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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
No. Cion doc.:	8940/19 - COM(2019) 192 final
Subject:	Proposal for a Council Directive amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework – General approach

1. On 24 April 2019 the Commission submitted to the Council the abovementioned proposal (doc. 8940/19). The aim of this proposal is to align the VAT treatment of the defence effort in the EU and NATO framework. The arrangements for exemptions from excise duties should be aligned in a similar way. The proposal follows recent developments in the framework of the Common Security and Defence Policy (CSDP).
2. The Working Party on Tax Questions (WPTQ) considered the proposal at two meetings during the Finnish Presidency. The latest Presidency compromise text distributed following the WPTQ meeting on 11 September 2019, and set out in the Annex to this note, is supported by all delegations.

3. The Permanent Representatives Committee is invited to recommend that the Council (ECOFIN) adopt a general approach on the basis of the text set in the Annex to this note as an "A" item at its meeting on 8 November 2019.
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Proposal for a

COUNCIL DIRECTIVE

amending Directive 2006/112/EC on the common system of value added tax and Directive 2008/118/EC concerning the general arrangements for excise duty as regards defence effort within the Union framework

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ OJ C, , p. .

² OJ C, , p. .

Whereas:

- (1) Council Directive 2006/112/EC³ provides, under certain conditions, an exemption from value added tax (VAT) for goods and services supplied to and goods imported by the armed forces of any State party to the North Atlantic Treaty when such forces are taking part in the common defence effort outside their own State.
- (2) Council Directive 2008/118/EC⁴ provides an exemption from excise duty for excise goods intended to be used by the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens, subject to conditions and limitations laid down by the host Member State.
- (3) Such exemptions are not available where the armed forces of a Member State are taking part in activities under the common security and defence policy (CSDP) as set out in Chapter 2, Section 2 of Title V of the Treaty on the European Union (TEU). Priority should be given to the need to improve European capabilities in the field of defence and crisis management and to strengthen the Union security and defence. The High Representative of the Union for Foreign Affairs and Security Policy and the Commission in their Joint Communication of 28 March 2018 on the Activity Plan on Military Mobility⁵ recognised the overall need for aligning the VAT treatment of defence efforts within the Union framework and the North Atlantic Treaty Organisation (NATO) umbrella.

³ Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1).

⁴ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

⁵ JOIN(2018) 5, of 28 March 2018.

- (4) Defence effort carried out for the implementation of a Union activity under the CSDP covers military missions and operations, activities of battlegroups, mutual assistance, permanent structured cooperation (PESCO) projects and activities of the European Defence Agency (EDA). It should however not cover activities under the solidarity clause established in Article 222 of the Treaty on the Functioning of the European Union or any other bilateral or multilateral activities between Member States that do not relate to defence effort carried out for the implementation of a Union activity under the CSDP.
- (5) An exemption from VAT should thus be introduced to cover the supply of goods or services intended either for the use by the armed forces of a Member State or by the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP framework outside their Member State. Supplies of goods and services for the armed forces of the Member State in which those goods or services are supplied should be excluded from the VAT exemption.
- (6) An exemption from excise duty should also be introduced covering excise goods supplied for the use of the armed forces of any Member State other than that within which the excise duty is chargeable, when such forces take part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State.
- (7) In addition, it is necessary to provide for exemption from VAT where goods imported by the armed forces of a Member State are intended for the use of those forces or of accompanying civilian staff or for supplying their messes or canteens, when taking part in a defence effort carried out for the implementation of a Union activity under the CSDP outside their Member State.

- (8) Similarly to the exemption from VAT and excise duty for NATO defence effort, the exemptions for the defence effort carried out for the implementation of a Union activity under the CSDP should be limited in scope. The exemptions should apply only to situations where armed forces carry out tasks directly linked to a defence effort under the CSDP. Those exemptions should not cover civilian missions under the CSDP. Goods or services supplied for the use of civilian staff could therefore only be covered by the exemptions when the civilian staff is accompanying armed forces carrying out tasks directly linked to a defence effort under the CSDP outside their Member State. Tasks performed exclusively by civilian staff or performed exclusively by using civilian capabilities should not be considered as a defence effort. Nor should the exemptions in any circumstance cover goods or services that the armed forces acquire for the use of the forces or the civilian staff accompanying them within their own Member State.
- (9) Since the objective of this Directive to align the VAT and excise duty treatment of defence efforts under the Union and NATO frameworks cannot be sufficiently achieved by the Member States but can 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 the European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (10) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents⁶ Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.
- (11) Directives 2006/112/EC and 2008/118/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

⁶ OJ C 369, 17.12.2011, p. 14.

Article 1

Amendments to Directive 2006/112/EC

Directive 2006/112/EC is amended as follows:

- (1) in Article 22 the following first paragraph is inserted:

‘The application by the armed forces of a Member State taking part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy, for their use or for the use of the civilian staff accompanying them, of goods which they have not purchased subject to the general rules governing taxation on the domestic market of a Member State shall be treated as an intraCommunity acquisition of goods for consideration, where the importation of those goods would not be eligible for the exemption provided for in Article 143(1)(ga).’;

- (2) in Article 143(1), the following point (ga) is inserted:

‘(ga) the importation of goods into Member States by the armed forces of other Member States for the use of those forces or the civilian staff accompanying them or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;’;

- (3) in Article 151(1), the following points (ba) and (bb) are inserted:

‘(ba) the supply of goods or services within a Member State, intended either for the armed forces of other Member States for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;

- (bb) the supply of goods or services to another Member State, intended for the armed forces of any Member State, other than the Member State of destination itself, for the use of those forces, or of the civilian staff accompanying them, or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;’.

Article 2

Amendment to Directive 2008/118/EC

In Article 12(1) of Directive 2008/118/EC, the following point (ba) is inserted:

- ‘(ba) by the armed forces of any Member State other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens when such forces take part in a defence effort carried out for the implementation of a Union activity under the common security and defence policy;’.

Article 3

Transposition

1. Member States shall adopt and publish, by 30 June 2022 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those measures from 1 July 2022.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 4

Entry into force

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

Article 5

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
