



EUROPEAN COMMISSION

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Proposal for a

COUNCIL REGULATION

Administrative Cooperation in the field of excise duties

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

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 (hereafter referred to as EMCS). EMCS has been put into place based on Decision No. 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products. EMCS supports a faster, more integrated approach for Member State Authorities to control the movement of excise goods, based on automated risk analysis (cf. third recital of Decision 1152/2003/EC).

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. Articles concerning the use of the economic operator registration system SEED (System of Exchange of Excise Data), EWSE (Early Warning System for Excise) and MVS (Movement Verification System) provided a legal base for the use of these tools, alongside more general articles on Requests for Information, Automatic Exchange and Spontaneous Exchange. These were derived from earlier legislation in the area of Administrative Cooperation, Council Directive 77/799/EEC, and certain provisions of Council Directive 92/12/EEC.

EWSE and MVS are now being phased out; EMCS Phase 2 is operational and EMCS Phase 3 is due for start of operation in 2012. EMCS Phase 3 will be able to generate electronic messages to replace EWSE and in the first instance to partially replace MVS, with complete replacement subsequently.

The existing description of SEED in Regulation (EC) No. 2073/2004 is out of date, being based on the Phase 0 version of the system and so requires updating. In addition, a clear legal basis for the service provided on the Europa portal for checking the validity of economic operator authorisations (SEED-on-Europa) is required.

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. The automation of these message flows will play a role in improving control and administrative cooperation.

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.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

Use of expertise

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 discussions with interested Member States to further discuss the proposal.

Assessment of impact on services of the Commission and of the Member States

Among the new elements contained in this proposal, the core is constituted by the legal rules ensuring application of the EMCS system. The ensuing impact has to be attributed in essence not to the text proposed here but to Decision No 1152/2003/EC, through which creation of the EMCS was decided. As explained above, 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. The addition of new statistical and reporting facilities should reduce the current administrative burden on Member State Administrations, whilst improving the quality of reporting.

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 Members 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. The exact use of the exemption is covered by national legislation and administrative practice, subject to the national transposition of Directive 95/46EC and subject to the general legal principles of necessity and proportionality of measures taken and the foreseeable relevance of information collected, stored or exchanged. 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:

- (1) 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.
- (2) Providing a mechanism for the copying of excise economic operator registration data between Member States.
- (3) The extraction of data for statistical purposes.

Area No. 1 (The secure communication channel) may convey information obtained by Member States that have made use of the exemptions allowed in Article 13 of Directive 95/46/EC, where a Member State needs to exchange data with another Member State in order to establish a full and accurate picture of compliance with excise legislation. The Commission assumes that the use of Article 13 is restricted to those cases where notification of the data subject might reasonably lead to interference with the assessment of compliance with excise legislation by the Member States in question. The scope of the information processed under this draft regulation is supposed to be necessary to the assurance of the correct application of excise legislation (draft Article 1 as well as the explanations given on this provision, below). Member States are bound by their Treaty obligations and by national legislation derived from Directive 95/46/EC to respect the rights of data subjects under Article 8 and also by the general legal principles of necessity and proportionality. National arrangements are not specified by this Regulation as such specification is not needed. The Commission further assumes that in exercising the powers granted under this Regulation, Member States respect all their other treaty obligations.

The Commission only provides a communication mechanism for the exchange of data collected and stored by Member States and the Commission has no operational access to the data itself, apart from for system maintenance. The responsibility of the Commission under this proposal is to ensure the confidentiality and the correct transmission of data with which we are entrusted.

Area no 2 (Mirror copy of national economic operator registrations) does not require the use of Article 13 by Member States, since the information is provided by the data subjects themselves. Member States should notify data subjects of this data, and data subject should be able to correct inaccuracies in such data. To address this right the proposal contains a reminder of the necessity of allowing subject access to their own data in this area and the possibility of correcting errors. However, the Commission has no operational access and therefore no possibility of modifying this data itself, since this would require the Commission to exercise control over national registers of economic operators, since the major

responsibility of TAXUD is to ensure the continuing confidentiality of the information processed. The public service which allows the checking of the validity of authorisations uses an extract of the excise economic operator registration data, which only includes an excise authorisation number and does not include information that would allow individuals to be identified, such as a name or address. The Commission provides a contact e-mail address associated with this service. Where an economic operator feels that the information provided is inaccurate, the Commission provides the economic operator with the details of the Member State Administration that is the Data Controller for this economic operator's data.

Area 3 only involves the extraction of anonymised operational data, which is used as the input for statistical reports. This extract contains no identification of the economic operators involved in an excise movement.

3. LEGAL ELEMENTS OF THE PROPOSAL

Summary of the proposed action

The Commission proposes to the Council to adopt a new regulation on administrative cooperation in the field of excise duty, which will replace the existing Council regulation in this area.

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.

A secondary aim is to 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.

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.

Legal basis

Article 113 of the Treaty on the Functioning of the European Union.

Subsidiarity principle

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 sufficiently achieved by the Member States for the following reason.

The object of the proposal is to replace Council Regulation (EC) No. 2073/2004 by provisions fulfilling the same function, namely to provide a common legal framework for administrative cooperation in the particular field of excise goods and making full of the facilities of the EMCS system.

This objective cannot be sufficiently achieved by individual actions of the Member States and can be better achieved at European Union level. In the absence of this proposal and the

existing Regulation exchange of information between Member States could only be carried out through the negotiation of bilateral treaties. It would be unlikely that such bilateral arrangements could be supported electronically by the Member States concerned, since the cost would be unsupportable for a bilateral arrangement. Variation between bilateral arrangements might also impede the efficient functioning of the Single Market.

Proportionality principle

The proposal complies with the proportionality principle for the following reason(s).

The proposed action only sets out common rules of procedures and instruments to facilitate day-to-day administrative cooperation between Member States, which therefore remain entirely responsible for their internal organisation and allocation of resources, for which cases are covered by international administrative cooperation and for what use is made of the results.

The proposed action will not mean any major additional financial and administrative burden for the Union, national governments, regional and local authorities, economic operators and citizens, but should on the contrary rationalise human and financial costs by creating a common approach to international administrative cooperation.

Choice of instruments

Proposed instrument: regulation.

The choice of instrument is fully in line with the current legal act in force. A Regulation provides a common framework for activity which can be applied immediately on replacement of the existing regulation.

The proposal aims to provide the basis for a modernisation of the existing common framework for administrative cooperation between Member States. The regulation is solely concerned with administrative cooperation and does not affect the approximation of national laws concerning the management of excise movements or the taxation of excise goods, both of which are covered by other legal acts.

4. BUDGETARY IMPLICATION

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 Programme¹ and therefore will not be discussed any further here.

5. ADDITIONAL INFORMATION

Repeal of existing legislation

¹ OJ L 330, 15.12.2007, p 1.

The adoption of the proposal will repeal existing legislation, namely Regulation (EC) No. 2073/2004.

Simplification

The proposal provides for simplification of legislation, simplification of administrative procedures for public authorities (EU or national) and simplification of administrative procedures for private parties.

The legislation leads to administrative simplification, as it comprises common measures which are easy to interpret and apply and which go further in this direction than the measures contained in Regulation (EC) No. 2073/2004.

Public authorities will be able to use common tools and instruments in a pre-defined organisational framework. This set of measures will simplify recourse to European international administrative cooperation. Extending the scope of EU legislation will mean that administrative authorities will not have to have recourse to different sets of legislation, each with their own rules and conditions, depending on the type of claim for which they are requesting assistance.

Detailed explanation of the proposal

The following detailed article by article explanation focuses on provisions which are new or have been changed in substance in comparison with the corresponding provisions of Regulation (EC) No. 2073/2004. The correlation table attached to the proposed new regulation should be used to correlate the new with the existing provisions of Regulation (EC) No. 2073/2004.

Chapter I – General provisions

Article 1 – Subject matter and scope

This Article reflects the fact that the scope of the Regulation will be widened so that it covers administrative cooperation to ensure the enforcement of all excise legislation, not just the correct assessment of excise duties. It also sets out the principle that the Regulation will not affect the application in Member States of the rules on judicial mutual assistance in criminal matters.

The standard of “necessity” is intended to provide for exchange of information in excise matters to the extent required by genuine needs of tax administrations, while being compliant with the criteria of the Charter of Fundamental Rights of the EU, as far as personal data are concerned (Articles 8 and 52(1)). Concretely, a request for information may be considered "necessary", for example, where it serves the verification of suspicions of investigators that economic operators may be involved or have been involved in activities that are irregular from an excise point of view. On the other hand, the term "necessary" clarifies that Member States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the excise situation affairs of a given person or ascertainable group or category of persons.

Article 2 – Definitions

A number of new definitions have been inserted to reflect the putting into operation of EMCS Phase 2 and Phase 3, which are not contained in Regulation (EC) No. 2073/2004, and to align with Council Directive 2008/118/EC. These are the “event driven exchange”, “economic operator”, “excise number”, “electronic administrative document”, “mutual administrative assistance document” and “fall-back administrative assistance document”. Other definitions have been slightly altered.

Articles 3 to 6 – Competent Authorities, Central Excise Liaison Office (CELO), liaison departments

The proposal continues the existing arrangements in Regulation (EC) No. 2073/2004, where there is a distinction between the competent authority, which is legally responsible for exchanges of information and in the name of which such exchanges are carried out, and direct contacts between departments and officials under the delegated legal authority of a competent authority. These arrangements are supervised by a central excise liaison office, which also acts as a first point of contact. This is because, having regard to the scope of the Regulation and the differences between Member States in the matter of organisation and operation of government departments and the Member State in general, it is not possible to establish uniform rules in this connection; in some States, for example, the competent authorities will normally be the excise authorities or services, while in other States other bodies may carry out certain tasks in connection with administrative assistance in this area. Any Member State may freely decide to change its competent authority. If it does so, it is obliged to inform the Commission and other Member States.

Consequently these articles impose no restrictions on the way that Member States choose to organise internally beyond the requirement to have a first point of contact. The proposal therefore continues to provide a clear legal framework for decentralised cooperation, gives central excise liaison offices a pivotal role, but also clarifies the functions for which they have primary responsibility.

Article 7 – Information or documents obtained with the authorisation or at the request of the judicial authority

Where the information requested involves making enquiries on behalf of or for judicial authorities information exchange is sometimes refused or seriously delayed. This can prevent the administrative authority of the requesting Member State initiating effective and timely administrative or legal proceedings against criminals. Consequently Article 7 defines Member States' duty to cooperate where criminal proceedings are involved, with due regard for the rules on judicial cooperation in criminal matters.

Chapter II – Co-operation on request

The proposal defines the rights and obligations of Member States and distinguishes between requests for information and administrative enquiries, the presence of officials in administrative offices and their participation in administrative enquiries, the use of simultaneous controls and notification requests. Article 11 lays down a three-month time limit for communication of information from the date of receipt of a request (one month where information is already available) but also allows other time limits in individual cases.

Article 8 - General duties of the requested authority

Article 8 is largely unchanged from Article 5 of Regulation (EC) No. 2073/2004. Article 8(1) is the legal basis for all information requests made using EMCS or otherwise. Paragraph 2 obliges the requested authority to carry out administrative enquiries if they are necessary to obtain the information requested. For this purpose paragraph 3 provides that information requests may include a reasoned request for an administrative enquiry. The requested Member State may decide, however, that no enquiry is necessary but if so must immediately inform the requesting Member State why it has decided not to carry out such an enquiry. To avoid arbitrary refusals, the list of legal reasons for such a refusal is listed in Article 25. As is the case today, the requested authority must proceed as though it were acting on its own account or at the request of another authority in its own Member State.

Article 9- 10 – Form of the request and the reply and provision of documents

Article 9 updates Article 6 of Regulation (EC) No. 2073/2004 to ensure that requests and replies under Articles 8 will normally be carried using EMCS. The details of the business processes, the exchanges of information and the fallback procedures will be contained in an Implementing Act for this Regulation, enacted according to Article 35(2), which will provide a legal basis for the business processes and message specifications in Section IV of the Functional Excise System Specification (FESS).

Nevertheless, it is not possible to predict in advance all forms of requests for information and requests for administrative enquiries. There is also a need to exchange supporting evidence and documentation. Therefore, it is important to recognise that the scope of Article 8 also includes the exchange of information not currently covered by EMCS. These requests need to continue to have a legal base and should be transmitted electronically as far as possible, to avoid unnecessary burden on Member State Administrations. An example is the use of the secure CCN e-mail system to exchange information between Central Excise Liaison Offices.

Article 10 privileges the use of certified copies and extracts to avoid the need to transfer original documents, the processing of which would increase administrative burdens.

Article 11 – Time limits

In Article 11, the Commission proposes a normal maximum time limit of three months for the provision of information, as is the case under Regulation (EC) No. 2073/2004. Where the requested Member State already has the information that is required, this normal deadline is reduced to 1 month. In special cases, such as particularly complex fraud cases involving several Member States, another time limit may be set by common consent. Where the requested authority is unable to respond to the request within the time limit laid down, it must inform the requesting authority immediately of the reasons for its failure to do so and indicate when it is likely to be able to respond.

Article 12 – Participation of officials from other member States in administrative enquiries

As in Regulation (EC) No. 2073/2004, this Chapter of the proposal also provides a legal base for excise officials to be present on the territory of another Member State in order to exchange information and to participate as observers in administrative enquiries. The Commission proposes a small change in wording to the existing Regulation to clarify that, subject to mutual agreement, officials from another Member State are entitled to be present anywhere that officials of the Member State are entitled to be.

Article 13 - Simultaneous controls

The Commission continues to believe that simultaneous controls make a positive contribution to administrative cooperation and should form an integral part of Member States' standard control plans. In cases where cross border excise irregularities or infractions are suspected, simultaneous controls can be very effective compliance and control tools for Member State administrations.

Certain multilateral controls are being financed by the Fiscalis 2013 programme to encourage Member States to include simultaneous controls in their control plans. The Commission proposes only a small textual modification to the existing text in the Regulation (the replacement of 'central liaison office' by central excise liaison office').

Article 14 - Requests for notification of administrative decisions and measures

This Article allows addressees to be informed of decisions affecting them made by the requesting authority, excluding notifications of claims. The proposal confines itself to updating the reference to the Recovery Directive, as Directive 76/308/EEC has been replaced by Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and measures².

Chapter III – Exchange of information without prior request

Articles 15 to 18 –Mandatory exchange, optional exchange and follow-up

The Commission proposes a number of changes to this chapter in order to create a logical and easy to understand framework for automatic exchange and spontaneous exchange, together with a flexible framework of legal rights for those Member States, which might want to go further than the automatic exchanges specified in Section 4 of the FESS. The proposal also introduces the concept of "follow-up", similar to the concept of "feedback" in VAT and direct tax. This is a voluntary reporting by a requesting or receiving Member State of the usefulness of the information received. This can make a positive contribution to the quality of exchanged information. This functionality is not currently part of EMCS.

The existing Regulation already contains Articles that cover automatic or mandatory exchange, and some Member States have made use of the legal possibilities to exchange monthly reports and to forward information. However, there is a lack of clarity in the current Regulation concerning the rights and obligations created by these Articles, compounded by the existence of a separate Article covering the Early Warning System for Excise (EWSE), which is in fact a particular form of spontaneous or optional exchange, coupled with a compulsory feedback mechanism in the case of warning messages.

EWSE information messages became obsolete with the arrival of EMCS Phase 2, their role being replaced by the forwarding of electronic administrative documents (e-AD) by the Member State of Dispatch. The remaining EWSE warning messages become obsolete with the arrival of Phase 3 of EMCS, which incorporates support for spontaneous exchange that will replace this function.

² OJ L 4, 31.3.2010, p 1.

Article 15 of the proposal continues to oblige Member States to forward information to any other Member State where there may have been an infringement or irregularity, or where an infringement or irregularity may have an effect in another Member State, or where there is risk of fraud or of loss of excise duty. The Article additionally mandates the use of EMCS messages to carry this exchange of information, where these messages are available to carry the information in question. Article 15 also mandates the exchange of messages which report on exceptional situations which may occur during an excise movement, as provided for in Section 4 of the FESS. It is intended that the exchange of reports of these exceptional situations which can occur during a movement of excise goods under duty suspension should be compulsory. An implementing act will set out the different categories of information that can be exchanged automatically, on both a mandatory and an optional basis. Member States will have the choice of opting in or out of automatic exchange based on these categories. The list of categories will be reviewed on an annual basis. Article 16 of the proposal also makes it clear that there is no intention to restrict any existing arrangements that Member States may have made concerning bilateral or multilateral exchanges of information.

Some examples of possible use of automatic exchanges are given here:

(a) situations where fraud is suspected in another Member State; Example: where an EMCS report of receipt has not been returned, nor any explanation given and it is suspected that the excisable goods dispatched have been diverted in the Member State of destination;

(b) situations where there is a serious risk of fraud in another Member State; Example: excise duties are paid in a Member State where the rate is low and goods are moved under the arrangement for excise goods released for consumption, but the goods are never received by the consignee, whilst goods are diverted to the market of a Member State where the rate is high;

(c) situations where fraud is discovered in the territory of a Member State, which could have ramifications in another Member State; Example: the Member State that discovers the irregular physical presence of excisable products suspects that fraud might have committed in the Member State of departure involving under-reporting or misreporting of excise goods on an e-AD.

Article 16 allows Member States to launch a forwarding of information where the information falls outside of the categories on which basis the Member State automatically exchanges information, perhaps due to an unusual but economically important irregularity being discovered. Article 16 also proposes as an option the establishment of a follow-up procedure that can be used by the requesting authority to tell the requested authority if the information given has been useful. Experience in the fields of VAT and direct taxation has shown that such feedback is a good motivator for the wider use of spontaneous exchanges and can act to help the requesting authority complete its own information on a case.

To sum up, the proposal intends to define a framework, which is both flexible and effective for these kinds of exchanges of information between Member States.

Chapter IV – Storage and exchange of information on economic operators and statistics specific to transactions within the Union

The four Articles of this Chapter combine the coverage of Chapter IV and Chapter V of Regulation (EC) No. 2073/2004. With the replacement of EWSE and MVS by the tools

provided by EMCS Phase 3, the articles relating to them have been removed. The new scope of this new chapter is more clearly defined to consist of those aspects of administrative cooperation where Commission Services provide operational support to administrative cooperation activities of the Member States, as well as a coordinating and facilitating role.

Article 19 - Storage and exchange of information contained in electronic databases

This Article describes the arrangements for the distributed electronic database known as SEEDv.1, which differ in some respects to its predecessor, which is described in Regulation (EC) No. 2073/2004. This Article also describes the obligation for the Member States and the Commission Central Services to ensure that the register details are up to date and accurate so that excise movements under duty suspension can proceed immediately, whilst movements to unauthorised destinations cannot take place. Finally, Article 19 provides a clear legal base for the SEED-on-Europa service, which allows excise economic operators to check the validity of the authorisations of their trading partners.

Article 20 – Access to and correction of information

Article 20 explains that economic operators have the right to check the publically available information on SEED-on-Europa concerning the details of their authorisation, by entering their excise authorisation number. They also have the right to have any errors in the public information corrected by the Member State that issues the authorisation. The Commission undertakes to forward such requests for correction to the appropriate competent authority. For access and corrections to the non-public information on economic operators, to which the Commission has no access, an economic operator must continue to refer to the relevant competent authority.

Article 21 – Data retention

This Article establishes that all information stored within EMCS should remain available for at least 3 years, depending on the retention policy of the competent authority, and additionally that this information should be available on-line to other Member States. This is to avoid excessive delays when Member States are running risk analyses of historical data.

Under Data Protection legislation, after expiry of the retention period such data should be deleted or should be modified in order to remove information which could be used to identify individuals.

Article 22 – Implementing provisions for stored information

Article 22 provides for implementing provisions for the storage and corrections of data.

Chapter V – Common conditions governing assistance

This Chapter groups together a number of mutual requirements and limitations on the provision of assistance.

Article 23 – Language Regime

This Article has been re-worded in the proposal to express its meaning more clearly. Less use of translations should be necessary due to better support for multi-lingual interfaces in EMCS.

Article 24 - Quality of Service

A new obligation is proposed on both the Commission and the Member States to maintain the computerised system, so that corrections and upgrades will be developed and applied according to agreed planning milestones. The details of these arrangements will be contained in a service level agreement, specifying the mutual obligations of the Commission and the Member States. The Commission and the Member States will also maintain a security policy for the computerised system.

Article 25 - General limits to the duties of the requested authorities

Under this Article the requested authority has the right to refuse to carry out enquiries or to provide information where the requesting authority has failed to exhaust its usual sources of information, where the legislative or administrative practices of the Member State requested to provide the information do not authorise its tax authorities either to carry out such enquiries or to gather or use this information for its own purposes, or where transmission of this information would be contrary to public policy or lead to the disclosure of a commercial, industrial or professional secret or of a commercial process. The Article has been updated to make clear that this exclusion does not include information simply because it is held by a financial institution.

Article 25(5) of this proposal provides that the requested authority must inform the requesting authority and the Commission of the reasons for refusing a request for mutual assistance.

Article 26 - Expenses

This Article has been reworded in comparison with its equivalent in Regulation (EC) No. 2073/2004. To allow the requested authority to ask for costs beyond the costs of outside experts contradicts the general obligation on the requested authority to treat administrative cooperation requests as if the requested enquiry were being conducted on their own behalf.

Article 27 - Minimum Amount

This Article gives the Committee on Excise Duty the power to set a minimum threshold for the excise duties due, in order to avoid disproportionate use of the Regulation.

Article 28 - Official Secrecy, Data Protection and Use of the information communicated under this Regulation

This Article clarifies the uses to which information collected may be used. Data protection has been extended to the protection of information that may not be related to the actions being carried out, to which an official has had access during the performance of his duties. In other respects, there is no substantial change from the existing provision apart from the update of references to other legislation.

The information exchanged is covered by official secrecy provisions and may only be disclosed for defined purposes. These purposes include judicial or administrative proceedings involving sanctions initiated because of infringements of tax law. The information may also be used for the purposes of establishing the assessment base, collection and control of excise duties and monitoring of movements of excise goods. Such information may also be used to determine other duties or taxes covered by Directive 2010/24/EU of 16 March 2010. This

Article also provides a legal basis for exchanges between the excise authorities and other tax authorities in the same Member State.

As in the existing Regulation Member States shall restrict the scope of the obligations and duties defined in Articles 10, Article 11(1) and Articles 12 and 21 of Directive 95/46/EC to safeguard where it is necessary the financial interests of the Member States and the European Union following Article 13 of Directive 95/46/EC. These exemptions allow for non-disclosure of the investigation and re-use of excise data collected originally from the economic operator or from other parties for other purposes.

Article 29 Access to information under Commission authorisation

This Article establishes the basis for access to data by persons authorised by the Commission, to restrict it to the minimum necessary for maintenance and operation of the system.

Article 30 - Evidential Value of Information Obtained

The text of this Article is the same as that of Article 32 in the existing Regulation, which establishes the equivalence of evidential value between information obtained through information exchange and evidence obtained by other authorities within the same Member State.

Article 31 - Obligation to Cooperate

The text of this Article is the same as Article 33 in the existing Regulation. The purposes of this provision is to ensure effective coordination at national and European Union level by requiring Member States to take all measures necessary to this end.

Article 32 – Relations with Third Countries

This Article allows a member State to forward information from a third country to other Member States if the information is useful and also allows information to be forwarded to third countries, if the third country has an agreement to treat information according to the principle of Directive 95/46/EC.

Article 33 – Assistance to economic operators

This Article covers the service provided in Article 24(3) of the existing Regulation where a Member State may ask another Member State to conduct an administrative enquiry to trace missing documentation.

Chapter VI – Evaluation and Transitional and final provisions

Article 34 - Evaluation of Arrangements, Collection of Operational Statistics and Reporting

As with the existing Regulation, the aim of the proposal is to put in place effective arrangements for mutual assistance and information exchange, which will prevent fraud in the movement of excise goods within the Union. It gives the Commission responsibility for overseeing administrative cooperation but does not give the Commission in any way an operational role in the detection and combating of tax fraud. However, because of the internal dimension of fraud within the Union involving excise duties, it is essential that it should be tackled at European Union level through the combined efforts of the Member States and the

Commission. Responsibility for the measures required to prevent fraud in movements of excise goods within the Union lies with the Member States, but the Commission plays a coordinating and facilitating role. Consequently, Member States provide all the statistical information needed for the mutual evaluation of the effectiveness of administrative cooperation. The data to be collected and the method of evaluation through reporting now that EMCS is in operation will be redefined by an implementing act after the conclusion of ongoing discussions with Member States. This Article will also provide the legal basis for the direct collection of movement data for the production of statistical reports using the CS/MISE application, thus largely removing the need for Member States to collect such statistics manually, thus improving the accuracy and timeliness of reporting.

Member States should also provide any other information concerning the methods and practices used or presumed to be used to contravene excise duty legislation. The Commission will report on all such information to the other Member States so that the administrative cooperation arrangements under this Regulation or under excise legislation can be continuously improved and so that Member States and the Commission can adapt administrative cooperation to deal with new threats that may present themselves.

Article 35 - Committee on Excise Duty

Article 35 of the new proposal updates Article 34 of the existing Regulation to take into account new provisions concerning implementing acts under Regulation (EU) No. 182/2011 of the European Parliament and of the Council.

Article 36 – Repeal of regulation (EC) No. 2073/2004

The explicit repeal of the existing Regulation and establishing that all existing references to it should be taken to refer to the new Regulation.

Article 37 - Reporting to European Parliament and Council

Article 37 on reporting reproduced the text of Article 35 of the existing Regulation 2073/2004.

Article 38 – Bilateral Arrangements

This requires Member States to inform the Commission of any additional, bilateral agreements that may exist. The Commission will then inform other Member States accordingly.

Article 39 – Entry into force

This specifies the date of entry into force and the date from which it will apply – 1 January 2012.

Proposal for a

COUNCIL REGULATION

Administrative Cooperation in the field of excise duties

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 consulting the European Data Protection Supervisor³,

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

Having regard to the opinion of the European Parliament⁴,

Having regard to the opinion of the European Economic and Social Committee⁵,

Having regard to the opinion of the Committee of the Regions⁶,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties⁷ provides for a common system whereby, in order to ensure a correct application of excise legislation and, conversely, combat excise duty evasion and the ensuing distortions in the internal market, Member States assist each other and cooperate with the Commission. A number of changes need to be made to that Regulation in view of experience gathered and in view of recent developments. Given the number of changes thus necessary, the Regulation should be replaced for reasons of clarity.
- (2) The completion of the internal market continues to require a system of administrative cooperation in the field excise duties.
- (3) In the interests of effectiveness and speed and on grounds of cost, it is essential that the role of electronic means in the exchange of information be enhanced. In view of

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⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ L 359, 4.12.2004, p. 1.

the repetitive nature of certain requests and the linguistic diversity within the Union, it is important to ensure that standard formats be more widely used in the exchange of information so that information requests can be more rapidly processed. These requirements can be best met through a more systematic use of the computerised system under Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products⁸. That system now offers broader possibilities than at the time Regulation No 2073/2004 entered into force and will continue to be developed. Member States should thus be required to resort to it whenever possible.

- (4) Exchange of information in excise matters is necessary to a very wide extent in order to establish a true picture of the excise affairs of some persons but at the same time Member States are not at liberty to engage in “fishing expeditions” or to request information that is unlikely to be relevant to the excise affairs of a given person or ascertainable group or category of persons
- (5) For the purposes of a proper coordination of information flows, it is necessary to maintain the provisions of Regulation No 2073/2004 on a single point of contact in each Member State. Since more direct contacts between the authorities and officials may be needed for reasons of efficiency, the provisions on delegation and the designation of competent officials should equally be maintained.
- (6) In order for the necessary information to be available in a timely manner, the provisions of Regulation No 2073/2004 requiring the requested authority to act as quickly as possible and at the latest within a given limit should be maintained. However, the time limit for the provision of information already available to the requested Member State should be shorter than the standard time limit.
- (7) For the effective monitoring of excise procedures in cross-border movement, it is necessary to continue to provide 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.
- (8) Difficulties linked to the notification of administrative decisions and measures across borders should continue to be addressed by maintaining the provisions of Regulation No 2073/2004 in the matter.
- (9) In order to fight fraud effectively, the provisions on the exchange of information without prior request should be maintained. To facilitate such exchange, the categories of information to be exchanged on a mandatory basis should be specified.
- (10) Member States should continue to be able to optionally exchange information necessary for the correct application of excise legislation, in case this information falls outside the categories of information that is automatically exchanged.
- (11) Feedback is an appropriate means to ensure continual improvement of the quality of the information exchanged. A framework for the provision of feedback should therefore be put in place.

⁸ OJ L 162, 1.7.2003, p. 5

- (12) Electronic storage by Member States of certain specified data on authorisations of economic operators and warehouses is indispensable for the proper functioning of the excise duties system and the fight against fraud. They allow for rapid exchange of these data between Member States, and automated access to information. This can be achieved by making use of the information already contained in the national computerised systems for excise, through the development of risk analysis enhancing the information held nationally on excise economic operators and their movements within the Union and through the inclusion of a range of information on the taxable persons and their transactions.
- (13) In order for the information stored in the electronic databases to be reliable, provision should be made for their regular update.
- (14) 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.
- (15) National rules on banking secrecy could hamper the efficiency of the mechanisms provided for in this Regulation. Member States should thus not be entitled to refuse the provision of information on the sole basis of such rules.
- (16) This Regulation should not affect other measures adopted at Union level, which contribute to combating excise irregularities and fraud, but should complement them.
- (17) The provisions on the exchange of information with third countries, under certain conditions, notably, of data protection, have proven beneficial for the correct application of excise legislation and should thus be maintained.
- (18) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁹ governs the processing of personal data carried out by Member States within the framework of this Regulation. Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data¹⁰ governs the processing of personal data carried out by the Commission pursuant to this Regulation
- (19) For the purposes of an effective application of this Regulation, it may be necessary to limit the scope of certain rights and obligations laid down by Directive 95/46/EC, specifically the rights defined in Articles 10, 11(1), 12 and 21 thereof, in order to safeguard the interests referred to in Article 13(1) (e) of that Directive, , bearing in mind the potential loss of revenue for Member States and the crucial importance of information covered by this Regulation for the effectiveness of the fight against fraud. Member States should be obliged to apply such limitations, to the extent they are necessary and proportionate.

⁹ OJ L 281, 23.11.1995, p. 31.

¹⁰ OJ L 8, 12.1.2001, p. 1.

- (20) In order to ensure uniform conditions for the implementation of Articles 8, 16, 19, 20, 21 and 34 of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers¹¹.
- (21) The examination procedure should be used for the adoption of those implementing acts given that those acts are measures of general scope within the meaning of Article 2(2) (a) of Regulation (EU) No 182/2011.
- (22) It is necessary to monitor and evaluate the functioning of this Regulation. Provision should thus be made for collection of statistics and other information by Member States and for the preparation of regular reports by the Commission.
- (23) Council Regulation (EC) No 2073/2004 of 16 November 2004 should be repealed.
- (24) Since the objective of this Regulation, namely the simplification and the strengthening of administrative cooperation between Member States, which requires a harmonised approach, cannot be sufficiently achieved by the Member States alone, and can, by reason of the uniformity and effectiveness required, 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 of the European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve those objectives.
- (25) 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 (Article 8). In 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 purposes of protecting legitimate fiscal interests of the Member States.

HAS ADOPTED THIS REGULATION:

Chapter I

General provisions

Article 1

Subject matter and scope

1. This 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

¹¹ OJ L 55, 28.2.2011, p. 13.

information, whether by electronic means or otherwise, that is necessary to the assurance of the correct application of excise legislation.

2. This Regulation shall not affect the application in the Member States of the rules on mutual assistance in criminal matters. It shall not affect the fulfilment of any obligation in relation to mutual assistance ensuing from other legal instruments, including bilateral or multilateral agreements.

Article 2 **Definitions**

For the purposes of this Regulation:

- (1) "competent authority" means the authority designated in accordance with Article 3(1);
- (2) "requesting authority" means the central excise liaison office of a Member State or any liaison department or competent official of that Member State requesting assistance on behalf of the competent authority;
- (3) "requested authority" means the central excise liaison office of a Member State or any liaison department or competent official of that Member State who receives the request for assistance on behalf of the competent authority;
- (4) "excise office" means any office at which some of the formalities laid down by excise rules may be completed;
- (5) "event driven automatic exchange" means the systematic communication of information with a predefined structure concerning an event of interest, without prior request, to another Member State as and when that information becomes available, excluding the exchange of information provided for in Article 21 of Directive 2008/118/EC;
- (6) "regular automatic exchange" means the systematic communication of information with a predefined structure, without prior request, to another Member State at pre-established regular intervals;
- (7) "spontaneous exchange" means the communication without prior request of information to another Member State, not covered by points (5) and (6);
- (8) "computerised system" means the computerised system for the movement and surveillance of excise goods provided for by Decision No 1152/2003/EC;
- (9) "person" means a natural person, a legal person, and any association of persons which is not a legal person but which is recognised under the law of the Union or national law as having the capacity to perform legal acts;
- (10) "economic operator" means a person who, in the course of his business, is involved in activities covered by excise legislation, whether authorised to do so or not;

- (11) "electronic means" signifies electronic equipment of any kind capable of processing (including transmission and compression) and storage of data and includes the computerised system defined in point (8);
- (12) "excise number" means the identification number assigned by Member States for excise purposes to records of the economic operators and premises referred to in Article 19(1) (a) and (b);
- (13) "a movement of excise goods within the Union" means the movement between two or more Member States of excise goods under suspension of excise duty within the meaning of Chapter IV of Directive 2008/118/EC or of excise goods after release for consumption within the meaning of Chapter V, Section 2, of Directive 2008/118/EC;
- (14) "administrative enquiry" means all the controls, checks and other action taken by officials or the competent authorities in the performance of their duties with a view to ensuring the correct application of excise legislation;
- (15) "CCN/CSI network" means the common platform based on the common communication network (CCN) and common system interface (CSI), developed by the Union to ensure all transmissions by electronic means between the competent authorities in the area of customs and taxation;
- (16) "excise duties" mean the duties referred to in Article 1(1) of Directive 2008/118/EC;
- (17) "mutual administrative assistance document" means a document established within the computerised system and used for the exchange of information under Article 8, Article 15 or Article 16 and used for follow-up under Article 8 or Article 16;
- (18) "fall-back mutual administrative assistance document" means a document in a paper form used for the exchange of information under Article 8 or Article 15 , in case the computerised system is not available;
- (19) "simultaneous control" means coordinated checks in regard to excise legislation on the situation of a economic operator or related persons, organised by two or more participating Member States with common or complementary interests.

Article 3
Competent authorities

1. Each Member State shall designate the competent authority in whose name this Regulation is to be applied. It shall inform the Commission about that designation and about any subsequent change thereof without delay.
2. The Commission shall make available a list of all competent authorities and publish this information in the Official Journal of the European Union.

Article 4
Central excise liaison offices and liaison departments

1. 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. It shall inform the Commission and the competent authorities of the other Member States thereof.

The central excise liaison office may also be designated as responsible for contacts with the Commission.

2. The competent authority of each Member State may designate liaison departments with a specific territorial competence or a specialised operational responsibility, other than the central excise liaison office, to directly exchange information under this Regulation.

The central excise liaison office shall ensure that the list of these departments is kept up to date and made available to central excise liaison offices of the other Member States concerned.

Article 5
Competent officials

1. The competent authority of each Member State may designate, under the conditions laid down by the Member State, competent officials who may directly exchange information under this Regulation.

The competent authority may limit the scope of such delegation.

The central excise liaison office shall be responsible for keeping the list of those officials up to date and making it available to the central excise liaison offices of the other Member States concerned.

2. The officials exchanging information under Articles 12 and 13 shall be deemed to be competent officials for the purpose of those Articles, in accordance with the conditions laid down by the competent authorities.

Article 6
Obligations of the central excise liaison office, liaison departments and competent officials

1. The central excise liaison office shall have principal responsibility for exchanges of information on movements of excise goods and in particular, it shall have principal responsibility for ensuring:
 - a) the exchange of information under Article 8;
 - b) the forwarding of notifications of administrative decisions and measures requested by Member States under Article 14;
 - c) mandatory exchanges of information under Article 15;

- d) optional spontaneous exchanges of information under Article 16;
 - e) provision of reports on the follow-up actions under Article 8(5) and Article 16(2);
 - f) the exchange of information stored in the electronic database provided for in Article 19;
 - g) the provision of statistical and other information under Article 34.
2. Where liaison departments or competent officials send or receive requests for assistance or responses to such requests for assistance, they shall inform the central excise liaison office of their Member State under the conditions laid down by the latter.
 3. Where a liaison department or a competent official receives requests for assistance requiring action outside its territorial or operational area, it shall immediately forward them to the central excise liaison office of its Member State and to the competent official of the liaison department in charge and inform the requesting authority thereof. In such a case, the time limits laid down in Article 11 shall begin on the day following that on which the request for assistance was forwarded to the central excise liaison office and to the competent official of the liaison department in charge, but no later than one week following the reception of the request as referred to in the first sentence of this paragraph.

Article 7

Information or documents obtained with the authorisation or at the request of the judicial authority

1. The obligation to give assistance shall not exclude the provision of information or documents obtained by the requested authority, where it has acted with the authorisation or on the request of a judicial authority.
2. The communication of the information to the requesting authority shall require the prior authorisation of the judicial authority if such authorisation is required under national law.

Chapter II

Co-operation on request

Article 8

General duties of the requested authority

1. At the request of the requesting authority, the requested authority shall communicate the information necessary to assure the correct application of excise legislation, including any information relating to a specific case or specific cases, especially concerning movements of excise goods within the Union.

2. For the purposes of communicating the information referred to in paragraph 1, the requested authority shall arrange for the conduct of any administrative enquiries necessary to obtain such information.
3. The request referred to in paragraph 1 may include a reasoned request for a specific administrative enquiry. If the requested authority decides that no administrative enquiry is necessary, it shall immediately inform the requesting authority of the reasons for its decision.
4. In order to obtain the information requested or to conduct the administrative enquiry requested, the requested authority or any administrative authority to which the requested authority has recourse shall proceed as though acting on its own account or at the request of another authority in its own Member State.
5. The requested authority may request the requesting authority to provide a report on the follow-up action taken by the requesting Member State on the basis of the provided information. If such a request is made, the requesting authority shall, without prejudice to rules on secrecy and data protection applicable in its Member State, send such report as soon as possible, provided that it does not impose a disproportionate burden on it.

Article 9

Form of the request and the reply

1. Requests for information and for administrative enquiries pursuant to Article 8 and replies to such requests shall be exchanged using a mutual administrative assistance document, subject to paragraph 4 of this Article.

Where the computerised system is unavailable, the fall-back mutual administrative assistance document shall be used instead of the mutual administrative assistance document.

2. The Commission shall adopt implementing acts to determine:
 - (a) the structure and content of the mutual administrative assistance documents;
 - (b) the rules and procedures relating to the exchanges of mutual administrative assistance documents;
 - (c) the model form and content of the fall-back mutual administrative assistance document;
 - (d) the rules and procedures relating to the use of the fall-back mutual administrative assistance document.

The Commission may also adopt implementing acts to determine the structure and content of the report referred to in Article 8(5).

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

3. Each Member State shall determine the situations where the computerised system may be considered unavailable.
4. Where the use of the mutual administrative assistance document is impractical, the exchange of messages may be carried out in whole or in part by other means. In such exceptional cases the message shall be accompanied by an explanation of why the use of the mutual administrative assistance document was impractical.

Article 10
Provision of documents

1. Documents of whatever content to be provided under Article 8 shall be attached to the administrative assistance document referred to in Article 9(1).

However, in case this is impossible or impractical, the documents shall be provided through electronic means or otherwise.
2. The requested authority shall have an obligation to provide original documents only where such documents are necessary for the purpose pursued by the requesting authority and is not contrary to the provisions in force in the Member State in which the authority is established.

Article 11
Time limits

1. The requested authority shall provide the information referred to in Article 8 as quickly as possible, and no later than three months following the date of receipt of the request.

However, where the requested authority is already in possession of that information, the time limit shall be one month.
2. In certain special categories of cases, time limits different from those provided for in paragraph 1 may be agreed between the requested and the requesting authorities.
3. Where the requested authority is unable to respond to the request by the time limit provided for in paragraph 1, it shall inform the requesting authority using a mutual administrative assistance document within one month of the reasons for its failure to do so and indicate when it assumes to be able to respond.

Article 12
Participation of officials from other Member States in administrative enquiries

1. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials authorised by the requesting authority may be present in the offices where the administrative authorities of the Member State in which the requested authority is established carry out their duties, or any other place where those authorities carry out their duties, with

a view to exchanging the information necessary to assure the correct application of excise legislation.

Where the requested information is contained in documentation to which the officials of the requested authority have access, the officials of the requesting authority shall be given copies thereof.

2. By agreement between the requesting authority and the requested authority and in accordance with the arrangements laid down by the latter, officials designated by the requesting authority may be present during the administrative enquiries carried out in the territory of the requested Member State with a view to exchanging the information necessary to assure the correct application of excise legislation.

Where such agreement is reached, the officials of the requesting authority may have access to the same premises and documents as the officials of the requested authority, through the intermediary of those officials and for the sole purpose of carrying out the administrative enquiry. In any event, the officials of the requesting authority shall not exercise the powers of inspection conferred on officials of the requested authority.

3. The officials of the requesting authority present in another Member State in accordance with paragraphs 1 and 2 shall at all times be able to produce a written authority indicating their identity and their official capacity.

Article 13

Simultaneous controls

1. With a view to exchanging the information necessary to assure the correct application of excise legislation, two or more Member States may agree, on the basis of a risk analysis, to conduct simultaneous controls, in their own territory, of the excise duty situation of one or more economic operators or other persons, that are of common or complementary interest, whenever such controls would appear to be more effective than controls carried out by only one Member State.
2. In order to initiate an agreement referred to in paragraph 1, the competent authority of a Member State shall submit a proposal to the competent authorities of the other Member States concerned.

The proposal shall:

- (a) specify the cases proposed for simultaneous controls;
- (b) individually identify each person with regard to whom such control is intended to be carried out;
- (c) state reasons justifying the necessity of a common control;
- (d) specify the period of time during which such controls are intended to be carried out.

3. Upon receiving the proposal referred to in paragraph 2, the competent authorities of the Member States concerned shall decide on their participation in the simultaneous control and shall notify the proposing competent authority thereof as soon as possible but no later than one month of receipt of that proposal.. Any refusal of participation in simultaneous control shall be duly reasoned.
4. If agreement referred to in paragraph 1 is concluded, each competent authority participating in that agreement shall appoint a representative responsible for supervising and coordinating the simultaneous control operation.
5. After having carried out a simultaneous control, the competent authorities shall inform the central excise liaison offices of the other Member States without delay of any methods or practices discovered during the simultaneous control that were used or suspected of having been used to contravene excise duty legislation, where it is deemed that such information is of particular interest to other Member States.

Article 14

Request for notification of administrative decisions and measures

1. At the request of the requesting authority, the requested authority shall, in accordance with the rules governing similar notifications in force in its Member State, notify the addressee of all decisions and measures taken by the administrative authorities of the requesting Member State concerning the application of excise legislation.

The first subparagraph of this paragraph and paragraphs 2, 3 and 4 of this Article shall not apply to documents referred to in Article 8 of Directive 2010/24/EU.

2. Requests for notification referred to in paragraph 1, shall mention the subject of the decision or measure to be notified and shall indicate the name, address and any other relevant information for identifying the addressee.
3. The requested authority shall, without delay, inform the requesting authority of its action on the request for notification referred to in paragraph 1 and notify it of the date of transmission of the decision or measure to the addressee.
4. Where the requested authority is unable to act on the request for notification referred to in paragraph 1, it shall inform the requesting authority thereof in writing within one month of receipt of the request.

The requested authority may not refuse to act on such request on account of the content of the decision or measure to be notified.

Chapter III

Exchange of information without prior request

Article 15

Mandatory exchange of information

1. The competent authority of each Member State shall forward, without prior request, by means of regular or event driven automatic exchange, the information necessary to assure the correct application of excise legislation to the competent authority of all other Member States concerned, in the following cases:
 - (a) where an irregularity or an infringement of excise legislation has occurred, or is suspected to have occurred, in another Member State;
 - (b) where an irregularity or an infringement of excise legislation which has occurred, or is suspected to have occurred, in the territory of one Member State may have repercussions in another Member State;
 - (c) where there is a risk of fraud or a loss of excise duty in another Member State;
 - (d) where an exceptional event has occurred during a movement of excise goods within the Union, which is not defined in the provisions of Directive 2008/118/EC and which may affect the calculation of liability to excise duty of an economic operator.
2. Where the information referred to in paragraph 1 relates to a movement of excise goods within the Union the information shall be forwarded using a mutual administrative assistance document, subject to paragraph 3.

However, where the use of that document is impractical, the exchange of messages may be, exceptionally, carried out in whole or in part by other means. In such cases the message shall be accompanied by an explanation of why the use of the mutual administrative assistance document was impractical.
3. Where the computerised system is unavailable, the fall-back mutual administrative document shall be used instead of the document referred to in paragraph 2.
4. The Commission shall adopt implementing acts to determine:
 - (a) the exact categories of information that shall be exchanged under Article 15(1);
 - (b) the frequency of regular exchange for each category of information;
 - (c) the structure and content of the mutual administrative assistance documents;
 - (d) the form and content of the fall-back mutual administrative assistance document;
 - (e) the rules and procedures relating to the exchanges of the documents referred to in points (c) and (d).

The Commission may also adopt implementing acts to determine the situations where the competent authorities may consider the computerised system unavailable for the purposes of paragraph 3 of this Article.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

Article 16

Optional exchange of information

1. The competent authorities of the Member States may, in any event, forward to each other, without prior request, by means of spontaneous exchange, any information necessary to assure the correct application of excise legislation of which they are aware and which is not covered by Article 15.

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

2. The authority having forwarded information to another authority under paragraph 1 may request that other authority to provide a report on the follow-up action taken by the requesting Member State on the basis of the provided information. If such a request is made, the other authority shall, without prejudice to rules on secrecy and data protection applicable in its Member State, send such report as soon as possible, provided that it does not impose a disproportionate administrative burden on it.
3. The Commission shall adopt implementing acts to determine:
 - a) the structure and content of the mutual administrative assistance documents to cover the most common types of information referred to in paragraph 1;
 - b) the rules and procedures relating to the exchanges of the mutual administrative document.

The Commission may also adopt implementing acts to determine the structure and content of the report referred to in paragraph 2.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

Article 17

Duty of Member States to facilitate exchanges of information without prior request

Member States shall take the necessary administrative and organisational measures to facilitate the exchanges provided for in this Chapter.

Article 18
Limitation of obligations

Member States shall not be obliged to impose, for the purposes of implementation of this Chapter, any new obligations on economic operators related to collection of information, nor to bear any disproportionate administrative burden.

Chapter IV
Storage and exchange of electronic information on economic operators

Article 19
Storage and exchange of information on authorisations of economic operators and warehouses

1. The competent authority of each Member State shall maintain an electronic database containing the following registers:
 - (a) a register of economic operators belonging to one of the following categories:
 - (i) authorised warehousekeepers within the meaning of point (1) of Article 4 of Directive 2008/118/EC;
 - (ii) registered consignees within the meaning of point (9) of Article 4 of Directive 2008/118/EC;
 - (iii) registered consignors within the meaning of point (10) of Article 4 of Directive 2008/118/EC.
 - (b) a register of premises authorised as tax warehouses within the meaning of point (11) of Article 4 of Directive 2008/118/EC.
2. The registers referred to in paragraph 1 shall contain the following information:
 - (a) the unique excise number issued by the competent authority in respect of an economic operator or premises;
 - (b) the name and address of the economic operator or premises;
 - (c) the excise product category (CAT) and/or the excise product code (EPC) referred to in Annex II, code list 11 of Regulation (EC) 684/2009 of the products covered by the authorisation;
 - (d) identification of the central excise liaison office or the excise office from which further information may be obtained;
 - (e) the date as of which the authorisation is valid, is amended and where applicable, ceases to be valid;

- (f) for authorised warehousekeepers, the tax warehouse or the list of tax warehouses to which his authorisation applies and, if applicable under national legislation, an indication that he is authorised to split a movement in accordance with Article 23 of Directive 2008/118/EC or is authorised to have excise goods moved to a place of direct delivery in accordance with Article 17(2) of that Directive;
 - (g) for registered consignees, if applicable under national legislation, an indication that he is authorised to have excise goods moved to a place of direct delivery in accordance with Article 17(2) of Directive 2008/118/EC;
 - (h) for registered consignees referred to in Article 19(3) of Directive 2008/118/EC, the content of the authorisation regarding 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;
 - (i) notwithstanding point (h), for registered consignees referred to in Article 19(3) of Directive 2008/118/EC that have an authorisation to receive wine from consignors who benefit from the derogation provided in Article 40 of Directive 2008/118/EC, the identity of the consignor in the Member State of dispatch shall be omitted. An indication of the derogation under Article 40 of 2008/118/EC shall be included in the record;
 - (j) for tax warehouses, the authorised warehousekeeper or list of authorised warehousekeepers for which this tax warehouse is authorised for use.
3. The central excise liaison office or a liaison department of each Member State shall ensure that the information contained in the national registers is complete, accurate and up to date.
 4. The information contained in the respective national registers as referred to in paragraph 2 shall be automatically exchanged via a central register.

The Commission shall operate the register as a part of the computerised system in a manner that ensures at all times a correct up to date view of all national registry data provided by all Member States.

The central excise liaison offices or liaison departments of Member States shall communicate the content of the national register as well as any modification thereto to the Commission in a timely manner.

Article 20

Access to and correction of information

1. The Commission shall ensure that persons involved in the movement of excise goods within the Union are allowed to obtain confirmation by electronic means of the validity of excise numbers held in the central register referred to in Article 19(4). The Commission shall forward any requests for correction of this information from an economic operator to the central excise liaison office or liaison department that is responsible for the authorisation of that economic operator.

2. The central excise liaison offices or liaison departments of Member States shall ensure that economic operators are allowed to obtain confirmation of the information held under this Article 19(2) about them and to correct any inaccuracies.

Article 21
Data retention

1. The competent authority of each Member State shall keep the information concerning movements of excise goods within the Union and the records contained in the national registers defined in Article 19 for at least three years from the end of the calendar year in which the movement began, in order that such information can be used for the procedures provided for in this Regulation. Information collected through the computerised system shall be kept in that system in a way that makes it possible to retrieve and to further process that information within the system in response to a request for information referred to in Article 8.
2. Member States shall at the expiry of the applicable data retention period either delete the content of the retained records, or archive them in a form that does not allow the identification of the economic operator or operators concerned.

Article 22
Implementation

The Commission shall adopt implementing acts:

- (a) to specify the technical details concerning the automated update of the databases referred to in Article 19(1) and of the central register referred to in Article 19(4);
- (b) to specify the rules and procedures concerning the access to and correction of information under Article 20(1);

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

Chapter V

Common conditions governing assistance

Article 23
Language regime

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

Article 24
Quality of service

- 1 The Commission and the Member States shall ensure that the parts of the computerised system necessary for the exchange of information described in this Regulation are operational, appropriately maintained and further developed.
- 2 The Commission and the Member States shall conclude a service level agreement and agree on security policy for the computerised system. The service level agreement shall define the technical quality and quantity of the services to be delivered by the Commission and the Member States in order to ensure a secure functioning of all parts of the computerised system and of electronic communication and the repartition of responsibilities for the further development of that system.

Article 25
General limits to the duties of the requested authority

1. The requested authority in one Member State shall provide the requesting authority in another Member State with the information requested under this Regulation provided that the requesting authority has exhausted the usual sources of information which it could have used in the circumstances to obtain the information requested, without running the risk of jeopardising the achievement of the desired end.
2. This Regulation shall impose no obligation on the competent authorities of a Member State to carry out enquiries or to provide information if the laws or administrative practices of that Member State do not authorise the authorities to carry out such enquiries or to collect or use such information for that Member State's own purposes.
3. The competent authority of a Member State may refuse to forward information if the requesting Member State cannot, for legal reasons, provide similar information.
4. The provision of information may be refused where it would lead to the disclosure of a commercial, industrial or professional secret or of a commercial process, or where its disclosure would be contrary to public policy. Member States may not refuse to supply information on a economic operator on the sole grounds that this information is held by a bank or other financial institution, by a nominee or a person acting as agent or fiduciary or because it relates to the ownership interests in a legal person.
5. The requested authority shall inform the requesting authority of the grounds for refusing a request for assistance. They shall also inform the Commission of the categories of grounds for such refusals on an annual basis for statistical purposes.

Article 26
Expenses

Member States shall mutually waive all claims for reimbursement of expenses in applying this Regulation, with the exception of claims related to fees paid to experts.

Article 27
Minimum amount

1. The possibility to request assistance under this Regulation may be subject to a threshold of minimum amount due in relation to excise duties.
2. The Commission may adopt implementing acts to specify the threshold referred to in paragraph 1 of this Article.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

Article 28
Official secrecy, data protection and use of the information communicated under this Regulation

1. Information communicated or collected by Member States pursuant to this Regulation or any information to which an official or other employee, or contractor has had access in the course of his duties shall be covered by the obligation of official secrecy and shall enjoy the protection granted to similar information under the national law of the Member State receiving that information.
2. Information referred to in paragraph 1 may be used for the following purposes:
 - (a) establishing the assessment base for excise duties;
 - (b) collection or administrative control of excise duties;
 - (c) monitoring of movements of excise goods;
 - (d) risk analysis in the field of excise duties;
 - (e) enquiries in the field of excise duties;
 - (f) establishing of other taxes, duties and charges covered by Article 2 of Directive 2010/24/EU.

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

To the extent allowed by national law, the information referred to in paragraph 1 may be used in connection with judicial or administrative proceedings that may involve penalties initiated as a result of infringements of tax law, without prejudice to the rules governing the right of the defendants and witnesses in such proceedings.

3. Where the requesting authority considers that information it has received from the requested authority may be useful to the competent authority of another Member State, it may forward it to that authority. It shall inform the requested authority thereof.

The requested authority may make the communication of information to another Member State subject to its prior consent.

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

However, Member States shall, for the purpose of the correct application of this Regulation, restrict the scope of the obligations and rights provided for in Article 10, Article 11(1) and Articles 12 and 21 of Directive 95/46/EC to the extent necessary to safeguard the interests referred to in Article 13(1) (e) of that Directive. Such restrictions shall be proportionate to the interest in question.

Article 29

Access to information under Commission authorisation

Persons duly authorised by the Commission may be provided with access to the information referred to in Article 28(4) only to the extent necessary for care, maintenance and development of the CCN/CSI network and the operation of the central register.

Such persons shall be subject to the obligation of official secrecy. The information accessed shall be protected as personal data under Regulation (EC) No 45/2001.

Article 30

Evidential value of information obtained

Reports, statements, and any other documents or certified true copies or extracts thereof obtained by the officials of the requested authority and communicated to the requesting authority pursuant to this Regulation may be invoked as evidence by the competent bodies of the Member State of the requesting authority on the same basis as similar documents provided by another authority of that Member State.

Article 31

Obligation to cooperate

1. For the purposes of applying this Regulation, a Member State shall take all necessary measures to:
 - (a) ensure effective internal coordination between the competent authorities referred to in Article 3;
 - (b) establish direct cooperation between the authorities authorised for the purposes of coordination referred to in point (a);
 - (c) ensure the smooth operation of the information exchange system provided for in this Regulation.

2. The Commission shall communicate without delay to the competent authority of each Member State any information necessary to assure the correct application of excise legislation, which it receives and which it is able to provide.

Article 32

Relations with third countries

1. When the competent authority of a Member State receives information from a third country, that authority may pass the information on to the competent authorities of any Member State which might be interested in it and, in any event, to all those which request it, provided that it is permitted by assistance arrangements with that particular third country. Such information may also be passed on to the Commission whenever it is in the interest of the Union and for the same purposes as this Regulation.
2. Provided the third country concerned has given a legal undertaking to provide the assistance required to gather evidence of the irregular nature of transactions which appear to contravene excise legislation, information obtained under this Regulation may be communicated to that third country, with the consent of the competent authorities which supplied the information, in accordance with their national law, for the same purposes for which this information has been supplied and in compliance with Directive 95/46/EC, in particular provisions on transfers of personal data to third countries, and the national legal measures implementing the Directive.

Article 33

Assistance to economic operators

1. The competent authorities of a Member State in which a consignor of excise goods is established may grant assistance to that consignor where the latter fails to receive a report of receipt referred to in Article 24(4) of Directive 2008/118/EC or, in the situations referred to in Article 33(1) of that Directive, a copy of the accompanying document referred to in Article 34 of that Directive.

Granting of such assistance shall be without prejudice to the tax obligations of the assisted consignor.

2. Where a Member State grants assistance pursuant to paragraph 1 and considers it necessary to obtain information from another Member State, it shall request such information in accordance with Article 8. The other Member State may refuse to obtain the information requested in case the consignor has not exhausted all the means available to him to obtain proof that the movement of excise goods has ended.

Chapter VI

Evaluation and Transitional and final provisions

Article 34

Evaluation of arrangements, collection of operational statistics and reporting

1. The Member States and the Commission shall examine and evaluate the application of this Regulation. To that end, the Commission shall regularly summarise the experience of the Member States with the aim of improving the operation of the system established by this Regulation.
2. The Member States shall communicate to the Commission the following information:
 - (a) any available information relevant to their experience with the application of this Regulation, including any statistical data needed for its evaluation;
 - (b) any available information on actual or suspected methods or practices used to contravene excise legislation where these methods or practices reveal shortcomings or gaps in the operation of procedures defined in this Regulation.

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

The Commission shall forward the information communicated by the Member States to the other Member States concerned.

The obligation to communicate information and statistical data shall not involve any unjustified increase of administrative burden.

3. The Commission may directly extract information from messages generated by the computerised system for operational and statistical purposes, subject to Article 28.
4. The information communicated by the Member States for the purposes of paragraph 1 and 2 shall not contain individual or personal data.
5. The Commission shall adopt implementing acts to determine, for the purpose of implementing this Article, the relevant statistical data communicated by the Member States, the information to be extracted by the Commission and the statistical reports to be prepared by the Commission and by the Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 35(2).

Article 35
Committee on Excise Duty

1. The Commission shall be assisted by the Committee on Excise Duty established by Article 43(1) of Directive 2008/118/EC. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 36
Repeal of Regulation (EC) No 2073/2004

Regulation (EC) No 2073/2004 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation in accordance with the correlation table in the Annex to this Regulation.

Article 37
Reporting to European Parliament and Council

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

Article 38
Bilateral Arrangements

1. This Regulation shall be without prejudice to the fulfilment of any wider obligations in relation to mutual assistance ensuing from other legal acts, including bilateral or multilateral agreements.
2. Where the competent authorities as referred to in Article 3(1) conclude arrangements on bilateral matters covered by this Regulation other than to deal with individual cases, they shall inform the Commission without delay. The Commission shall in turn inform the competent authorities of the other Member States.

Article 39
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 1 January 2012.

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

Done at Brussels,

*For the Council
The President*

ANNEX

Correlation Table No. 1: Regulation (EC) No. 2073/2004 > New Regulation			
Article 2073/2004	New Article	Article 2073/2004	New Article
1	1	20	17
2	2	21	18
3	3, 4, 5, 6	22	19, 20
4	7	23	-
5	8	24	33
6	9	25	21
7	7, 10	26	34
8	11	27	32
9	11	28	9, 15,16, 22
10	11	29	23
11	12	30	25,27,28,
12	13	31	28, 29, 32
13	13	32	30
14	14	33	31
15	14	34	35
16	14	35	37
17	15	36	38
18	15	37	39
19	16		

