

Procedure file

Basic information		
CNS - Consultation procedure Regulation	2011/0330(CNS)	Procedure completed
Excise duties: administrative cooperation		
Repealing Regulation (EC) No 2073/2004 2003/0309(CNS)		
Amended by 2018/0181(CNS)		
Amended by 2022/0331(CNS)		
Subject		
2.70.02 Indirect taxation, VAT, excise duties		
2.80 Cooperation between administrations		

Key players			
European Parliament	Committee responsible		Rapporteur
	ECON Economic and Monetary Affairs		Appointed
			29/11/2011
			PPE CASA David
			Shadow rapporteur
			S&D BULLMANN Udo
			ALDE SCHMIDT Olle
			Verts/ALE LAMBERTS Philippe
			ECR FOX Ashley
	Committee for opinion		Rapporteur for opinion
	INTA International Trade		Appointed
			The committee decided not to give an opinion.
	IMCO Internal Market and Consumer Protection		The committee decided not to give an opinion.
Council of the European Union	Council configuration		Meeting
	Economic and Financial Affairs ECOFIN		Date
European Commission			3163
			02/05/2012
	Commission DG		Commissioner
	Taxation and Customs Union		ŠEMETA Algirdas

Key events			
14/11/2011	Legislative proposal published	COM(2011)0730	Summary
30/11/2011	Committee referral announced in Parliament		
29/02/2012	Vote in committee		
05/03/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0044/2012	Summary

29/03/2012	Results of vote in Parliament		
29/03/2012	Decision by Parliament	T7-0108/2012	Summary
02/05/2012	Act adopted by Council after consultation of Parliament		
02/05/2012	End of procedure in Parliament		
08/05/2012	Final act published in Official Journal		

Technical information

Procedure reference	2011/0330(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealing Regulation (EC) No 2073/2004 2003/0309(CNS) Amended by 2018/0181(CNS) Amended by 2022/0331(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/7/07779

Documentation gateway

Legislative proposal		COM(2011)0730	14/11/2011	EC	Summary
Committee draft report		PE475.980	05/01/2012	EP	
Economic and Social Committee: opinion, report		CES0146/2012	18/01/2012	ESC	
Document attached to the procedure		N7-0050/2012 OJ C 074 13.03.2012, p. 0001	27/01/2012	EDPS	Summary
Amendments tabled in committee		PE480.839	06/02/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0044/2012	05/03/2012	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0108/2012	29/03/2012	EP	Summary
Commission response to text adopted in plenary		SP(2012)323	02/05/2012	EC	
Follow-up document		COM(2013)0850	03/12/2013	EC	Summary
Follow-up document		SWD(2013)0490	03/12/2013	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Final act

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Excise duties: administrative cooperation

PURPOSE: to replace Council Regulation (EC) No 2071/2004 by provisions fulfilling the same function, namely to provide a common legal framework for administrative cooperation in the particular field of excise goods.

PROPOSED ACT: Council Regulation.

BACKGROUND: the provisions of Regulation (EC) No. 2073/2004 lay down a legal framework for administrative cooperation in the field of excise duties. These provisions need to be revised to take into account the introduction of the computerised Excise Movement and Control System (EMCS).

EMCS has been put into place based on Decision No. 1152/2003/EC of the European Parliament and of the Council on computerising the movement and surveillance of excisable products. The existing Council Regulation provided a legal basis for an earlier Phase of the EMCS project, to support computer assisted manual procedures (Phase 0 of EMCS), pending the automation of support for administrative cooperation that is contained in Phase 2 and Phase 3 of EMCS.

Phase 3 will include the automatic exchange of messages between economic operators and Member State Administrations for the reporting of exceptional situations, such as the results of road controls, reports of exceptions made by economic operators and definitive interruptions of movements. These exchanges are currently handled manually on a best effort basis.

A statistics and reporting service is to be provided as part of the EMCS project (CS/MISE Central Services / Management Information System Excise). This is intended to improve the quality and frequency of reporting on the operation of EMCS. This service will partially remove the need for manual collection of operational statistics by Member States and the Commission. A legal base will be required to allow the collection of data from individual movement records.

Decision 1152/2003/EC has required the Commission and Member States to fund the development, testing and putting into place of EMCS. The new Regulation also proposes a similar continuing obligation on Member States and the Commission for the maintenance of EMCS and associated services now that EMCS is operational.

Apart from these specific changes, other changes to the content of Regulation (EC) No. 2073/2004 are considered necessary:

- to update the language in the Regulation, to take account of new legislative standards;
- to generally revise the text, taking out provisions which are no longer relevant and to make the structure of the text more logical;
- to take account of new administrative cooperation procedures in the field of excise and elsewhere, in order to provide a regulatory framework, which is more efficient and less burdensome for both excise authorities and economic operators.

In order to provide a legal basis for the administrative cooperation functions of EMCS, to generally tidy up and create an easier to read and more consistent document, and given the scope of the changes it is proposed to totally replace the text of the existing Regulation.

IMPACT ASSESSMENT: the Commission did not undertake an impact assessment. The proposal was developed in close cooperation with a specialists working group under the auspices of the Committee on Excise Duty (established under Directive 2008/118/EC). The Commission's services undertook a number of bilateral and multilateral meetings with interested Member States to further discuss the proposal.

LEGAL BASIS: Article 113 of the Treaty on the Functioning of the European Union (TFEU).

CONTENT: the Commission proposes to the Council the adoption of a new Regulation on administrative cooperation in the field of excise duties which would replace the Council Regulation currently in force in this field. The proposed Regulation lays down the conditions under which the competent authorities responsible in the Member States for the application of the excise legislation are to cooperate with each other, and with the Commission, in order to ensure compliance with that legislation. To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange information, whether by electronic means or otherwise, that is necessary to the assurance of the correct application of excise legislation.

The aim is to:

- align legislation in this field with the possibilities created by the development of EMCS and to provide a more clearly defined and comprehensive legal base for these possibilities, allowing for the replacement of existing manual and semi-automated procedures;
- more clearly define the rights and obligations of Member States and the Commission in this field, both within the scope of EMCS and more generally.

Among the new elements contained in this proposal, the core is constituted by the legal rules ensuring application of the EMCS system. The new system, in particular, simplifies movements under suspension of excise duty and facilitates appropriate controls by Member States. This proposal imposes no new additional burden on excise economic operators in comparison with the existing situation, since it is largely confined to the modernisation of existing tools and practices.

Assessment of impact on fundamental rights: the proposal assumes that Member States will make necessary and proportionate use of Article 13 of Directive 95/46/EC, which allows Member States to exempt administrative bodies from the requirement to act according to all of the rights of a data subject under Article 8 of the Charter of Fundamental Rights. The Regulation permits Member States to make use of the exemptions in Article 13 of Directive 95/46/EC for storage or exchange of information, where such a restriction is necessary to safeguard the important economic or financial interests of a Member State or of the European Union, including monetary, budget and taxation matters. In this, there is no change in the rights and obligations of Member States from the rights and obligations defined in the existing Regulation on Administrative Cooperation in the field of excise.

The processing of data by the Commission is limited to the following areas:

- providing a secure communication channel (CCN/CSI) between Member State Administrations. This channel is used for the

forwarding of structured messages involving the exchange of information on request, automatic exchange of information and spontaneous forwarding of information, which can aid in the correct application of excise legislation;

- providing a mechanism for the copying of excise economic operator registration data between Member States;

the extraction of data for statistical purposes.

The Commission considers that such an approach will allow and encourage enhanced cooperation between Member States and will bring the legislation in this area more into line with the recently adopted provisions for administrative cooperation in the field of VAT and of direct taxation.

BUDGETARY IMPACT: any financial impact relating to the introduction of Phase 3 of EMCS results from Decision 1152/2003/EC. The budgetary impact of the development and operation of a new service for the collection of statistics and the commitment to continue to develop, maintain and operate the system in general is covered by expenditure under the [Fiscalis 2013](#) Programme and therefore are not discussed any further in the context of this document.

Excise duties: administrative cooperation

Opinion of the European Data Protection Supervisor on the proposal for a Council regulation on administrative cooperation in the field of excise duties.

Before the adoption of the proposal, the EDPS was given the opportunity by the Commission to provide informal comments. The EDPS is pleased with the process, which has helped to improve the text from a data protection point of view at an early stage. Some of those comments have been taken into account in the proposal. The EDPS welcomes the reference to the present consultation in the preamble of the proposal. The EDPS would nevertheless like to highlight some elements which could still be ameliorated in the text from a data protection perspective.

The EDPS welcomes the specific reference in the proposal to the applicability of Directive 95/46/EC and Regulation (EC) No 45/2001 to the personal data processing activities covered by the regulation. He proposes a precision of this reference.

The EDPS recommends the following points with a view to ameliorate the text from a data protection perspective:

- the categories of data to be exchanged between competent authorities should be laid down in the proposal,
- the EDPS expects to be consulted on implementing measures related to the protection of personal data,
- safeguards about the permitted use of information related to suspected cases of fraud should be inserted in the text of the Regulation,
- the necessity and the proportionality of the restrictions to the rights of information and access have to be clearly demonstrated by the legislator. In addition, specific situations where such restrictions are needed must be specified in the text of the proposal or in a recital,
- the maximum retention period for information concerning intra-Community movements should be specified in the Regulation,
- the retention period should be justified in its preamble,
- international transfers of data on suspicious transactions should comply with Articles 8 and 26 of Directive 95/46/EC and their scope, the identity of the sender and the purpose should be specified.

Excise duties: administrative cooperation

The Committee on Economic and Monetary Affairs adopted the report drafted by David CASA (EPP, MT) on the proposal for a Council regulation on Administrative Cooperation in the field of excise duties.

It suggests that the European Parliament should amend the Commission proposal as follows:

Characteristics of the system: the report stresses that 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. The need to simplify bureaucratic procedures is also highlighted.

Cooperation on request: Members deleted the obligation, for the requested authority, to immediately inform the requesting authority of the reasons for its decision that no administrative enquiry is necessary.

Form of the request and the reply and provision of documents: 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.

Simultaneous controls: Members consider that simultaneous controls should not appear just as an option, but as a natural procedure allowed by this Regulation.

Exchange of information without prior request: the proposal provides that the Commission shall adopt implementing acts to determine the exact categories of information that shall be exchanged under the Regulation. An amendment stipulates that the objective is to create a comprehensive list of information, which will be updated twice a year in order to align it to new exchange needs.

Optional exchange of information: to that end, Members consider that it is desirable to use the computerised system where the system is capable of processing such 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.

Storage and exchange of information on authorisations of economic operators and warehouses: Members state that 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.

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

General limits to the duties of the requested authority: Members have deleted the possibility for the competent authority of a Member State to refuse to forward information if the requesting Member State cannot, for legal reasons, provide similar information. 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.

Official secrecy, data protection and use of the information communicated under this Regulation: 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. Processing of personal data by Member States referred to in this Regulation shall be subject to the national provisions implementing Directive 95/46/EC. 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.

Relations with third countries: 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.

Conflict resolution mechanism: the report stresses that it is necessary to create an efficient and transparent legal instrument for an alternative resolution of cross-border disputes. 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.

Evaluation of arrangements, collection of operational statistics and reporting: Members consider that the Commission should have a well defined and active role in the examination and evaluation of 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. 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.

Lastly, every three years (as opposed to 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.

Excise duties: administrative cooperation

The European Parliament adopted by 584 votes to 39, with 32 abstentions, in the framework of a special legislative procedure (consultation) a legislative resolution on the proposal for a Council regulation on Administrative Cooperation in the field of excise duties.

Parliament amends the proposal as follows:

Characteristics of the system: Parliament stresses that 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. The need to simplify bureaucratic procedures is also highlighted.

Cooperation on request: Members deleted the obligation, for the requested authority, to immediately inform the requesting authority of the reasons for its decision that no administrative enquiry is necessary.

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 send such report as soon as possible.

Form of the request and the reply and provision of documents: 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.

Simultaneous controls: 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.

General limits to the duties of the requested authority: Members have deleted the possibility for the competent authority of a Member State to refuse to forward information if the requesting Member State cannot, for legal reasons, provide similar information. 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.

Official secrecy, data protection and use of the information communicated under this Regulation: 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. Processing of personal data by Member States referred to in this Regulation shall be subject to the national provisions implementing Directive 95/46/EC. 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.

Relations with third countries: 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.

VAT and excise duty forum: 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.

Evaluation of arrangements, collection of operational statistics and reporting: Members consider that the Commission should have a well defined and active role in the examination and evaluation of 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.

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.

Lastly, every three years (as opposed to 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.

Excise duties: administrative cooperation

PURPOSE: to simplify and reinforce administrative cooperation in the field of excise goods.

LEGISLATIVE ACT: Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004.

CONTENT: the Council adopted a regulation aimed at modernising the framework for administrative cooperation between the member states in the field of excise duties.

The Regulation, which repeals and replaces regulation 2073/2004, lays down the conditions for cooperation in the application of legislation on excise duties, and rules and procedures for the exchange of information, including by electronic means. It lays down the conditions under which the competent authorities responsible in the Member States for the application of the excise legislation are to cooperate with each other, and with the Commission, in order to ensure compliance with that legislation. To that end, it lays down rules and procedures to enable the competent authorities of the Member States to cooperate and to exchange information, whether by electronic means or otherwise, that is necessary to the assurance of the correct application of excise legislation.

The main elements of the new Regulation are as follows:

- For the purposes of a proper coordination of information flows, the competent authority of each Member State shall designate a central excise liaison office to which principal responsibility shall be delegated for contacts with other Member States in the field of administrative cooperation with respect to legislation on excise duties. The competent authority of each Member State may designate, under the conditions laid down by the Member State, competent officials who may exchange information directly under this Regulation.
- In order for the necessary information to be available in a timely manner, the new Regulation maintains the provisions of Regulation (EC) No 2073/2004 requiring the requested authority to act as quickly as possible and at the latest within a given time limit should be maintained. However, it provides that the time limit for the provision of information already available to the requested Member State be shorter than the standard time limit (one month instead of three).
- For the effective monitoring of excise procedures in cross-border movement, the Regulation provides for the possibility of simultaneous controls by Member States and for the presence of officials of one Member State in the territory of another Member State, within the framework of administrative cooperation.
- Member States should continue to be able to exchange, on an optional basis, information necessary for the correct application of the legislation on excise duties, where that information falls outside the categories of information to be automatically exchanged.
- The Regulation provides a framework concerning feedback which is an appropriate means to ensure continual improvement of the quality of the information exchanged.
- The electronic storage by Member States of certain specified data regarding the authorisation of economic operators and tax warehouses is indispensable for the proper functioning of the excise duties system and the fight against fraud. Each Member State shall keep the information concerning movements of excise goods within the Union and the records contained in the national registers referred to in Article 19 for at least five years from the end of the calendar year in which the movement began.
- Economic operators should be able to speedily operate the verifications necessary for movements of excise goods. They should be provided with the possibility to have the validity of excise numbers confirmed electronically through a central register operated by the Commission and fed by the information contained in national databases.
- Member States should therefore not be entitled to refuse the provision of information solely on the basis of banking secrecy rules.
- The Regulation confirms that where information or documents are obtained with the authorisation or on the request of a judicial authority, the communication of the information or documents to the competent authority of another Member State is subject to authorisation by the judicial authority if such authorisation is required under the law of the communicating Member State.
- The exchange of information with third countries has proven beneficial for the correct application of legislation on excise duties and should therefore be maintained. Directive 95/46/EC sets out specific conditions for the communication of information to third countries, with which Member States must comply.
- It might be necessary to limit the scope of certain rights and obligations laid down by Directive 95/46/EC in order to safeguard important economic and financial interests of the Member States. However, they should be obliged to apply such limitations, to the extent they are necessary and proportionate.

Reporting: every five years from the date of entry into force of this Regulation and on the basis, in particular, of 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.

ENTRY INTO FORCE: 28/05/2012.

APPLICATION: from 01/07/2012.

Excise duties: administrative cooperation

The Commission report aims to assess the functioning of horizontal rules in the excise area, in line with respective reporting obligations in the

legislation, as regards two main aspects:

- the functioning of the [arrangements for the computerised supervision of excise movements under duty suspension](#) and
- the application of the administrative cooperation rules in the area of excise duties.

It is thus a first building-block of a formal economic evaluation planned by the Commission in the years to come which will also cover the whole set of other substantive legal rules laid down in Council Directive 2008/118/EC concerning the general arrangements for excise duty and review the functioning of the EU Excise Movement and Control System (EMCS), the computerised system for monitoring movements of excise goods under suspension of excise duty within the EU.

The report comprises three sections devoted to the implementation of determined horizontal aspects of EU excise legislation:

- Firstly, it reports on the implementation of Decision 1152/2003/EC of the European Parliament and Council on the computerisation of the movement and surveillance of excisable products. This Decision established the governance arrangements and the central development funding for the Excise Movement and Control System (EMCS).
- Secondly, it addresses the requirement under Directive 2008/118/EC for the Commission to provide a report concerning EMCS Fallback Procedures, and the print-out of the electronic administrative document.

Lastly, the report summarises the consultation of Member States concerning their first experiences with Council Regulation (EU) No. 389/2012 on administrative cooperation in the field of excise duties.

The report states that so far, the new Regulation has not led to big changes in the way that Member States cooperate with each other. This is despite the increase in the responsibilities of the role of the Central Excise Liaison Office.

Member States feel that the new arrangements are an improvement over the previous systems based on e-forms, giving better control of workflow and a readily available archive of administrative cooperation information.

The report notes that some Member States:

- would like to see the development of a feedback message in EMCS, together with a provision in the appropriate Implementing Regulation, which would allow requesting Member States to inform, requested Member States about subsequent actions that they have taken on the basis of information received;
- criticised the current EMCS fallback arrangements. The document flow does not necessarily involve the Member States and is considered to provide opportunities for fraud;
- would like to see a new message to allow for the transfer of information where the economic operator that is being checked is unable to produce documentation for the excise goods present;
- report that a proportion of requests for administrative cooperation are not answered within the one month or three month time-limits, or are not answered at all;
- suggested that the system might be enhanced to support partial replies to requests.

Various suggestions for improvements to EMCS functionality were made, which the Commission will take up for inclusion in the future evolution of EMCS and where necessary the corresponding implementing acts.

A more comprehensive evaluation of the EU excise system and notably of the whole of EMCS and the implementation of Directive 2008/118/EC in its entirety will be carried out by the Commission, with a view to a possible legislative reform initiative as of 2015.