

EXPLANATORY MEMORANDUM FOR EUROPEAN UNION LEGISLATION WITHIN THE SCOPE OF THE UK/EU WITHDRAWAL AGREEMENT AND NORTHERN IRELAND PROTOCOL

2022/0331 (CNS)

COM (2022) 539 final

Proposal for a COUNCIL REGULATION amending Regulation (EU) No 389/2012 as regards the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes.

Submitted by HM Revenue & Customs

30 November 2022

SUBJECT MATTER

1. This is a proposal to amend Council Regulation (EU) No 389/2012 which lays down the legal basis for administrative cooperation between Member States in the field of excise duties. It is one of a number of changes being made to the EU rules for the holding and movement of excise goods governed primarily by Directive 2008/118/EC (the 'Horizontal Excise Directive'), which itself is being modified and updated in Council Directive (EU) 2020/262. The changes to the EU rules in this area are aimed at trade facilitation and preventing fraud by increasing the transparency of excise goods movements using IT solutions. All the changes are effective from 13 February 2023.
2. Each EU Member State, and the UK in respect of Northern Ireland, maintains an electronic database containing registers of information about businesses engaged in the movement of excise goods. The data included in these registers is exchanged with a central register operated by the European Commission within the context of administrative cooperation. This system is currently used to exchange information on businesses engaged in the movement of goods on which excise duty has been suspended. This proposal extends the data required to be shared between Member States and the UK in respect of Northern Ireland, to include details of businesses engaged in duty paid movements. This information is already held by HMRC, so would not create new obligations for businesses.

SCRUTINY HISTORY

3. **Commission Implementing Regulation C(2022)4497 of 5 July 2022 makes change to Council Directive 2020/262 by updating certain requirements in connection with electronic documents relating to the movement of excise goods.** HMRC submitted an EM dated 7 October 2022. The House of Commons European Scrutiny Committee have yet to consider the implementing regulation. The EU regulation has been sifted for scrutiny to the House of Lords European Affairs

Committee's Sub-Committee on the Protocol on Ireland/Northern Ireland (Chair's Sift 24, 27 October 2022).

4. **EM COM (21)28: Proposal for a COUNCIL REGULATION amending Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers.** HMRC submitted an EM dated 9 February 2021. The House of Commons European Scrutiny Committee did not report on the proposal substantively and scrutiny was completed on 10 March 2021, Report 39, 19/21. The proposal completed scrutiny in the House of Lords European Affairs Committee at Chair's Sift 44 on 21 February 2021.
5. Council Directive 2020/262 was scrutinised as **EU document 9571/18, COM (28)346; Proposal for a COUNCIL DIRECTIVE laying down the general arrangements for excise duty (recast) on which HMRC submitted an EM dated 16 June 2018.** The House of Commons European Scrutiny Committee reported on three occasions that the proposal raised issues of legal and political importance (Reports 33 & 50, 17/19 and Report 23, 19/21). The proposal completed scrutiny in the then House of Lords European Union Committee at Chair's Sift 1698 on 26 June 2018.
6. Council Decision 2020/263 was subject to scrutiny as **EU document 9567/18, COM (18)341; Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on computerising the movement and surveillance of excise goods (recast)** on which HMRC submitted an EM dated 16 June 2018. The House of Commons European Scrutiny Committee reported on three occasions that the proposal raised issues of legal and political importance (Reports 33 & 50, 17/19 and Report 23, 19/21). The proposal completed scrutiny in the then House of Lords European Union Committee at Chair's Sift 1698 on 26 June 2018.

MINISTERIAL RESPONSIBILITY

7. The Chancellor of the Exchequer has responsibility for UK policy on European Union monetary and economic issues.
8. The Financial Secretary to the Treasury has responsibility for tax policy and customs.
9. The Exchequer Secretary to the Treasury has responsibility for excise duties (alcohol, tobacco, fuel, and gambling), including excise fraud and law enforcement.
10. The Secretary of State for Foreign, Commonwealth and Development Affairs is responsible for overall UK policy towards the EU.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

11. Excise duties are a reserved matter under the UK's devolution settlements.

12. Under the Northern Ireland Protocol to the Withdrawal Agreement, EU excise law concerning goods applies to and in the United Kingdom in respect of Northern Ireland. Northern Ireland Executive Ministers have an interest in any amendment that concerns legislation applicable in Northern Ireland under the Protocol.
13. The Northern Ireland Civil Service has been consulted in the preparation of this Explanatory Memorandum and were interested in the impact on businesses. As stated in the financial implications section, we expect no business impacts.

LEGAL AND PROCEDURAL ISSUES

14. The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This Article provides for the Council, acting unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.
15. There are no procedural issues. The UK has withdrawn from the EU. Following the terms of the Withdrawal Agreement, as of 1 January 2021, EU law no longer applies to the UK. However, under the terms of the Northern Ireland Protocol, the provisions of EU law listed in Annex 3 concerning excise goods are to continue to apply to and in the UK in respect of Northern Ireland.
16. The proposed Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. It shall apply from 13 February 2023.

POLICY IMPLICATIONS

17. The UK, when a member of the EU, supported the objectives of Directive 2020/262 and linked measures such as this proposal to improve processes and procedures to manage risks while minimising burdens on legitimate business. The changes covered here are broadly welcomed as logical changes in line with these broader objectives, and are necessary to support movements of excise goods between Northern Ireland and EU Member States; in particular Ireland.
18. The proposed amendment is not applicable in the UK other than in respect of Northern Ireland.
19. The change proposed extends the information which HMRC is required to share with EU Member States but applies no new obligations on UK businesses.

CONSULTATION

There has been no UK consultation on this change.

FINANCIAL IMPLICATIONS

These Regulations are not expected to have any economic impacts or business impacts. There are some additional costs for HMRC in implementing these changes, for example, updating the database registers.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in blue ink that reads "Victoria Atkins". The signature is written in a cursive style with a large initial 'V' and a long, sweeping underline.

Victoria Atkins

Financial Secretary to the Treasury

HM Treasury