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2022/0331 (CNS)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EU) No 389/2012 as regards the exchange of information  
maintained in the electronic registers concerning economic operators who move excise  
goods between Member States for commercial purposes**

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Intra-EU commercial movements of excise goods may be performed under suspension of excise duty (hereinafter, ‘Duty Suspension’) or after they are released for consumption in the territory of one Member State and then moved to the territory of another Member State in order to be delivered for commercial purposes (hereinafter, ‘Duty Paid’). Currently only movements under Duty Suspension are monitored by the computerised system referred to in Article 1 of Decision (EU) 2020/263 of the European Parliament and of the Council<sup>1</sup>. For these movements, economic operator types are created and defined in Council Directive 2008/118/EC<sup>2</sup>.

Under Chapter V of Council Directive 2020/262<sup>3</sup>, as from 13 February 2023 Duty Paid movements shall be monitored by the computerised system. Specific economic operator types for Duty Paid movements were created and defined in Council Directive 2020/262.

Council Regulation (EU) No 389/2012<sup>4</sup> lays down the legal basis for administrative cooperation between Member States. Each Member State maintains an electronic database containing registers with the data of the economic operators engaged in the movement of excise goods. Within the context of administrative cooperation, the Member States exchange the data included in these registers with a central register operated by the Commission only as regards the economic operators moving goods under Duty Suspension.

On the basis of Article 19 of Council Regulation (EU) No 389/2012, as from 13/2/2023, Member States will maintain in the same electronic database registers the data of the economic operators who are engaged in the Duty Paid movements. These economic operators are defined in Council Directive 2020/262 as certified consignors and certified consignees.

With this proposal, the Member States shall align the procedure of exchanging the data of economic operators moving goods under Duty Suspension with the exchange of data of the economic operators moving goods under Duty Paid. .

This alignment will further complete the digitalisation of the monitoring of movements of excise goods released for consumption in the territory of one Member State and moved to the territory of another Member State in order to be delivered there for commercial purposes and improve the fight against tax fraud.

Also, this proposal, shall replace references to a regulation which will be repealed. More specifically, Council Regulation (EU) No 389/2012 refers to Commission Regulation (EC)

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<sup>1</sup> Decision (EU) 2020/263 of the European Parliament and of the Council of 15 January 2020 on computerising the movement and surveillance of excise goods (OJ L 58, 27.2.2020, p. 43–48).

<sup>2</sup> Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12–30).

<sup>3</sup> Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

<sup>4</sup> Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

No 684/2009<sup>5</sup>. That regulation will be repealed as from 13/2/2023 and replaced by Commission Delegated Regulation (EU) .../[OP please insert publication number of the Regulation mentioned in the footnote]<sup>6</sup>. With this proposal the reference of the previous regulation will be replaced with the reference of the new one.

- **Consistency with existing policy provisions in the policy area**

The proposal is linked to Council Directive (EU) 2020/262, which defines the movements of excise goods that have been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes.

The objective of this proposal is to widen the scope of Articles 15, 19 and 20 of Council Regulation EU (No) 389/2012 in order for Member States to exchange information concerning all economic operators and not only those who are engaged in the movement of excise goods under duty suspension arrangements.

This proposal is further linked to Council Directive (EU) 2020/262 as Delegated Regulation (EU) .../[OP please insert publication number], which will replace Commission Regulation (EC) No 684/2009, in pursuant to Council Directive (EU) 2020/262.

- **Consistency with other Union policies**

This amendment is very technical and subsequently has no impact on other Union policies.

## **2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY**

- **Legal basis**

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be achieved by the Member States and can be better achieved at European Union level. Council Regulation EU (No) 389/2012 provides harmonised rules as regards the exchange of data for the smooth operation of the movements of excise goods between the Member States, in the absence of which the Member States would possibly set them bilaterally with variations from one Member State to another. This proposal extends the application of the existing procedures of data exchange to the economic operators engaged in the movement of excise goods which have been released for

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<sup>5</sup> Commission Regulation (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty (OJ L 197, 29.7.2009, p. 24–64).

<sup>6</sup> Commission Delegated Regulation (EU) .../[OP please insert publication number] of ... supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing thresholds for the losses due to the nature of the goods (OJ L ...)[OP please insert number and OJ reference].

consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes.

- **Proportionality**

The proposed amendment does not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty's objectives of a proper and effective functioning of the Internal Market.

This proposal complies with the principles of proportionality as set out in Article 5, paragraph 4 of the Treaty on the European Union.

The objective of the proposal is to introduce the obligations of Member States regarding the exchange of the data of economic operators moving goods under Chapter V, section 2 of Directive (EU) 2020/262 maintained in the national registers with the central register. In the absence of this proposal the full exchange of information will not be possible, negatively impacting the administrative burden on economic operators, the risk of fraud and the administrative cooperation between the competent authorities of the Member States.

- **Choice of the instrument**

Council Regulation

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Impact assessment**

The impact assessment was prepared for the recast of Directive 2008/118/EC. Council Directive 2008/118/EC setting out general arrangements for goods subject to excise duty, after being substantially amended several times, in the interests of clarity, was repealed by Council Directive (EU) 2020/262. The proposal for the recast was accompanied by an impact assessment on Council Directive 2008/118/EC focusing on certain areas, one of which was the automation of intra-EU movements of excise goods released for consumption. Council Directive (EU) 2020/262 addresses the computerisation of movements of excise goods released for consumption, not provided for in Directive 2008/118/EC.

- **Regulatory fitness and simplification**

The evaluation of Directive 2008/118/EC was carried out within the framework of the Commission's REFIT programme.

- **Fundamental rights**

This proposal respects the fundamental rights, particularly the right to privacy though the existing provision on data protection contained in Regulation (EU) No 389/2012

### **4. BUDGETARY IMPLICATIONS**

No additional resources will be required from the EU budget.

## **5. OTHER ELEMENTS**

- **Detailed explanation of the specific provisions of the proposal**

The proposal extends the scope of Article 15(1)(d) of Regulation (EU) No 389/2012 setting out the obligation of Member States to exchange necessary information where the total destruction or irretrievable loss in movements excise goods under a duty suspension arrangement has occurred to the movements of excise goods released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes.

Commission Regulation (EC) No 684/2009 will be repealed and replaced by Delegated Regulation (EU) .../....[OP please insert publication number]. The proposal replaces the reference to Annex II, code list 11 of Commission Regulation (EC) No 684/2009 in Article 19(2)(c) of this regulation with the reference to Annex II, code list 10 of Delegated Regulation (EU) .../....[OP please insert publication number].

The proposal extends the scope of the first paragraph of Article 19 (4) of Regulation (EU) No 389/2012, as regards the obligation of Member States to exchange via a central register the information contained in the respective national registers concerning economic operators engaged in moving excise goods under duty suspension arrangements between Member States, to the movements of excise goods released for consumption in the territory of one Member State and moved to the territory of another Member State in order to be delivered there for commercial purposes.

The first sentence of Article 20 (1) of Regulation (EU) No 389/2012 refers to the possibility to validate electronically the excise registration numbers of economic operators engaged in the movement of excise goods under duty suspension arrangement. The proposal extends its scope so that this option applies to the excise registration numbers of economic operators moving excise goods released for consumption in the territory of one Member State and moved to the territory of another Member State in order to be delivered there for commercial purposes.

Proposal for a

## **COUNCIL REGULATION**

### **amending Regulation (EU) No 389/2012 as regards the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>1</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>2</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Article 36 of Council Directive (EU) 2020/262<sup>3</sup> provides that the movement of excise goods which have been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes, is to take place under cover of an electronic simplified administrative document. That Article thus extends the use of the computerised system under Decision (EU) 2020/263 of the European Parliament and of the Council<sup>4</sup> for monitoring the movement of excise goods, which is used to monitor movements of excise goods under duty suspension arrangements, to the monitoring of excise goods released for consumption in the territory of one Member State and then moved to the territory of another Member State in order to be delivered for commercial purposes. That extension of the use of the computerised system will start to apply as of 13 February 2023.
- (2) In order to reflect that extension of the use of the computerised system, it is necessary to extend the scope of Article 15(1), point (d), Article 19(4), first subparagraph, and Article 20(1) of Regulation (EU) No 389/2012 to all excise goods concerned, irrespective of whether a duty suspension arrangement has occurred.
- (3) Article 19(2), point (c), of Regulation (EU) No 389/2012 requires Member States to maintain in the electronic registers the excise product category (CAT) and/or the excise product code (EPC) of the products covered by the authorisation referred to in

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<sup>1</sup> OJ C [...], [...], p. [...]

<sup>2</sup> OJ C [...], [...], p. [...].

<sup>3</sup> Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

<sup>4</sup> Decision (EU) 2020/263 of the European Parliament and of the Council of 15 January 2020 on computerising the movement and surveillance of excise goods (OJ L 58, 27.2.2020, p. 43).

code list 11 of Annex II to Commission Regulation (EC) No 684/2009<sup>5</sup>. However, as from 13 February 2023, Commission Regulation (EC) No 684/2009 will be replaced by Commission Delegated Regulation (EU) .../... [OJ Please insert the publication number of the Regulation mentioned in the footnote]<sup>6</sup>. For reasons of clarity, it is appropriate to reflect that replacement in Article 19(2), point (c), of Regulation (EU) No 389/2012.

- (4) Since the objective of this Regulation is to provide for the exchange of the information, which each Member State maintains in the electronic register concerning the economic operators moving goods released for consumption in the territory of one Member State and then moved to the territory of another Member State in order to be delivered there for commercial purposes, it cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, namely ensuring the harmonised functioning of the computerised system across Member States, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective.
- (5) This Regulation respects the fundamental rights and observes the principles which are recognised by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data. The processing of such data carried out within the framework of this Regulation does not go beyond what is necessary and proportionate for the purpose of the protecting the legitimate fiscal interest of the Member States.
- (6) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>7</sup>.
- (7) In order to align the date of application of this Regulation with the date of application of Chapter V, Section 2, of Directive (EU) 2020/262, and to allow the Member States adequate time to prepare for the changes resulting from this Regulation, it should apply from 13 February 2023.
- (8) Regulation (EU) No 389/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

#### **Amendments to Regulation (EU) No 389/2012**

Regulation (EU) No 389/2012 is amended as follows:

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<sup>5</sup> Commission Regulation (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty (OJ L 197, 29.7.2009, p. 24).

<sup>6</sup> Commission Delegated Regulation (EU) .../... of ... supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing thresholds for the losses due to the nature of the goods (OJ L ...) [OP please insert number and OJ reference].

<sup>7</sup> Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

- (1) in Article 15(1), point (d) is replaced by the following:  
'(d) where the total destruction or irretrievable loss of excise goods has occurred;';
- (2) Article 19 is amended as follows:
- (a) in paragraph 2, point (c) is replaced by the following:  
'(c) the excise product category (CAT) and/or the excise product code (EPC) of the products covered by the authorisation referred to in code list 10 of Annex II to Delegated Regulation (EU) .../[OP please insert publication number]\*;

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\* Commission Delegated Regulation (EU) .../... of ... supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing thresholds for the losses due to the nature of the goods (OJ L ...)[OP please insert number and OJ reference].';

- (b) in paragraph 4, the first subparagraph is replaced by the following:  
'The information contained in the respective national registers as referred to in paragraph 2 of this Article concerning economic operators engaged in movements of excise goods referred to in Chapter IV and Chapter V, Section 2, of Council Directive (EU) 2020/262\* shall be automatically exchanged via a central register.'

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\* Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).';

- (3) in Article 20(1), the first sentence is replaced by the following:  
'The Commission shall ensure that persons involved in the movement of excise goods referred to in Chapter IV and Chapter V, Section 2, of Directive (EU) 2020/262, can obtain confirmation by electronic means of the validity of excise numbers held in the central register referred to in Article 19(4) of this Regulation.'

## *Article 2*

### **Entry into force**

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 13 February 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Council*  
*The President*