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**A7-0044/2012**

5.3.2012

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## **REPORT**

on the proposal for a Council regulation on Administrative Cooperation in the field of excise duties  
(COM(2011)0730 – C7-0447/2011 – 2011/0330(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: David Casa

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council regulation on Administrative Cooperation in the field of excise duties

(COM(2011)0730 – C7-0447/2011 – 2011/0330(CNS))

(Special legislative procedure – consultation)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2011)0730),
  - having regard to Article 113 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C7-0447/2011),
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A7-0044/2012),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

#### Proposal for a regulation

#### Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) The creation of a European fiscal union should include an extended, rapid, efficient, user friendly and, as far as possible, automatic exchange of information among Member States in order to improve the fight against tax evasion.***

## *Justification*

*Each piece of EU legislation on taxation should be considered an important tool for the simultaneous achievement of micro and macroeconomic objectives. Therefore it is important to make, within this regulation, a clear reference to the internal market as well as to the European fiscal union.*

### **Amendment 2**

#### **Proposal for a regulation Recital 11**

##### *Text proposed by the Commission*

(11) Feedback is an appropriate means to ensure continual improvement of the quality of the information exchanged. A framework for the provision of feedback should therefore be put in place.

##### *Amendment*

(11) Feedback is an appropriate means to ensure continual improvement of the quality of the information exchanged ***and to simplify bureaucratic procedures***. A framework for the provision of feedback should therefore be put in place.

### **Amendment 3**

#### **Proposal for a regulation Recital 14 a (new)**

##### *Text proposed by the Commission*

##### *Amendment*

***(14a) Personal data processed in accordance with this Regulation should be kept for no longer than is necessary, in compliance with the applicable national and Union law.***

### **Amendment 4**

#### **Proposal for a regulation Recital 19**

##### *Text proposed by the Commission*

(19) For the purposes of an effective application of this Regulation, it may be necessary to limit the scope of certain rights and obligations laid down by

##### *Amendment*

(19) For the purposes of an effective application of this Regulation, it may be necessary to limit the scope of certain rights and obligations laid down by

Directive 95/46/EC, specifically the rights defined in Articles 10, 11(1), 12 and 21 thereof, in order to safeguard the interests referred to in Article 13(1) (e) of that Directive, , bearing in mind the potential loss of revenue for Member States and the crucial importance of information covered by this Regulation for the effectiveness of the fight against fraud. Member States should be obliged to apply such limitations, to the extent they are necessary and proportionate.

Directive 95/46/EC, specifically the rights defined in Articles 10, 11(1), 12 and 21 thereof, in order to safeguard the interests referred to in Article 13(1) (e) of that Directive, bearing in mind the potential loss of revenue for Member States and the crucial importance of information covered by this Regulation for the effectiveness of the fight against fraud. Member States should be obliged to apply such limitations, to the extent they are necessary and proportionate. ***Given the need to preserve evidence in cases of suspected fiscal irregularities or fraud and to prevent interference with the correct assessment of compliance with excise legislation, it should be possible, where necessary, to restrict the obligations of the data controller and the rights of the data subject relating to the provision of information, access to data and publicising of processing operations, in the course of the exchange of personal data under this Regulation.***

## Amendment 5

### Proposal for a regulation Recital 20

#### *Text proposed by the Commission*

(20) In order to ensure uniform conditions for the implementation of *Articles 8, 16, 19, 20, 21 and 34* of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.

#### *Amendment*

(20) In order to ensure uniform conditions for the implementation of this Regulation, ***and to describe the main categories of data that can be exchanged by Member States under this Regulation,*** implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing

powers.

## Amendment 6

### Proposal for a regulation

#### Recital 20 a (new)

*Text proposed by the Commission*

*Amendment*

***(20a) Processing of personal data relating to offences, criminal convictions or security measures is to be carried out in accordance with Article 8(5) of Directive 95/46/EC or Article 10(5) of Regulation (EC) No 45/2001.***

## Amendment 7

### Proposal for a regulation

#### Recital 22

*Text proposed by the Commission*

*Amendment*

(22) It is necessary to monitor and evaluate the functioning of this Regulation. Provision should thus be made for collection of statistics and other information by Member States and for the preparation of regular reports by the Commission.

(22) It is necessary to monitor and evaluate the functioning of this Regulation. Provision should thus be made for collection of statistics and other information by Member States and for the preparation of regular reports by the Commission. ***The collection of data by the Member States and the Commission reports should be submitted annually and made available both to Parliament and to the Council.***

## Amendment 8

### Proposal for a regulation

#### Recital 25 a (new)

*Text proposed by the Commission*

*Amendment*

***(25a) The Commission should establish a new VAT and excise duties forum, similar to the Joint Transfer Pricing Forum***



***(JTPF), within which companies can address issues relating to corporate VAT and disputes between Member States.***

*Justification*

*It is necessary to create an efficient and transparent legal instrument for an alternative resolution of cross-border disputes. Compared to the usual legal remedies the alternative dispute resolution provides a faster and more cost-effective resolution of conflicts between companies or between companies and end customers.*

**Amendment 9**

**Proposal for a regulation  
Article 8 – paragraph 3**

*Text proposed by the Commission*

3. The request referred to in paragraph 1 may include a reasoned request for a specific administrative enquiry. ***If the requested authority decides that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons for its decision.***

*Amendment*

3. The request referred to in paragraph 1 may include a reasoned request for a specific administrative enquiry.

**Amendment 10**

**Proposal for a regulation  
Article 8 – paragraph 5**

*Text proposed by the Commission*

5. The requested authority may request the requesting authority to provide a report on the follow-up action taken by the requesting Member State on the basis of the provided information. If such a request is made, the requesting authority shall, without prejudice to rules on secrecy and data protection applicable in its Member State, send such report as soon as possible, ***provided that it does not impose a disproportionate burden on it.***

*Amendment*

5. The requested authority may request the requesting authority to provide a report on the follow-up action taken by the requesting Member State on the basis of the provided information. If such a request is made, the requesting authority shall, without prejudice to rules on secrecy and data protection applicable in its Member State, send such report as soon as possible.

## Amendment 11

### Proposal for a regulation Article 9 – paragraph 4

#### *Text proposed by the Commission*

4. Where the use of the mutual administrative assistance document is impractical, the exchange of messages may be carried out in whole or in part by other means. In such exceptional cases the message shall be accompanied by an explanation of why the use of the mutual administrative assistance document was impractical.

#### *Amendment*

4. Where the use of the mutual administrative assistance document is impractical, the exchange of messages may be carried out in whole or in part by other means. In such exceptional cases, ***where the requested authority considers this to be necessary***, the message shall be accompanied by an explanation of why the use of the mutual administrative assistance document was impractical.

#### *Justification*

*Such a requirement would create an additional burden, if for no other reason because of the troublesome and time-consuming correspondence involved, while also yet further prolonging the information exchange. It is therefore undesirable to make this requirement compulsory: rather, the requested authority should be allowed to assess the appropriateness of the document in the particular situation.*

## Amendment 12

### Proposal for a regulation Article 10 – paragraph 2

#### *Text proposed by the Commission*

(2) The requested authority shall have an obligation to provide original documents only where such documents are necessary for the purpose pursued by the requesting authority and is not contrary to the provisions in force in the Member State in which the authority is established.

#### *Amendment*

(2) The requested authority shall have an obligation to provide original documents only where such documents are necessary for the purpose pursued by the requesting authority and is not contrary to the provisions in force in the Member State in which the ***requested*** authority is established.

## Amendment 13

### Proposal for a regulation Article 13 – paragraph 1

*Text proposed by the Commission*

1. ***With a view to exchanging the information necessary*** to assure the correct application of excise legislation, two or more Member States may agree, on the basis of a risk analysis, to conduct simultaneous controls, in their own territory, of the excise duty situation of one or more economic operators or other persons, that are of common or complementary interest, whenever such controls would appear to be more effective than controls carried out by only one Member State.

*Amendment*

1. ***In order*** to assure the correct application of excise legislation, two or more Member States may agree, on the basis of a risk analysis, ***and where appropriate***, to conduct simultaneous controls, in their own territory, of the excise duty situation of one or more economic operators or other persons, that are of common or complementary interest, whenever such controls would appear to be more effective than controls carried out by only one Member State.

## Amendment 14

### Proposal for a regulation Article 13 – paragraph 4

*Text proposed by the Commission*

4. ***If*** agreement referred to in paragraph 1 is concluded, each competent authority participating in that agreement shall appoint a representative responsible for supervising and coordinating the simultaneous control operation.

*Amendment*

4. ***Where*** agreement referred to in paragraph 1 is concluded, each competent authority participating in that agreement shall appoint a representative responsible for supervising and coordinating the simultaneous control operation.

*Justification*

*Simultaneous controls should not appear just as an option, but as a natural procedure allowed by this Regulation.*

## Amendment 15

### Proposal for a regulation Article 15 – paragraph 4 – subparagraph 1 – point a

*Text proposed by the Commission*

(a) the exact categories of information that

*Amendment*

(a) the exact categories of information that

*shall* be exchanged under Article 15(1);

*are to* be exchanged under Article 15(1),  
***with the objective of creating a comprehensive list of information, which will be updated twice a year in order to align it to new exchange needs;***

## **Amendment 16**

### **Proposal for a regulation**

#### **Article 16 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

To that end, ***they may*** use the computerised system where the system is capable of processing such information.

*Amendment*

To that end, ***it is desirable to*** use the computerised system where the system is capable of processing such information.

## **Amendment 17**

### **Proposal for a regulation**

#### **Article 16 – paragraph 2**

*Text proposed by the Commission*

2. The authority having forwarded information to another authority under paragraph 1 may request that other authority to provide a report on the follow-up action taken by the requesting Member State on the basis of the provided information. If such a request is made, the other authority shall, without prejudice to rules on secrecy and data protection applicable in its Member State, send such report as soon as possible, provided that it does not impose a disproportionate administrative burden on it.

*Amendment*

2. The authority having forwarded information to another authority under paragraph 1 may request that other authority to provide a report on the follow-up action taken by the requesting Member State on the basis of the provided information. ***Where the authority has forwarded the information following discovery of an unusual but economically significant irregularity, it shall request such a report on follow-up action.*** If such a request is made, the other authority shall, without prejudice to rules on secrecy and data protection applicable in its Member State, send such report as soon as possible, provided that it does not impose a disproportionate administrative burden on it.

## **Amendment 18**

**Proposal for a regulation**  
**Article 19 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) the name and address of the economic operator or premises;

*Amendment*

(b) the name and address of the economic operator or premises ***or, for registered consignees referred to in point (a)(ii) of paragraph 1, the address for service approved by the competent authorities of the Member State of registration;***

*Justification*

*It should clearly be stated that the address registered in the SEED-register for a registered consignee shall be the same as where he receives the goods under duty suspension arrangement.*

**Amendment 19**

**Proposal for a regulation**  
**Article 23 – paragraph 1**

*Text proposed by the Commission*

Requests for assistance, including requests for notifications, and attached documents may be made in any language agreed between the requested and requesting authority. The requests shall only require an accompanying translation, into the official language or one of the official languages of the Member State in which the requested authority is established, if the requested authority provides a justification explaining the need for translation.

*Amendment*

Requests for assistance, including requests for notifications, and attached documents may be made in any language agreed between the requested and requesting authority. The requests shall only require an accompanying translation, into the official language or one of the official languages of the Member State in which the requested authority is established, if the requested authority provides a ***reasonable*** justification explaining the need for translation.

*Justification*

*The Member States should be required to translate to all the official languages. This is a disproportionate administrative burden for the competent authorities.*

**Amendment 20**

**Proposal for a regulation**  
**Article 23**

*Text proposed by the Commission*

Requests for assistance, including requests for notifications, and attached documents may be made in any language agreed between the requested and requesting authority. The requests shall only require an accompanying translation, into the official language or one of the official languages of the Member State in which the requested authority is established, if the requested authority provides a justification explaining the need for translation.

*Amendment*

Requests for assistance, including requests for notifications, and attached documents may be made in any language agreed ***in advance*** between the requested and requesting authority. The requests shall only require an accompanying translation, into the official language or one of the official languages of the Member State in which the requested authority is established, if the requested authority provides a justification explaining the need for translation.

**Amendment 21**

**Proposal for a regulation**  
**Article 25 – paragraph 3**

*Text proposed by the Commission*

***3. The competent authority of a Member State may refuse to forward information if the requesting Member State cannot, for legal reasons, provide similar information.***

*Amendment*

***deleted***

**Amendment 22**

**Proposal for a regulation**  
**Article 25 – paragraph 4**

*Text proposed by the Commission*

(4) The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or where its disclosure would be contrary to public policy. Member States may not refuse to supply information on a economic operator on the sole grounds that

*Amendment*

(4) The provision of information may be refused where it would ***demonstrably*** lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or where its disclosure would be contrary to public policy. Member States may not refuse to supply information on a economic operator

this information is held by a bank or other financial institution, by a nominee or a person acting as agent or fiduciary or because it relates to the ownership interests in a legal person.

on the sole grounds that this information is held by a bank or other financial institution, by a nominee or a person acting as agent or fiduciary or because it relates to the ownership interests in a legal person.

### **Amendment 23**

#### **Proposal for a regulation**

#### **Article 28 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

However, the competent authority of the Member State providing the information **shall** permit its use for other purposes in the Member State of the requesting authority, if the legislation of the Member State of the requested authority allows the information to be used for similar purposes in that Member State.

##### *Amendment*

However, the competent authority of the Member State providing the information **may** permit its use for other purposes in the Member State of the requesting authority, if the legislation of the Member State of the requested authority allows the information to be used for similar purposes in that Member State.

### **Amendment 24**

#### **Proposal for a regulation**

#### **Article 28 – paragraph 4 – subparagraph 1**

##### *Text proposed by the Commission*

**All storage or exchange of information** by Member States referred to in this Regulation shall be subject to the national provisions implementing Directive 95/46/EC.

##### *Amendment*

**Processing of personal data** by Member States referred to in this Regulation shall be subject to the national provisions implementing Directive 95/46/EC.

### **Amendment 25**

#### **Proposal for a regulation**

#### **Article 32 – paragraph 2**

##### *Text proposed by the Commission*

2. Provided the third country concerned has given a legal undertaking to provide the assistance required to gather evidence of

##### *Amendment*

2. Provided the third country concerned has given a legal undertaking to provide the assistance required to gather evidence of

the irregular nature of transactions which appear to contravene excise legislation, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities which supplied the information, in accordance with their national law, for the same purposes for which this information has been supplied and in compliance with Directive 95/46/EC, **in particular** provisions on transfers of personal data to third countries, and the national legal measures implementing the Directive.

the irregular nature of transactions which appear to contravene excise legislation, information obtained under this Regulation may be communicated **by a competent authority of a Member State** to that third country, with the consent of the competent authorities which supplied the information, in accordance with their national law, for the same purposes for which this information has been supplied and in compliance with Directive 95/46/EC, **including the** provisions on transfers of personal data to third countries, and the national legal measures implementing the Directive.

## Amendment 26

### Proposal for a regulation Article 34 – paragraph 1

*Text proposed by the Commission*

1. The Member States and the Commission shall examine and evaluate the application of this Regulation. To that end, the Commission shall regularly **summarise** the experience of the Member States with the aim of improving the operation of the system established by this Regulation.

*Amendment*

1. The Member States and the Commission shall examine and evaluate the application of this Regulation. To that end, the Commission shall regularly **compare and analyse** the experience of the Member States with the aim of improving the operation of the system established by this Regulation.

#### *Justification*

*The Commission should have a clear and active role in monitoring the application of this Regulation. This should be done not by just summarising, but by an in-depth analysis of the experience of Member States from a European point of view.*

## Amendment 27

### Proposal for a regulation Article 34 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

**1a. The Commission shall present to Parliament and to the Council a report on**



*fraud in the field of excise duties by 31 December 2012, together with amendments to this Regulation if appropriate.*

## **Amendment 28**

### **Proposal for a regulation**

#### **Article 34 – paragraph 2 – subparagraph 2**

##### *Text proposed by the Commission*

With a view to evaluating the effectiveness of this system of administrative cooperation in enforcing the application of the excise legislation and combating evasion and fraud concerning excise duties, Member States *may* communicate to the Commission any available information other than information referred to in the first subparagraph.

##### *Amendment*

With a view to evaluating the effectiveness of this system of administrative cooperation in enforcing the application of the excise legislation and combating evasion and fraud concerning excise duties, Member States *shall* communicate to the Commission any available information other than information referred to in the first subparagraph.

## **Amendment 29**

### **Proposal for a regulation**

#### **Article 37**

##### *Text proposed by the Commission*

Every *five* years from the date of entry into force of this Regulation and based in particular on the information provided by the Member States, the Commission shall report to the European Parliament and to the Council on the application of this Regulation.

##### *Amendment*

Every *three* years from the date of entry into force of this Regulation and based in particular on the information provided by the Member States, the Commission shall report to the European Parliament and to the Council on the application of this Regulation.

##### *Justification*

*A period of five years for providing a Report on the application of this Regulation appears too long, especially in a phase of strong reforms, at the European level, in the field of taxation and fiscal union. A shorter period is therefore proposed, in order to ensure a more effective impact analysis and to where necessary, eventually adapting the legislation.*

## PROCEDURE

<b>Title</b>	Administrative cooperation in the field of excise duties	
<b>References</b>	COM(2011)0730 – C7-0447/2011 – 2011/0330(CNS)	
<b>Date of consulting Parliament</b>	28.11.2011	
<b>Committee responsible</b> Date announced in plenary	ECON 30.11.2011	
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	INTA 30.11.2011	IMCO 30.11.2011
<b>Not delivering opinions</b> Date of decision	INTA 8.12.2011	IMCO 24.1.2012
<b>Rapporteur(s)</b> Date appointed	David Casa 29.11.2011	
<b>Discussed in committee</b>	24.1.2012	28.2.2012
<b>Date adopted</b>	29.2.2012	
<b>Result of final vote</b>	+: 43	–: 0
	0: 0	
<b>Members present for the final vote</b>	Burkhard Balz, Sharon Bowles, Udo Bullmann, Pascal Canfin, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Syed Kamall, Philippe Lamberts, Astrid Lulling, Arlene McCarthy, Sławomir Witold Nitras, Ivari Padar, Alfredo Pallone, Antolín Sánchez Presedo, Olle Schmidt, Edward Scicluna, Peter Skinner, Theodor Dumitru Stolojan, Sampo Terho, Corien Wortmann-Kool, Pablo Zalba Bidegain	
<b>Substitute(s) present for the final vote</b>	Elena Băsescu, Philippe De Backer, Herbert Dorfmann, Sari Essayah, Ashley Fox, Enrique Guerrero Salom, Thomas Händel, Danuta Jazłowiecka, Krišjānis Kariņš, Olle Ludvigsson, Thomas Mann, Sirpa Pietikäinen, Theodoros Skylakakis	
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Godielieve Quisthoudt-Rowohl	
<b>Date tabled</b>	5.3.2012	