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#### 'I/A' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee (Part 2)/Council

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Subject: Report to the Council and the European Parliament on the implementation and evaluation of Council Directive 2008/118/EC concerning the general arrangements for excise duty  
– Endorsement

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1. On 21 April 2017 the Commission submitted a Report to the Council and the European Parliament on the implementation and evaluation of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty (hereafter – "the Commission Report")<sup>1</sup>.
2. The Commission Report provides an overview of the relevant background, the scope and methodology used for the external evaluation of Council Directive 2008/118/EC. Building on evidence gathered through the studies, this report also summarises the evaluation conclusions of the Commission.

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<sup>1</sup> Doc. 8523/17 FISC 84 ECOFIN 309 + ADD1.

3. At the meeting of Fiscal Attachés on 31 May 2017 delegations indicated their willingness to work towards drafting conclusions that Council could possibly adopt in response to this Report and provide additional political guidance to the Commission in its expected follow-up work, which could also be taken into account in the upcoming legislative proposal.
  4. Following the preparatory work at the Working Party on Tax Questions (WPTQ), as well as the exchange of views at the meeting of the High Level Working Party on Tax Questions (HLWP) on 27 October, all delegations were in a position to lift their remaining reserves and unanimously supported the draft Council Conclusions on the Commission Report, which are set out in the Annex to this note.
  5. Against this background, the Committee of Permanent Representatives is invited to suggest that the Council endorse the abovementioned draft Council conclusions as set out in the Annex to this note, as an "A" item on the agenda of a forthcoming meeting.
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**DRAFT**

**COUNCIL CONCLUSIONS**

**ON THE COMMISSION REPORT TO THE COUNCIL ON THE IMPLEMENTATION  
AND EVALUATION OF COUNCIL DIRECTIVE 2008/118/EC CONCERNING THE  
GENERAL ARRANGEMENTS FOR EXCISE DUTY**

The Council:

1. WELCOMES the Commission Report to the Council on the implementation and evaluation of Council Directive 2008/118/EC concerning the general arrangements for excise duty and TAKES NOTE of the findings and recommendations set out therein.
2. AGREES with the Commission assessment that, in general, the current arrangements for the holding and movement of excise goods under Directive 2008/118/EC function effectively and efficiently, and in a way that could not be achieved without a Union-wide action.
3. IS CONVINCED that, generally, the Excise Movement and Control System (EMCS) has decreased costs by reducing the amount of time needed to process and administer excise-related documents, has streamlined movement of goods under excise duty suspension arrangements and has reduced costs for both economic entities and administrations as well as has reduced the risk of fraud.
4. OBSERVES, however, that certain rules covering areas within the scope of the Directive 2008/118/EC could be improved further, subject to a careful analysis, as set out in the Commission Report and these conclusions, and, therefore, SUPPORTS the continuation of work aimed at the revision of that Directive.

5. TAKES NOTE of the follow-up actions that the Commission envisages taking, as set out in the Report and BELIEVES that further action should form a good basis for the future changes in order to improve excise surveillance, strengthen fight against fraud and reduce administrative burden for economic operators and tax authorities.
6. NOTES that the Commission finds the arrangements for moving goods already released for consumption to another Member State inefficient, insufficient to provide for the free movement of excise goods and potentially open to tax evasion and fraud.
7. INVITES the Commission to further explore whether any improvements can be made in the area of efficiency and effectiveness of Directive 2008/118/EC, namely concerning B2B duty paid arrangements, especially in cases where it can be determined that these arrangements impose a substantial burden on businesses, particularly in the case of SMEs, and are not compatible with the objectives of the free movement of goods and single market (e. g. excessive use of paper-based documents, variations between national requirements and lack of clear information about national procedures). For those cases, EMCS could be adapted to cover movements of excise goods under duty paid arrangements, however, extension of EMCS could only be justified after a careful costs and benefits analysis taking into account the aim to keep the costs reasonable for the Member States, having regard to the benefit of such extension.
8. OBSERVES that lack of coherence between customs and excise procedures, with regard to terminology used and with regard to the use of export followed by transit and the Single Transport Document, creates confusion and legal uncertainty and increases the risk of fraud and tax evasion, SUPPORTS legal steps to effectively and in a balanced manner re-establish this coherence, ensuring that this does not lead to an undue burden on businesses and promotes the free movement of excise goods, while keeping in mind the objective of preventing tax fraud and tax evasion.

9. OBSERVES that the missing link between customs and excise procedures with regard to export of excise goods lead to many unclosed movements and SUPPORTS legal and technical steps proposed by the Commission in strengthening cross-border procedures, as well for import.
10. NOTES that trade and movement of excisable goods within the EU could be further automated by improving existing IT systems. Nevertheless, while pursuing these objectives, specificities of Member States' economies and their size should be taken into account.
11. NOTES, concerning possible introduction of certain simplifications to the monitoring of the low risk movement of excise goods, in accordance with Article 31 of the Directive, that such a possibility should be thoroughly scrutinised by assessing the tendency of tax evasion risk of each product; however RECOGNISES the difficulty of finding a common understanding on what could be seen as a low risk movement of excise goods.
12. NOTES that, although it might be complicated to find a common solution on the guarantees, the cases of possible distortion of competition should be examined further, in order to determine whether requirements for the authorisation to manufacture, hold and move excise goods and the minimum standard requirements or conditions for the guarantee of payment of the excise duty could be determined further.
13. CALLS upon the Commission to examine whether any further improvements can be made on the excise-related regulation of distance trade in alcohol and tobacco products, inter alia, covering revision of rules on use of tax representatives, as well as ensuring fair conditions of competition for domestic traders by making sure that taxes are paid appropriately.

14. CALLS upon the Commission to explore the possibilities for revising the provisions on guide-levels for intended own use of alcohol and tobacco, set out in Article 32 of the Directive, ensuring that they remain fit for purpose to balance the objectives of public revenues and health protection. This work could also cover the analysis of a feasibility of introducing quantitative limits to intra-Community transport of such products, respecting the principle of free movement of goods.
15. BELIEVES that it is worthy to further discuss the regulatory regime on shortages, excesses and other exceptions regarding the movement of excise goods, and, in that context, assess whether the Directive could contain a clearer definition of the end of a movement.
16. NOTES, in this context, that a number of other issues should be examined as well, to determine, whether amendments to the Directive could be proposed by the Commission, such as: introduction, where possible, of clear definitions and of rules on the “journey time” (the duration of the movement under suspension of excise duty); question about possible common definition of the place of the direct delivery; working towards better functioning of Article 41 of the Directive.
17. EMPHASISES, in this context, that the guiding principle should be borne in mind, that arrangements for the holding and movement of excise goods should not distort competition, hinder the free movement of such goods within the EU, nor should such arrangements hinder tax collection or facilitate fiscal fraud.
18. REQUESTS that the Commission, taking into account these Council Conclusions and the objectives set out in Directive 2008/118/EC, undertakes all relevant studies and, after carrying out the relevant technical analysis, public consultations and an impact assessment, submits to the Council an appropriate legislative proposal in 2018 or, in case it chooses not to submit a proposal, informs the Council of the reasons.