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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. prev. doc.:	13634/19 FISC 420 ECOFIN 958
Subject:	Excise duties a) Draft COUNCIL DIRECTIVE laying down the general arrangements for excise duty (recast) b) Draft COUNCIL REGULATION amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers – Adoption

1. On 25 May 2018 the Commission adopted a proposal for a Council Directive laying down the general arrangements for excise duty¹. The proposal was accompanied by the proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register².
2. The aim of the proposals is to align the EU excise and customs procedures, to improve clarity of intra-EU movements of excise goods that have been released for consumption and to reduce the administrative and legal burdens on small enterprises. The proposals contain a number of measures to streamline and simplify the processes covering export and import interaction of excise products, business-to-business interaction and exceptional situations.

¹ 9571/18 FISC 239 ECOFIN 547 IA 165 + ADD 1-3

² 9568/18 FISC 237 ECOFIN 544

3. The Economic and Social Committee delivered its opinion on 17 October 2018³. The European Parliament delivered its opinions on the proposal for a Council Directive and Council Regulation and on 27 March 2019⁴ and 3 October 2018⁵, respectively.
4. The Council (ECOFIN) reached a political agreement on the proposal on 8 November 2019.
5. The Commission made a statement, set out in the Annex, to be inserted in the minutes of the Council.
6. The Permanent Representatives Committee is therefore invited to recommend that the Council:
 - adopt the draft **Council Directive laying down the general arrangements for excise duty**, as finalised by the legal/linguistic experts and set out in doc. 14107/19 FISC 442 ECOFIN 1003 and the draft **Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers**, as finalised by the legal/linguistic experts and set out in doc. 14108/19 FISC 443 ECOFIN 1004, as "A" items on the agenda of a forthcoming meeting, and
 - agree on the publication of the abovementioned legislative acts in the Official Journal.

³ OJ C 62, 5.2.2019, p. 108

⁴ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0296_EN.html?redirect

⁵ http://www.europarl.europa.eu/doceo/document/TA-8-2018-0368_EN.html?redirect

Statement by the Commission on the implementation of Article 32 of Directive 2008/118

"The Commission recalls the importance of ensuring free movement of goods while ensuring the protection of public health. To secure this balance, it is necessary to clarify the existing rules and provisions of Article 32.

The Commission first recalls that under Article 34 TFEU quantitative restrictions on imports are prohibited between Member States and, therefore, in principle there should be no limits on what private persons can buy and take with them when they travel between EU Member States, as long as the products purchased are for own use and not for resale. Excise duties will be included in the price of the products in the Member State of purchase and no further payment of taxes can be due in any other Member State.

However, special rules apply in the case of goods subject to excise duty, such as alcoholic beverages and tobacco products. If a private person purchases such products in one Member State and takes them to another Member State, the principle that no excise duty has to be paid in the Member State of destination only applies if the traveller transports the goods themselves and the goods are for his or her own use.

To determine whether these products are for the own use of the traveller, Article 32(3) lists a number of criteria that Member States must take account of. "Own use" implies that the goods are held for private purposes of the traveller. This does not include any gifts for other people or goods intended to be used for commercial purposes.

As to the quantity of the excise goods, Article 32(3) indicates that Member States may lay down guide levels, as a form of evidence as to how the goods are to be used. Quantities of excise goods below the guide levels can be assumed to be for own use. If the guide levels are exceeded, a Member State is considered to have reasonable grounds to suspect that the goods are not for own use unless it is evidenced otherwise. If it is not evidenced that the goods are for own use, excise duty shall become due in the Member State of consumption.

Following the Council Conclusions on the Commission report on Council Directive 2008/118/EC of 5 December 2017, the Commission has launched a study to evaluate the application of Article 32 (and Article 36 distance selling) in particular whether those provisions remain fit for purpose to balance the objective of public revenue and health protection."
