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PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 341 final
Subject:	Proposal for a DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on computerising the movement and surveillance of excise goods (recast)

Delegations will find attached document COM(2018) 341 final.

Encl.: COM(2018) 341 final



Brussels, 25.5.2018
COM(2018) 341 final

2018/0187 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on computerising the movement and surveillance of excise goods (recast)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

- **Reasons for and objectives of the proposal**

This proposal accompanies the proposal for a Council Directive laying down the general arrangement for excise duty as regards the automation of the procedure for movements of excise goods which have been released for consumption in the territory of one Member State and that are moved to the territory of another Member State in order to be delivered for commercial purposes in that other Member State.

Decision No 1152/2003/EC is the founding decision for the computerised system (Excise Movement and Control System – EMCS). At the moment it covers only movements of excise goods under excise duty suspension. In order to allow the automation of the procedure for the movement of excise goods which have been released for consumption in the territory of one Member State and moved to the territory of another Member State in order to be delivered for commercial purposes in that other Member State, the Decision has to be modified. However, since most provisions of the Decisions are affected by such modification, the Decision should be recast in the interests of clarity.

- **Consistency with existing policy provisions in the policy area**

The proposal is linked to the recast of Council Directive 2008/118/EC.

- **Consistency with other Union policies**

Not applicable.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU). This article provides that the European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States which have as their object the establishment and functioning of the internal market.

- **Subsidiarity (for non-exclusive competence)**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the European Union.

The objectives of the proposal cannot be sufficiently achieved by the Member States and can be better achieved at Union level.

- **Proportionality**

The proposed recast does not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty's objectives of a proper and effective functioning of the Internal Market.

This proposal complies with the principles of proportionality as set out in Article 5, paragraph 4 of the Treaty on the European Union.

The objective of the proposal is to extend the Excise Movement and Control System to intra EU movements of excise goods that are released for consumption, in order to simplify the procedure and allow for proper monitoring of such movements, and to provide a base for the governance of further automations of processes defined by Union excise legislation, where such automation is considered beneficial. In the absence of this proposal the coordinated planning of the automation of the intra EU movement of excise goods that are released for consumption will not be possible.

- **Choice of the instrument**

The choice of instrument is fully in line with the current legal act in force. Since the proposal is a recast of Decision No 1152/2003/EC it must be a proposal for a Decision.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

Directive 2008/118/EC was evaluated and the proposal for a Council Directive laying down the general arrangement for excise duty is built on this evaluation and the Commission 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" from 21/04/2017 (COM(2017) 184 final). The report stressed the need for further automation and this proposal only concerns an adaptation reflecting this policy option.

- **Stakeholder consultations**

Stakeholder consultations took place in the context of the revision of Council Directive 2008/118/EC.

- **Impact assessment**

No separate impact assessment was necessary as the policy choice of further automation is underpinned by the impact assessment for the recast of Directive 2008/118/EC.

- **Regulatory fitness and simplification**

The evaluation of Directive 2008/118/EC was carried out within the framework of the Commission's REFIT programme. In 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.

- **Fundamental rights**

Not applicable.

4. BUDGETARY IMPLICATIONS

The funding of the central project will be covered by the FISCALIS budget within the appropriations already foreseen in the official financial programming. No additional resources will be required from the EU budget. Moreover, this initiative does not intend to prejudice the Commission's proposal on the next Multiannual Financial Framework.

The estimation of costs for administrations and economic operators are included in the impact assessment prepared for the recast of Directive 2008/118/EC.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Not applicable.

- **Explanatory documents (for directives)**

No explanatory documents on the transposition of the provisions of this proposal are considered necessary.

- **Detailed explanation of the specific provisions of the proposal**

Decision No 1152/2003/EC is the founding decision for the computerised system (Excise Movement and Control System – EMCS). At the moment it covers only movements of excise goods under excise duty suspension. In order to allow the automation of the procedure for the movement of excise goods which have been released for consumption in the territory of one Member State and moved to the territory of another Member State in order to be delivered for commercial purposes in that other Member State, the Decision has to be modified.

Most of provisions of the Decision are affected by the modifications in order to have a wording of Decision more general which could give a possibility of automation of any procedure used for movements and surveillance of excisable goods. Some of the wording has to be deleted as it contains references to the outdated legislation or it lost its meaning (due to the fact that the computerised system for duty suspension procedure is in operation since 2010). Therefore Articles 1 to 14 are modified as proposed in the recast of Decision.

↓ 1152/2003/EC (adapted)

2018/0187 (COD)

Proposal for a

DECISION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on computerising the movement and surveillance of excisable products excise goods (recast)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty ~~establishing the European Community~~ on the Functioning of the European Union , and in particular Article ~~95~~ 114 (1) thereof,
Having regard to the proposal from the European Commission,
After transmission of the draft legislative act to the national parliaments,
Having regard to the opinion of the European Economic and Social Committee,
Acting in accordance with the ordinary legislative procedure,
Whereas:

↓ new

(1) A number of amendments are to be made to Decision No 1152/2003/EC of the European Parliament and of the Council¹. In the interests of clarity, that Decision should be recast.

↓ 1152/2003/EC recital 1
(adapted)

(2) [~~Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products² XXX/EC³~~] provides that ~~products~~ goods moving between the territories of the Member States under excise-duty suspension arrangements must be accompanied by a document completed by the consignor.

¹ Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products (OJ L 162, 1.7.2003, p.5).

² ~~(OJ L 76, 23.3.1992, p. 1.~~

³ ~~Council Directive xxx/EC of (OJ L., , p.).~~

↓ 1152/2003/EC recital 2
(adapted)

- (3) Commission Regulation ~~(EEC) No 2719/92 of 11 September 1992 on the accompanying document for the movement under duty suspension arrangements of products subject to excise duty~~⁴ (EC) No 684/2009⁵ lays down the form structure and content of the accompanying document ~~provided for~~ referred to in [Directive ~~XXX/EC 92/12/EEC~~] and the procedure for its use .
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↓ new

- (4) In order to improve checks and allow the movement of excise goods inside the Union to be simplified, a computerised system was established with Decision No 1152/2003/EC.
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↓ 1152/2003/EC recital 3
(adapted)
⇒ new

- (5) It is necessary to further maintain and develop that ~~have a computerised~~ system for the monitoring ~~the~~ movement of excisable excise goods, ~~such as will~~ in order to allow Member States to obtain real-time information on those movements and to carry out the requisite manual and automated checks, including checks during ~~movement~~ movements of excise goods products, within the meaning of Chapters III, IV and V ~~Article 15~~ of [Directive ~~92/12/EEC XXX/EC~~] and Chapter IV of Council Regulation (EU) No 389/2012⁶ .
-

↓ 1152/2003/EC recital 4
(adapted)
⇒ new

- (6) The ~~setting up~~ modification, extension and operation of ~~a~~ the computer computerised system should ~~also~~ allow the ~~intra-Community~~ intra-Union movement of excise goods under duty suspension ~~of excise duties to be simplified~~ as well as movement of excise goods which have already been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered for commercial purposes .
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⁴ ~~OJ L 276, 19.9.1992, p. 1, Regulation as amended by Regulation (EEC) No 2225/93 (OJ L 198, 7.8.1993, p. 5).~~

⁵ Commission Regulation (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty (OJ L 197, 29.7.2009, p. 24).

⁶ Council Regulation (EU) No 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p.1)

↓ 1152/2003/EC recital 12
(adapted)
⇒ new

- (7) ~~Establishing~~ Modifying and extending the computerised system serves to enhance the internal-market aspects of the movement of ~~excisable~~ excise goods. Any fiscal aspects relating to the movement of excise goods should be addressed by amending [Directive ~~92/12/EEC~~ XXX/EC] or Regulation (EU) No 389/2012 . This Decision does not prejudice the legal basis of any future amendments to [Directive ~~92/12/EEC~~ XXX/EC] or Regulation (EU) No 389/2012 .

↓ 1152/2003/EC recital 9
(adapted)

- (8) It is necessary to define ~~the~~ the division between the ~~Community~~ Union and ~~non-Community~~ non-Union components of the computerised system ~~should also be defined~~, as well as ~~should~~ the respective duties of the Commission and the Member States with regard to the system' development and deployment. In that context, the Commission, assisted by the relevant Committee, should fulfil a major role in coordinating, organising and managing the system.

↓ 1152/2003/EC recital 5

~~A computerised system for the intra-Community movement and monitoring of excisable goods (EMCS) should be compatible and, if technically possible, merged with the new computerised transit system (NCTS), so as to facilitate administrative and commercial procedures.~~

↓ 1152/2003/EC recital 6

~~For the purposes of implementing this Decision, the Commission should coordinate Member States' activities, so as to ensure the smooth operation of the internal market.~~

↓ new

- (9) In order to ensure uniform conditions for the implementation of the measures necessary for the modification, extension and operation of the computerised system, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁷.

⁷ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

↓ 1152/2003/EC recital 10
(adapted)

- (10) Arrangements should be made for evaluating the implementation of the computerised system for monitoring ~~excisable~~ excise goods.
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↓ 1152/2003/EC recital 13
(adapted)
⇒ new

- (11) Before ~~the EMCS~~ a new extension of the computerised system is operational, and given the problems which have been experienced, the Commission, in collaboration with Member States, and taking account of the views of the trade sectors concerned, should ⇒ investigate whether any ~~look at ways to improve the~~ current paper-based ~~system~~ systems are still suitable .
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↓ 1152/2003/EC recital 11
(adapted)

- (12) The ~~funding~~ costs of the computerised system should be shared between the ~~Community~~ Union and the Member States, ~~the Community's share being specifically entered as such in the general budget of the European Union.~~
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↓ 1152/2003/EC recitals 7 and 8
(adapted)

- (13) ~~Because of~~ Due to the size and complexity of ~~such a~~ the computerised system, it is necessary that both the ~~Community~~ Union and the Member States ~~will need considerable additional~~ provide human and financial resources for the purpose. ~~Accordingly, provision should be made whereby the Commission and the Member States make the necessary resources available~~ for the development and deployment of the system. In developing the national components, Member States should apply the principles laid down for electronic government systems and should treat the economic operators in the same way as in the other fields where computer systems are set up. In particular, they should allow the economic operators, especially the small and medium-sized enterprises active in this sector, to use these national components at the lowest possible cost, and they should promote all measures aimed at preserving their competitiveness.
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↓ new

- (14) Since the objective of this Decision, namely to provide a base for the governance of further automations of processes defined by Union legislation on excise duties cannot be sufficiently achieved by the Member States but can rather, by reason of ensuring a proper functioning of internal market, be better achieved at Union level, the Union

may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Decision does not go beyond what is necessary in order to achieve that objective,

↓ 1152/2003/EC recital 14

~~This Decision lays down, for the entire period needed for the development and the deployment of the system, a financial framework constituting the prime reference within the meaning of Point 33 of the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure, for the budgetary authority during the annual budgetary procedure.~~

↓ 1152/2003/EC recital 15

~~The measures necessary for the implementation of this Decision should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission~~

↓ 1152/2003/EC (adapted)

⇒ new

HAVE ADOPTED THIS DECISION:

Article 1

1. This Decision makes provision for the management of the modification, extension and operation of the ~~▲~~ computerised system used for monitoring of the movement and surveillance of ~~excisable products of the kind~~ excise goods referred to in Article ~~3(1)~~ 1(1) of Directive ~~XXX/EC92/42/EEC~~ hereinafter referred to as (‘the computerised system)’² is hereby established.

2. The computerised system is intended to:

- (a) permit the electronic transmission of the ~~accompanying~~ administrative ~~document~~ documents provided for in Directive XXX/EC and Regulation ~~(EEC) No 2719/92~~ (EU) No 389/2012, and the improvement of checks;
- (b) improve the functioning of the internal market, by simplifying the ~~intra-Community~~ intra-Union movement of excise goods ~~products under excise duty suspension arrangements~~, and by affording Member States the possibility of monitoring the flows in real time and of carrying out the requisite checks where necessary.

Article 2

~~Member States and the Commission shall establish the computerised system within six years of the entry into force of this Decision.~~

Activities relating to the initiation of ~~application~~ extension of the computerised system shall begin no later than 12 months after the entry into force of this Decision.

Article 3

1. The computerised system shall be made up of ~~Community~~ Union and ~~non-Community~~ non-Union components.
2. The Commission shall ensure that in work on the ~~Community~~ Union components of the computerised system every attention is paid to the re-use of ~~as much of the NCTS~~ existing systems as much as possible and ensuring that the computerised system is compatible with other relevant Commission and Member States computerised systems, and, if technically possible, integrated into, the NCTS with the objective of creating an integrated computer system set of computerised systems for the surveillance both of ~~intra-Community~~ intra-Union movements of excisable excise goods and of movements of excisable goods and goods subject to other duties and charges coming from or going to third countries.
3. The ~~Community~~ Union components of the system shall be the common specifications, the technical products, the services of the Common Communications Network/Common Systems Interface network, and the coordination services used by all the Member States, to the exclusion of any variant or special feature of any such services designed to meet national requirements.
4. The ~~non-Community~~ non-Union components of the system shall be the national specifications, the national databases forming part of the system, network connections between the Union ~~Community and non-Community~~ non-Union components and any software or equipment which a Member State considers necessary to ensure full use of the system throughout its administration.

Article 4

1. The Commission, ~~acting in accordance with the procedure provided for in Article 7(2)~~, shall coordinate the ~~setting up and running~~ modification, extension and operation of the ~~Community~~ Union and ~~non-Community~~ non-Union components of the computerised system, and in particular:
 - (a) the infrastructure and tools needed to guarantee the system's internal links and overall interoperability;
 - (b) the development of a security policy of the highest standard possible in order to prevent unauthorised access to data and to guarantee the integrity of the system;
 - (c) the instruments for the exploitation of data to combat fraud.
2. To achieve the aims of set out in paragraph 1, the Commission shall conclude the necessary contracts for the modification and extension of ~~setting up~~ the ~~Community~~ Union components of the computerised system and shall, in cooperation with the Member States meeting within the Committee referred to in Article 7(1), draw up a master plan and management plans required for the ~~establishment and running~~ modification, extension operation of the system.

The master plan and the management plans shall specify the initial and routine tasks which the Commission and each Member State are to perform. The management plans shall specify the completion dates for the tasks required for carrying out each project identified in the master plan.

Article 5

1. Member States shall ~~ensure that they~~ complete, by the date specified in the management plans ~~mentioned~~ referred to in Article 4(2), the initial and routine tasks allocated to them.

They shall report to the Commission the results of each task and the date of its completion. The Commission shall in turn inform the Committee referred to in Article 7(1) thereof.

2. ~~No Member State~~ Member States shall not take any action relating to the ~~setting up or running~~ modification, extension and operation of the computerised system that might affect the system's internal links and overall interoperability or its functioning as a whole.

Any measure that a Member State ~~might wish~~ wishes to take ~~and~~ that could affect either the computerised system's internal links and overall interoperability or its functioning as a whole shall be taken ~~only~~ with the prior agreement of the Commission, ~~acting in accordance with the procedure provided for in Article 7(2).~~

3. Member States shall inform the Commission regularly of any measure they may have taken to enable their respective administrations to make full use of the computerised system. The Commission shall in turn inform the Committee referred to in Article 7(1) thereof.

Article 6

~~⇒ The Commission shall adopt implementing acts establishing~~ ~~the measures necessary for the implementation of this Decision relating to the setting up and running~~ the modification, extension and operation of the computerised system as relating and to the matters referred to in Article 4(1) and in the second subparagraph of Article 5(2), second subparagraph ~~⇒ Those implementing acts~~ shall be adopted in accordance with the ~~⇒ examination~~ procedure ~~provided for~~ referred to in Article 7(2). These implementing measures shall not affect the ~~Community~~ Union provisions in relation to the raising and checking of indirect taxes or administrative cooperation and mutual assistance in matters of indirect taxation.

Article 7

1. The Commission shall be assisted by the Committee on Excise Duty ~~Duties set up under Article 24 of Directive 92/12/EEC.~~ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, ~~Articles 4 and 7 of Decision 1999/468/EC~~ ~~⇒ Article 5 of Regulation (EU) No 182/2011~~ shall apply, ~~having regard to the provisions of Article 8 thereof.~~

~~The period laid down in Article 4(3) of Decision 1999/468/EC shall be set at three months.~~

~~3. The Committee shall adopt its rules of procedure.~~

Article 8

1. The Commission shall ~~take whatever other steps are necessary to~~ verify that the measures financed from the general budget of the European Union are being carried out correctly and in compliance with the provisions of this Decision.

It shall regularly, in collaboration with the Member States, meeting in the Committee referred to in Article 7(1), monitor the various development and deployment stages of the

computerised system with a view to determining whether the objectives pursued have been achieved, and to issuing guidelines on how to raise the effectiveness of the activities involved in implementing the computerised system.

~~2. 30 months after the entry into force of this Decision, the Commission shall submit to the Committee referred to in Article 7(1) an interim report on the monitoring operations. If appropriate, this report shall set out methods and criteria to be used in the later evaluation of how the excise computerised systems is functioning.~~

~~23.~~ ⇒ Five years after the entry into force of this Decision and every five years thereafter, ⇐ ~~At the end of the six-year period referred to in the first subparagraph of Article 2,~~ the Commission shall present ~~⊗~~ a report ~~⊗~~ to the European Parliament and the Council ~~a report~~ on the implementation ~~⊗~~ and operation ~~⊗~~ of the computerised system.

The report shall set out, *inter alia*, the methods and criteria to be used in the later evaluation of how the system is functioning.

Article 9

The countries that have applied for membership of the Union shall be kept informed by the Commission of the development and deployment of the computerised system and may, if they so desire, take part in the tests to be carried out.

Article 10

1. The costs of ~~⊗~~ modifying and extending ~~⊗~~ ~~setting up~~ the computerised system shall be split between the ~~Community~~ ~~⊗~~ Union ~~⊗~~ and the Member States in accordance with paragraphs 2 and 3.

2. The ~~Community~~ ~~⊗~~ Union ~~⊗~~ shall bear the costs of the design, acquisition, installation and maintenance of the ~~Community~~ ~~⊗~~ Union ~~⊗~~ components of the computerised system and the ongoing operating costs of those ~~Community~~ ~~⊗~~ Union ~~⊗~~ components installed in Commission premises, or in those of a subcontractor designated by the Commission.

3. Member States shall bear the costs of ~~setting up and running~~ ~~⊗~~ modifying, extending and operating ~~⊗~~ the ~~non-Community~~ ~~⊗~~ non-Union ~~⊗~~ components of the system and the ongoing operating costs of those ~~Community~~ ~~⊗~~ Union ~~⊗~~ components installed in their premises, or in those of a subcontractor designated by the Member State concerned.

Article 11

~~1. The financial framework for financing the computerised system for the period defined in the first subparagraph of Article 2 is hereby set at EUR 35 000 000 insofar as the general budget of the European Union is concerned.~~

1. The annual appropriations, including appropriations assigned to the use and operation of the system after the ~~above~~ implementation period, shall be authorised by the budgetary authority within the limits of the financial perspective ~~⊗~~ set out in Regulation (EU) No 1286/2013 of the European Parliament and of the Council⁸ ~~⊗~~ .

⁸ Regulation (EU) No 1286/2013 of the European Parliament and of the Council of 11 December 2013 establishing an action programme to improve the operation of taxation systems in the European Union for the period 2014-2020 (Fiscalis 2020) and repealing Decision No 1482/2007/EC (OJ L 347, 20.12.2013, p. 25))

2. Member States shall estimate and make available the budgets and human resources needed to meet their obligations described in Article 5. The Commission and the Member States shall provide the human, budgetary and technical resources needed to modify, extend ~~establish and run~~ operate modify, extend, operate and further develop the computerised system.

↓

Article 12

Decision No 1152/2003/EC is repealed.

References to the repealed Decision shall be construed as references to this Decision and shall be read in accordance with the correlation table in the Annex.

↓ 1152/2003/EC (adapted)

Article 13

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 14

This Decision is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President