



Brussels, 26.1.2021
COM(2021) 28 final

2021/0015 (CNS)

Proposal for a

COUNCIL REGULATION

**amending Council Regulation (EU) No 389/2012 on administrative cooperation in the
field of excise duties as regards the content of electronic registers**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

Council Regulation (EU) No 389/2012¹ lays down the legal basis for administrative cooperation between Member States.

This proposal accompanies Chapter V of Council Directive 2020/262². It concerns the content of the registers in the electronic database maintained by Member States in relation to the certified consignors and certified consignees sending or receiving goods only occasionally.

For a certified consignor or certified consignee sending or receiving excise goods only occasionally, Member States can give them a temporary certification limited to a specified quantity of excise goods, a single consignee or consignor and a specified period of time.

The proposal sets out the information to be introduced in the registers maintained by the Member States as regards to the certified consignors and certified consignees moving goods only occasionally. This information concerns the quantity of goods, the identity of the economic operator at the end of the movement of the goods and the duration of the temporary certification.

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

The proposal is linked to Council Directive (EU) 2020/262, which defines certified consignors and certified consignees. Certified consignors and certified consignees are the economic operators involved in the movement of excise goods that have been released for consumption in the territory of one Member State and then moved to the territory of another Member State. The objective of this proposal is to widen the scope of Article 19 of Council Regulation EU (No) 389/2012 in order to set out the information to be introduced by the Member States in the registers of these economic operators when moving excise goods only occasionally.

- **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.

¹ OJ L 121, 8.5.2012, p. 1

² OJ L 58, 27.2.2020, p. 4

The objectives of the proposal cannot be sufficiently achieved by the Member States and can be better achieved at European Union level. Existing national registration procedures vary widely and are not suitable as a basis for automation of these procedures.

- **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 economic operators moving goods under Chapter V, section 2 of Council Directive (EU) 2020/262. In the absence of that proposal the full automation of movements of goods released for consumption will not be possible.

- **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 by the certified consignors and certified consignees, not provided for in Directive 2008/118/EC, and also sets out the conditions for the temporary certification when certified consignors or certified consignees are moving excise goods only occasionally.

- **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 amends the scope of Article 19 of Regulation (EU) No 389/2012 to include the information that Member States must introduce in the registers of the electronic database in relation to the certified consignors and certified consignees who are moving excise goods only occasionally and are granted a temporary certification.

For the registered consignors, the competent authorities of the Member States must include in the register the content of the temporary certification namely the quantity of excise goods, the identity of the consignee in the Member State of destination and the period of time for which the authorisation is valid.

For the registered consignees, the competent authorities of the Member States must include in the register the content of the temporary certification namely the quantity of excise goods, the identity of the consignor in the Member State of dispatch, and the period of time for which the authorisation is valid.

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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 Parliament³,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Article 19 of Council Regulation (EU) No 389/2012⁴ lays down an obligation for Member States to maintain electronic registers of authorisations of economic operators and warehouses that are engaged in moving excise goods under duty suspension arrangements.
- (2) Council Directive (EU) 2020/262⁵ extends the use of the computerised system under Decision (EU) 2020/263 of the European Parliament and of the Council⁶, which is currently used to supervise movements of excise goods under duty suspension, to the supervision 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.
- (3) In order to allow for the proper functioning of the computerised system by ensuring storage of complete, up-to-date and accurate data, it is necessary to amend the scope of Article 19 of Regulation (EU) No 389/2012 in order to set out the information that Member States should introduce in the registers of the electronic database in relation to the certified consignors and certified consignees that move excise goods only occasionally.
- (4) Since the objective of this Regulation, namely the specification of the information which the Member States should introduce in the electronic register concerning the

³ OJ C , , p. .

⁴ 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.)

⁵ 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.)

⁶ 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.)

certified consignors and certified consignees moving excise goods only occasionally, cannot be sufficiently achieved by the Member States but can rather, by reason of ensuring the harmonised functioning of the computerised system and facilitating the fight against fraud, 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. In the view of the limits set by the present Regulation, 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 of Regulation (EU) 2018/1725 of the European Parliament and of the Council⁷.
- (7) In order to align the application date of this Regulation with the application date of the provisions of Directive (EU) 2020/262 on automation of movements 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 for commercial purposes in the territory of that other Member State 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

In Article 19(2) of Regulation (EU) No 389/2012, the following points are added:

- (l) for certified consignors moving excise goods only occasionally referred to in Article 35(8) of Directive (EU) 2020/262, the quantity of excise goods, the identity of the consignee in the Member State of destination and the period of time for which the temporary certification is valid;
- (m) for certified consignees moving excise goods only occasionally referred to in Article 35(8) of Directive (EU) 2020/262, the quantity of excise goods, the identity of the consignor in the Member State of dispatch, and the period of time for which the temporary certification is valid.’

⁷ Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 (OJ L 295, 21.11.2018, p. 39)

Article 2

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*