

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

2021/0015 (CNS)

COM(2021) 28 FINAL

**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.**

Submitted by H M Revenue & Customs

9 February 2021

SUBJECT MATTER

1. The Communication sets out proposals for a minor technical change to Council Regulation (EU) 389/2012.
2. In December 2019 and July 2020, the EU agreed certain reforms to the Alcohol Duty Structures Directive and the administrative requirements linked to movements of excise goods, on the basis of proposals made by the European Commission in May 2018. The reforms, which were uncontroversial, were described in an Explanatory Memorandum submitted to the Committee by HM Treasury on 16 June 2018.
3. The changes were made via three new pieces of EU legislation: Council Directive (EU) 2020/262 laying down the general arrangements for excise duty (recast); Regulation (EU) 2020/261 on administrative cooperation in the field of excise duties as regards the content of electronic registers; and Decision (EU) 2020/263 on computerising the movement and surveillance of excise goods (recast).
4. As part of these reforms, Council Directive (EU) 2020/262 introduced two new categories of economic operators: certified consignors and consignees, who would be registered for the dispatch and receipt of excise goods that have already been released for consumption in one Member State and moved to another, for a commercial purpose. The Directive also, under Decision 2020/263, extended the use of the computerised system currently used to supervise movements of duty suspended excise goods, to include intra-EU movements of excise goods already released for consumption.

5. To allow for the proper functioning of the computerised system, proposal 2018/0181(CNS) amended the scope of Article 19 of Regulation (EU) No 389/2012 setting out the information that Member States should introduce in their registers and electronic database in relation to certified consignors and consignees that move excise goods.
6. Proposal 2021/0015, further extends Article 19 by setting out the information that Member States should introduce in their registers and electronic database in relation to certified consignors and consignees that move excise goods, only on an occasional basis. The new information concerns: the quantity of excise goods; the identity of the economic operator at the end of the movement and the duration of the temporary certification.

SCRUTINY HISTORY

7. This is the first time that proposal 2021/0015 has been published and there has been no previous scrutiny.
8. The changes set out in paragraph 3, including Proposal 2018/081(CNS) amending Regulation (EU) No 389/2012 in respect of the content of electronic registers, have previously cleared scrutiny. See Committee's report of 9 January 2019 'Duty on alcohol, tobacco and fuel: EU excise reforms'.

MINISTERIAL RESPONSIBILITY

9. The Exchequer Secretary to the Treasury has responsibility for excise duties.

INTEREST OF THE DEVOLVED ADMINISTRATIONS

10. Excise Duties are a reserved matter under the UK's devolution settlements.
11. Under the Northern Ireland Protocol to the Withdrawal Agreement, EU Excise law 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.
12. The Northern Ireland Executive has been consulted in the preparation of this Explanatory Memorandum.

LEGAL AND PROCEDURAL ISSUES

i. Legal Base

13. Proposal 2021/0015 is based upon Article 113 of the Treaty on the Functioning of the European Union (TFEU).

ii. Voting Procedure

14. Article 113 of the TFEU provides for the Council to, acting unanimously in accordance with the special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

15. Unanimous agreement is required.

iii. Timetable for adoption and implementation

16. The adopted regulation is proposed to enter into force on the twentieth day following its publication in the Official Journal of the European Union.

17. It is proposed to apply from 13 February 2023.

POLICY IMPLICATIONS

18. The UK broadly supported the proposed reforms made by the European Commission in May 2018 and voted in favour in 2019. The latest proposal aligns with the objectives of those reforms, to improve processes and procedures to better manage risk.

19. Council Regulation (EU) No 389/2012 applied in the UK until the end of the transition period. It continues to apply in respect of Northern Ireland post transition, by virtue of Article 8 of the Northern Ireland Protocol. The updated information requirements, as described in the amended scope of Article 19, will therefore apply in Northern Ireland from the effective date.

20. Under Article 99 of the Withdrawal Agreement, which covers administrative cooperation on matters relating to indirect tax, Council Regulation (EU) No 389/2012 continues to apply for four years after the end of transition, in respect of goods dispatched before the end of the transition period. However, Article 6 limits the application of Union law within the agreement to that which applied on the last

day of the transition period. The proposed amendment comes into force on 13 February 2023.

21. The proposed amendment therefore is not applicable in the UK other than in respect of Northern Ireland.
22. The Proposal would require a minor technical adjustment to HM Revenue & Customs' existing registration and record keeping procedures. The UK and EU will need to discuss how the planned extension to the computerised system used to supervise movements of excise goods, as set out in EU Decision 2020/263, will be delivered in Northern Ireland.

CONSULTATION

23. The Commission carried out a consultation in the context of the revision of Council Directive 2008/118/EC with Member States' administrations, economic operators and citizens between April and July 2017.
24. No UK government consultation has taken place or is planned.

FINANCIAL IMPLICATIONS

25. There are no financial implications associated with Proposal 2021/0015.

MINISTERIAL NAME AND SIGNATURE

A handwritten signature in black ink that reads "Kemi Badenoch". The signature is written in a cursive, flowing style.

KEMI BADENOCH MP

The Exchequer Secretary to the Treasury

Her Majesty's Revenue & Customs