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Proposal for a

COUNCIL DIRECTIVE

**amending Directive 2006/112/EC on the common system of value added tax and
Directive 2008/118/EC concerning the general arrangements for excise duty as regards
defence effort within the Union framework**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Value added tax (VAT) is a general consumption tax borne ultimately by the final consumer but collected by businesses supplying goods or services. The scope of VAT, as set out in Article 2 of the VAT Directive¹, is very broad, covering any supply of goods and services for consideration by a taxable person within the territory of a Member State and any importation of goods into the European Union (EU). One of the aims of the VAT Directive was to draw up a common list of VAT exemptions so that EU own resources could be collected in a uniform manner in all Member States². That is why the exemption of any transaction from VAT requires a specific provision in the VAT Directive.

The VAT Directive does not provide for any general exemption for the supply of goods or services for security and defence purposes. In principle, goods or services supplied to, or goods imported by, armed forces will therefore carry VAT³. The cost of VAT is reflected in an increase in the revenues that the tax generates for the state treasury (as public bodies, the military forces are unable to recuperate such VAT), which in turn feed into the budget that finances activities such as national defence.

The Directive does provide for an exemption for supplies to the armed forces of any state party to the North Atlantic Treaty that are taking part in a common defence effort outside their own state. This exemption was established to address situations in which the circle of revenue and expenditure flow is broken, because VAT on such supplies would normally constitute revenue for the state in which the armed forces are located, rather than their own.

The Excise Directive⁴ provides for a similar exemption from excise duty⁵ for movements of excise goods to the armed forces of any North Atlantic Treaty Organisation (NATO) member.

While NATO defence effort has been covered by the VAT Directive since 1977⁶ and the Excise Directive since 1993, neither of the exemptions covers supplies linked to the common defence effort within the Union framework, because there is as yet no common Union defence policy. However, the common security and defence policy (CSDP), which was established as

¹ Council Directive 2006/112/EC on the common system of value added tax ([OJ L 347, 11.12.2006, p. 1](#)).

² See recital 35 of the Directive.

³ Article 148(b) of the Directive allows some scope for exemption where goods are supplied for the fuelling and provisioning of fighting ships (CN code 8906 10 00) that are leaving their territory and bound for ports or anchorages outside the Member State in question. Points (11) and (12) in Part B of Annex X to the Directive allow for the exemption of the supply, modification, repair, maintenance, chartering and hiring of aircraft used by state institutions, including equipment incorporated or used in such aircraft, and the supply, modification, repair, maintenance chartering and hiring of fighting ships.

⁴ Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ([OJ L 9, 14.1.2009, p. 12](#)).

⁵ Excise duties governed by EU law are applied on alcoholic beverages, manufactured tobacco products and energy products (motor fuels and heating fuels, such as petrol and gasoline, electricity, natural gas, coal and coke). The structure of the taxes and minimum rates are harmonised at EU level.

⁶ Introduction of an exemption under diplomatic and consular arrangements for supplies to NATO forces taking part in the common defence effort subject to conditions and limitations laid down by Member States, which could also be implemented by means of a refund of VAT.

the European security and defence policy (ESDP) in 2000⁷, is a key instrument for external action and includes the progressive framing of a common Union defence policy⁸.

The Lisbon Treaty, which came into force in December 2009, was a milestone in the development of the CSDP. The Treaty on European Union (TEU), as amended by the Lisbon Treaty, includes a mutual assistance clause⁹ and allowed Member States to strengthen their cooperation in military matters through ‘permanent structured cooperation’ (PESCO)¹⁰. The Lisbon Treaty also established the European External Action Service (EEAS), which assists the High Representative of the Union for Foreign Affairs and Security Policy in all her responsibilities, including the CSDP. The fact that the High Representative is also one of the Vice-Presidents of the Commission facilitates the bringing together of all necessary EU assets and the application of a comprehensive approach to EU crisis management.

The EU Military Committee (EUMC), which was set up in 2001¹¹, is the Council’s highest military body. It directs all military activities within the EU framework and advises on the planning and execution of military missions and operations under the CSDP, and on the development of military capabilities.

Also established in 2001¹² and working under the military direction of the EUMC, the European Union Military Staff (EUMS) is the source of the EU’s military expertise¹³. It provides early warning, situation assessment and strategic planning for missions and tasks referred to in Articles 42(1) and 43(1) TEU. It also contributes to the elaboration, assessment and review of the capability goals.

In June 2016, the global strategy for the European Union’s foreign and security policy (EUGS)¹⁴ laid the ground for developing CSDP further towards three core priorities: responding to external conflicts and crises, building the capabilities of partners and protecting

⁷ The conditions under which military units could be deployed were agreed by the Western European Union (WEU) Council in 1992 and the ‘Petersberg Tasks’ were included in the questions referred to in the 1997 Treaty of Amsterdam. WEU tasks and institutions were subsequently transferred gradually to the EU, in particular with the creation of the European Defence Agency (EDA) in 2004 by Council Joint Action 2004/551/CFSP ([OJ L 245, 17.7.2004, p. 17](#)). This process was completed in 2009 when a mutual assistance clause between the EU Member States, similar to the WEU’s mutual assistance clause, entered into force with the Treaty of Lisbon. The WEU was finally closed in 2011.

⁸ Article 42(2) TEU provides that ‘[t]he common security and defence policy shall include the progressive framing of a common Union defence policy. This will lead to a common defence, when the European Council, acting unanimously, so decides. It shall in that case recommend to the Member States the adoption of such a decision in accordance with their respective constitutional requirements’. In his 2017 ‘state of the Union’ address, the President of the Commission referred to the need for a fully-fledged European Defence Union by 2025:

https://ec.europa.eu/commission/priorities/state-union-speeches/state-union-2017_en

⁹ Article 42(7) TEU.

¹⁰ Articles 42(6) and 46 TEU.

¹¹ Council Decision 2001/79/CFSP setting up the Military Committee of the European Union ([OJ L 27, 30.1.2001, p. 4](#)).

¹² Council Decision 2001/80/CFSP on the establishment of the Military Staff of the European Union ([OJ L 27, 30.1.2001, p. 7](#)). Recital 6 of Council Decision (EU) 2017/971 ([OJ L 146, 9.6.2017, p. 133](#)) states that ‘the Council approved the consolidated Terms of Reference of the EUMS [which] replace the Terms of Reference of the EUMS annexed to Council Decision 2001/80/CFSP on the establishment of the military staff of the European Union, which are no longer applicable’.

¹³ In 2004, the EUMC agreed on a battlegroup concept developed by the EUMS and a single battlegroup concept document was adopted in October 2006.

¹⁴ [Shared vision, common action: a stronger Europe – a global strategy for the European Union’s foreign and security policy](#).

the Union and its citizens. In December 2017¹⁵, the European Council invited the High Representative, the Commission and the Member States to bring forward work on military mobility, both under PESCO and in the context of EU-NATO cooperation.

In March 2018, as a follow-up to their November 2017 Joint Communication on improving military mobility in the EU¹⁶, the Commission and the High Representative presented a Joint Communication on the action plan on military mobility¹⁷. The action plan recognises the need for equal treatment of defence efforts with a view to reducing administrative burden and thus delays and costs in military mobility, and providing Member States with an incentive to cooperate¹⁸. It requires the Commission to assess the feasibility of aligning the VAT treatment of defence efforts in the EU framework and under the NATO umbrella.

On 19 November 2018, the Council concluded on Security and Defence in the context of the EUGS¹⁹. The Council welcomed the substantive progress made in the area of security and defence during the previous two years and stressed the importance of keeping the momentum through the continued engagement of the Member States and EU institutions. In particular, the Council welcomed the progress in the implementation of PESCO and the ongoing implementation of efforts to improve the mobility of military personnel, materiel and equipment for routine activities and during crisis and conflict, within and beyond the EU.

In line with the action plan and the Council conclusions, the objective of this proposal is to align the VAT treatment of defence efforts in the EU and NATO frameworks as far as is feasible. The proposal has to acknowledge that, while there is a collective defence effort under the North Atlantic Treaty, no common Union defence policy exists as yet.

The arrangements for exemptions from excise duties, as provided for in the Excise Directive, should be aligned in a similar way.

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

The proposal complements the 2016 VAT action plan²⁰ setting out ways to modernise the VAT system so as to make it simpler, more fraud-proof and business-friendly.

Consistency with Chapter 8 of Title IX of the VAT Directive (exemptions relating to certain transactions treated as exports), in particular with Article 151(1)(c) (and (d)) of the VAT Directive and its interpretation by the Court of Justice of the European Union (CJEU)²¹, and with Article 12(1)(c) of the Excise Directive, is achieved by excluding from the exemptions supplies of goods and services for the armed forces of the Member State in which those goods or services are supplied.

Furthermore, the limitation of the scope of the proposal to situations, in which the circle of revenue and expenditure flow is broken, is consistent with Article 151(1)(aa) (and (b)) of the VAT Directive. Domestic supplies can only be exempted, if supplied to the EU, bodies set up

¹⁵ *Fourth progress report towards an effective and genuine security union*, Communication from the Commission to the European Parliament, the European Council and the Council ([COM\(2017\) 41 final](#)).

¹⁶ *Improving Military Mobility in the European Union*, Joint Communication to the European Parliament and the Council ([JOIN\(2017\) 41 final](#)).

¹⁷ *Action plan on military mobility*, Joint Communication to the European Parliament and the Council ([JOIN\(2018\) 5 final](#)).

¹⁸ *Idem*, p. 7.

¹⁹ <https://www.consilium.europa.eu/media/37030/st13978-en18.pdf>

²⁰ *Towards a single EU VAT area — time to decide*, Communication from the Commission to the European Parliament, the Council and the European Economic and Social Committee on an action plan on VAT ([COM\(2016\) 148 final](#)).

²¹ [Case C-225/11 Able UK](#).

by the EU or international bodies. Similar to NATO as a recognised international body and to EDA as an EU body covered by the Protocol on Privileges and Immunities (PPI) and meeting limits and conditions laid down in the PPI, operational headquarters and other entities established for defence purposes under the CSDP could benefit from an exemption under the conditions and limitations of the host Member State, if they fulfil the requirements laid down in Article 151(1)(aa) (or (b)) of the VAT Directive. The proposal does not introduce a means of circumventing these requirements or to deprive the host Member State from defining conditions and limitations²².

Finally, consistent with the wording in Article 151(1)(c) (and (d)) of the VAT Directive, supplies to the armed forces and the accompanying civilian staff can only be exempted, when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP. Therefore, the exemptions do not cover the deployment of armed forces solely for security purposes, for humanitarian and rescue tasks or when evoking the solidarity clause laid down in Article 222 of the Treaty on the Functioning of the European Union, which has no defence implications. Taking into account that the VAT Directive does not allow for any exemption of supplies to public bodies other than armed forces, the limitation of the scope to defence effort and therefore to activities that are generally exclusively performed by armed forces is consistent with the principle of fiscal neutrality inherent in the common system of VAT and Article 20 of the Charter of Fundamental Rights of the European Union. EU law would generally preclude a different VAT treatment for armed forces compared to other government bodies, e.g. police forces, or non-profit organisations when carrying out similar tasks.

- **Consistency with other Union policies**

The proposal is consistent with the EUGS and the implementation plan on security and defence²³, which sets out proposals to implement the EUGS in the area of security and defence.

It implements the Commission's commitment in the action plan on military mobility to assess the feasibility of aligning the VAT treatment of defence efforts in the EU framework and under the NATO umbrella.

The proposal is also consistent with the European defence action plan²⁴, which includes the launching of a European Defence Fund²⁵, and the Athena mechanism²⁶, which (pursuant to Article 41(2) TEU) handles the financing of common costs of EU military missions and operations in the framework of the CSDP.

²² Member States can always compensate for the cost of VAT outside the VAT system provided that the mechanism used complies with the basic principles of the internal market and EU law.

²³ https://eeas.europa.eu/sites/eeas/files/eugs_implementation_plan_st14392.en16_0.pdf

²⁴ *European defence action plan*, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions ([COM\(2016\) 950 final](#)).

²⁵ Proposal for a Regulation of the European Parliament and of the Council establishing the European Defence Fund ([COM\(2018\) 476 final](#)). The Fund will provide EUR 4.1 billion to directly finance competitive and collaborative research projects, in particular through grants, and EUR 8.9 billion to complement Member States' investment by co-financing the costs for prototype development, the ensuing certification and testing requirements.

²⁶ [Council Decision \(CFSP\) 2015/528](#) establishing a mechanism to administer the financing of the common costs of European Union operations having military or defence implications (Athena) and repealing Decision 2011/871/CFSP ([OJ L 84, 28.3.2015, p. 39](#)).

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed Directive will amend the VAT and Excise Directives on the basis of Article 113 of the Treaty on the Functioning of the European Union. That provision provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions to harmonise Member States' rules in the area of indirect taxation.

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

The lack of alignment in the VAT and excise-duty treatment of defence efforts in the EU and under NATO frameworks stems from the current VAT and Excise Directives. Member States could not address it by acting alone. Alignment requires a proposal by the Commission to amend both Directives.

- **Proportionality**

The proposal is consistent with the principle of proportionality, as it does not go beyond what is necessary to meet the objectives of the Treaties linked to the smooth functioning of the single market and the progressive framing of a common defence policy under the CSDP. The current exemptions for NATO defence activities, which are already framed and limited in scope, will not be extended. With this proposal, the scope of exemptions will be similar for Union and NATO defence efforts. While any exemption has an impact on tax revenue, extending the scope of these exemptions to EU defence effort will have a minimal effect on the tax base.

- **Choice of instrument**

A Directive is proposed in view of amending the VAT and Excise Directives.

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

- ***Ex post* evaluations/fitness checks of existing legislation**

Currently, there is no legislation relating to the VAT or excise-duty treatment of supplies under the EU defence effort. There is no available data regarding the relevant supplies under the NATO defence effort.

- **Stakeholder consultations**

Member States were consulted in the group on the future of VAT²⁷ and broadly confirmed the need to act at EU level by introducing a VAT exemption for supplies linked to defence effort in the EU framework similar to that for supplies linked to NATO defence effort under Article 151(1)(c) and (d) of the VAT Directive. The current proposal implements this objective and maintains consistency between VAT and excise duty.

- **Collection and use of expertise**

The expertise collected through consultation with representatives of the EEAS, the EDA and defence experts supporting the members of the group on the future of VAT was sufficient for the present proposal.

²⁷ Informal group of representatives of national tax administrations, providing the Commission with a forum for consulting VAT experts from Member States on pre-legislative initiatives.

- **Impact analysis**

This proposal is not accompanied by an impact assessment, as the objective *per se* dictates the policy option. Furthermore, given the limited scope of the proposed exemption, there are no social, economic or environmental impacts.

This section analyses the impact of the measure on VAT revenues in comparison to a ‘do nothing’ baseline scenario. As detailed data on military expenses is either confidential or not available, the analysis relies on rough estimates.

CSDP activities that would be covered by the exemptions are as follows:

(1) military missions and operations

Under the CSDP, the EU has since 2003 conducted military missions and operations pursuant to the (current) legal basis of Articles 42(4) and 43(2) TEU. There are currently six ongoing military missions/operations in the neighbourhood of the Union and Africa²⁸. CSDP missions and operations can take place only outside the Union, but the exemptions would cover activities within the Union as part of such (re)deployment (deployment in operational headquarters, transits, movements, pre-deployments, exercises, meetings, etc.);

(2) battlegroups

With regard to EU battlegroups²⁹ based on Article 42(1) TEU, the extension of the exemptions will, so far, have no impact on VAT or excise-duty revenues, because battlegroups have not been deployed to date. In the event of (re)deployment (which would be outside the Union)³⁰, the exemptions would cover related CSDP activities in the Union;

(3) mutual assistance

It is not possible to predict the impact on VAT and excise-duty revenues of exemptions for mutual assistance pursuant to Article 42(7) TEU in the event of a Member State being a victim of armed aggression on its territory. Following the terrorist attacks in Paris on 13 November 2015, France requested such aid and assistance from the other Member States. In parallel with bilateral contributions, some Member States decided to increase their participation in the CSDP military mission EUTM Mali;

(4) PESCO

It can be assumed that the PESCO³¹ established recently pursuant to Article 46 TEU, in which 25 Member States participate³², will lead to a loss of VAT and excise-duty revenue. PESCO allows willing and capable Member States to deepen their defence

²⁸ https://eeas.europa.eu/topics/military-and-civilian-missions-and-operations/430/military-and-civilian-missions-and-operations_en

²⁹ See *EU battlegroup concept*, Council document 11624/14 (7 July 2014). These are multinational military units, usually composed of 1 500 personnel each, which form an integral part of the EU’s rapid reaction capacity to respond to emerging crises and conflicts around the world.

³⁰ On 22 June 2017, EU leaders agreed that the cost of any deployment of battlegroups would be borne as a common cost; this is aimed at strengthening the EU’s rapid response capabilities.

³¹ Council Decision (CFSP) 2017/2315 establishing permanent structured cooperation (PESCO) and determining the list of participating Member States ([OJ L 331, 14.12.2017, p. 57](#)).

³² Austria, Belgium, Bulgaria, Czech Republic, Croatia, Cyprus, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Romania, Slovenia, Slovakia, Spain and Sweden.

cooperation, plan jointly, develop and invest in cooperative capability projects, and enhance the operational readiness and contribution of their armed forces³³; and

(5) EDA activities

Currently, the only loss of revenue in connection with EDA activities would relate to those referred to in Articles 42(3) and 45 TEU³⁴, which include regular education and operational training³⁵. In order to qualify for exemption, projects would have to involve the deployment of the armed forces of one Member State to another. The exemption would not be available to the armed forces of other countries that have signed administrative arrangements with the EDA³⁶. However, non-EU NATO members can benefit from the existing exemptions.

Defence spending data for EDA members is published on the EDA ‘defence data portal’. Expenditure for outsourced operations and maintenance for all Member States (except Denmark) amounted to EUR 5.3 billion in 2014 (most recent available data). However, this data does not distinguish between:

- domestic supplies not covered by the exemption; and
- supplies in another Member State, which would in general relate to activities in the CSDP or NATO frameworks.

It is reasonable to assume that most of the amount (at least 80%) relates to the former and only a small part (maximum 20%) relates to the latter. In addition, around half of the latter would normally be supplies of accommodation for the deployed armed forces, which would normally be VAT-exempt under Article 135(1)(l) of the VAT Directive.

It can therefore be assumed that a maximum of 10 % of the overall amount (EUR 530 million) could either become VAT-exempt under the new rules or would already be covered by the exemption for NATO activities. This concerns supplies of goods (e.g. food, fuel, special liquids, equipment, pharmaceutical provisions, electricity, water, gas) and services (e.g. catering, communication, maintenance, repair, transportation, road charges). While the estimate does not take into account any future rise in military spending by Member States as a result of the increasing importance of the CSDP, it includes the costs of the existing NATO exemption.

³³ The initial list of 17 projects to be developed under PESCO, as adopted by Council Decision (CFSP) 2018/340 ([OJ L 65, 8.3.2018, p. 24](#)), covers domains such as the European Union Training Mission Competence Centre (EU TMCC) and the Strategic Command and Control (C2) System for CSDP Missions and Operations. The second list of 17 additional projects, adopted by Council Decision (CFSP) 2018/1797 of 19 November 2018 amending and updating Decision (CFSP) 2018/340 ([OJ L 294, 21.11.2018, p. 18](#)), covers domains such as European Attack Helicopters TIGER Mark III and the European Military Space Surveillance Awareness Network (EU-SSA-N).

³⁴ Currently, all Member States except Denmark participate in the EDA.

³⁵ Specific examples of EDA activities that could benefit from an extension of the exemptions are:

- helicopter availability (over 13 000 personnel have taken part in eight live exercises, e.g. Italy hosted a training event with participants from seven different countries in June 2015);
- fixed-wing training (e.g. European air-to-air refuelling training hosted by the Netherlands in 2014 and 2015); and
- countering improvised explosive devices (several training courses have already taken place).

³⁶ The EDA has signed administrative arrangements with Norway (2006), Switzerland (2012), Serbia (2013) and Ukraine (2015) whereby they can participate in its projects and programmes.

Consequently, it is prudent to use the estimate of EUR 530 million as an indicator for outsourced activities, which could then translate into a possible loss of VAT revenue for all Member States of around EUR 80 million (assuming an average VAT rate of 18%³⁷).

With regard to excise duties, energy products (e.g. fuel) and electricity should be the main product category subject to exemption. As with VAT, it can be assumed that around 10% of such costs would become exempt from excise duty in the future. However, there is no available data to provide a basis for quantifying the impact.

- **Regulatory fitness and simplification**

The proposal is not linked to REFIT and has no particular impact on micro-enterprises or SMEs.

4. BUDGETARY IMPLICATIONS

By extending the scope of VAT exemptions, the proposal could reduce VAT revenue collected by Member States and therefore the VAT own resource. While there will be no negative implications for the EU budget, as the own resource based on gross national income (GNI) compensates for any expenditure not covered by traditional own resources and the VAT own resource, the non-collected VAT own resources from certain Member States would have to be compensated by all Member States through the GNI own resource.

Excise duty is not an own resource. Therefore, there are no implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor implementation of the proposed measures as part of its responsibilities for ensuring the correct application of EU VAT and excise legislation.

- **Explanation of the specific provisions of the proposal**

Article 1 of the proposal amends the VAT Directive as follows:

- a paragraph is added to Article 22, mirroring the existing paragraph referring to the armed forces of a NATO state³⁸

The new provision ensures that the use of goods by Member States' armed forces taking part in the defence effort carried out for the implementation of a Union activity under the CSDP will be treated as an intra-EU acquisition for consideration where those goods, which have not been purchased under the local VAT rules of the Member State in which the forces are stationed, are brought back and used by those forces for their needs or for their accompanying civilian staff in their own Member

³⁷ The estimate is derived by calculating the median of the estimated weighted average VAT rate applied in each Member State.

³⁸ Under the current Article 22, the final use of goods by NATO forces is to be treated as an intra-EU acquisition of goods for consideration, provided that:

- NATO forces use the goods for their needs or for their accompanying civilian staff;
- the goods were not purchased under the local VAT rules of the Member State in which the forces are stationed; and
- the importation of such goods would not have been eligible for exemption in the normal way for such transactions under Article 143(1)(h).

State. This provision applies where importation of the goods would not have been eligible for exemption under Article 143(1)(ga);

- point (ga) is added to Article 143(1), mirroring the exemption in point (h) for the importation of goods by NATO members³⁹

The new provision introduces a VAT exemption for the importation of goods into Member States by the armed forces of other Member States taking part in a defence effort carried out for the implementation of a Union activity under the CSDP, where the goods are for the use of those forces or accompanying civilian staff or for supplying their messes or canteens; and

- points (ba) and (bb) are added to Article 151(1), mirroring the exemption in points (c) and (d) for the NATO defence effort⁴⁰

The exemption in Article 151(1)(ba) covers supplies of goods or services within a Member State, intended for use by the armed forces of other Member States or the accompanying civilian staff, or for supplying their messes or canteens, where such forces are taking part in a defence effort carried out for the implementation of a Union activity under the CSDP.

The exemption in Article 151(1)(bb) relates to supplies of goods or services to another Member State, intended for the armed forces of any Member State, other than the Member State of destination, for the use of those forces or accompanying civilian staff, or for supplying their messes or canteens, where such forces are taking part in a defence effort carried out for the implementation of a Union activity under the CSDP.

Like the exemption for NATO defence effort, the exemption therefore does not cover domestic supplies to Member States' own military forces of goods such as spare parts for military equipment or services such as repair and transport services; and

Article 2 introduces an excise-duty exemption for defence effort carried out for the implementation of a Union activity under the CSDP⁴¹. The exemption will cover supplies of

³⁹ The current Article 143(1)(h) provides for a mandatory VAT exemption for the importation of goods into EU Member States that are also NATO members by the armed forces of other NATO members provided that:

- the goods are for the use of the armed forces or accompanying civilian staff, or for supplying their messes or canteens; and
- those forces are taking part in the common defence effort.

⁴⁰ The current Article 151(1)(c) and (d) exempt supplies of goods or services to armed NATO forces or accompanying civilian staff, or for supplying their messes or canteens, provided that:

- the supply is within or to a Member State that is a party to the NATO Treaty;
- it is intended for the armed forces or accompanying civilian staff, or for supplying their messes or canteens, of a NATO member. While the forces can be from a third country, the forces of the Member State where the supply takes place cannot benefit from the exemption; and
- those armed forces are taking part in the common defence effort. For the forces to be eligible for exemption, their presence must therefore be related to activities linked to the objectives set out in the North Atlantic Treaty. If it is just based on a bilateral agreement and the forces are not taking part in the common defence effort, no exemption can be granted.

The exemption for supplies would apply no matter whether the armed NATO forces are stationed, visiting or simply passing through a Member State other than their own.

⁴¹ The current Article 12(1)(c) allows for the excise-duty exemption of excise goods delivered to the armed forces of any NATO member other than the Member State in which the excise duty is chargeable, for the use of those forces or accompanying civilian staff, or for supplying their messes or canteens. The provision covers both intra-EU movements and movements from third countries.

excise goods to the armed forces of any Member State other than that in which the excise duty is chargeable, for the use of those forces or accompanying civilian staff, or for supplying their messes or canteens where such forces are taking part in a defence effort carried out for the implementation of a Union activity under the CSDP.

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework

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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2006/112/EC³ provides, under certain conditions, an exemption from value added tax (VAT) for goods and services supplied to and goods imported by the armed forces of any State party to the North Atlantic Treaty when such forces are taking part in the common defence effort outside their own State.
- (2) Council Directive 2008/118/EC⁴ provides an exemption from excise duty for excise goods intended to be used by the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens, subject to conditions and limitations laid down by the host Member State.
- (3) Such exemptions are not available where the armed forces of a Member State are taking part in activities under the common security and defence policy (CSDP) as set out in Chapter 2, Section 2 of Title V of the Treaty on the European Union (TEU). Priority should be given to the need to improve European capabilities in the field of defence and crisis management and to strengthen the Union security and defence. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission in their Joint Communication of 28 March 2018 on the Activity Plan on

¹ OJ C , , p. .

² OJ C , , p. .

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁴ 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).

Military Mobility⁵ recognised the overall need for aligning the VAT treatment of defence efforts within the Union framework and the North Atlantic Treaty Organisation (NATO) umbrella.

- (4) Defence effort carried out for the implementation of a Union activity under the CSDP covers military missions and operations, activities of battlegroups, mutual assistance, permanent structured cooperation (PESCO) projects and activities of the European Defence Agency (EDA). It should however not cover activities under the solidarity clause established in Article 222 of the Treaty on the Functioning of the European Union or any other bilateral or multilateral activities between Member States that do not relate to defence effort carried out for the implementation of a Union activity under the CSDP.
- (5) An exemption from VAT should thus be introduced to cover the supply of goods or services intended either for the use by the armed forces of a Member State or by the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP framework outside their Member State. Supplies of goods and services for the armed forces of the Member State in which those goods or services are supplied should be excluded from the VAT exemption.
- (6) An exemption from excise duty should also be introduced covering excise goods supplied for the use of the armed forces of any Member State other than that within which the excise duty is chargeable, when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State.
- (7) In addition, it is necessary to provide for exemption from VAT where goods imported by the armed forces of a Member State are intended for the use of those forces or of accompanying civilian staff or for supplying their messes or canteens, when taking part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State.
- (8) Similarly to the exemption for NATO defence effort, the exemption for the defence effort carried out for the implementation of a Union activity under the CSDP should be limited in scope. Only expenses incurred in respect of tasks directly linked to a defence effort should be eligible for exemption. Tasks performed exclusively by civilian staff or performed exclusively by using civilian capabilities should not be covered by the exemption. Nor should the exemption cover items such as spare parts to military equipment or transport services that the armed forces of a Member State acquire for use within that Member State or extend to the construction of transport or communication and information systems infrastructures.
- (9) Since the objective of this Directive to align the VAT and excise duty treatment of defence efforts under the Union and NATO frameworks cannot be sufficiently achieved by the Member States but can 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 the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

⁵ JOIN(2018) 5, of 28 March 2018.

- (10) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶ Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (11) Directives 2006/112/EC and 2008/118/EC should therefore be amended accordingly,
HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendments to Directive 2006/112/EC

Directive 2006/112/EC is amended as follows:

- (1) in Article 22 the following first paragraph is inserted:
- ‘The application by the armed forces of a Member State taking part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy (CSDP), for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic market of a Member State shall be treated as an intra-Community acquisition of goods for consideration, where the importation of those goods would not be eligible for the exemption provided for in Article 143(1)(ga).’;
- (2) in Article 143(1), the following point (ga) is inserted:
- ‘(ga) the importation of goods into Member States by the armed forces of other Member States for the use of those forces or the civilian staff accompanying them or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP;’;
- (3) in Article 151(1), the following points (ba) and (bb) are inserted:
- ‘(ba) the supply of goods or services within a Member State, intended either for the armed forces of other Member States for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP;
- (bb) the supply of goods or services to another Member State, intended for the armed forces of any Member State, other than the Member State of destination itself, for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP;’.

⁶ OJ C 369, 17.12.2011, p. 14.

Article 2

Amendment to Directive 2008/118/EC

In Article 12(1) of Directive 2008/118/EC, the following point (ba) is inserted:

‘(ba) by the armed forces of any Member State other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;’.

Article 3

Transposition

1. Member States shall adopt and publish, by 30 June 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those measures from 1 July 2022.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President