

Excise duties: administrative cooperation

2011/0330(CNS) - 14/11/2011 - Legislative proposal

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

PROPOSED ACT: Council Regulation.

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

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

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

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

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

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

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

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

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

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

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

The **aim** is to:

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

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

Assessment of impact on fundamental rights: the proposal assumes that Member States will make necessary and proportionate use of Article 13 of Directive 95/46/EC, which allows 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. In this, there is no change in the rights and obligations of Member States from the rights and obligations defined in the existing Regulation on Administrative Cooperation in the field of excise.

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

- providing a secure communication channel (CCN/CSI) between Member State Administrations. This channel is used for the forwarding of structured messages involving the exchange of information on request, automatic exchange of information and spontaneous forwarding of information, which can aid in the correct application of excise legislation;
- providing a mechanism for the copying of excise economic operator registration data between Member States;

the extraction of data for statistical purposes.

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

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