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PROPOSAL

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	Proposal for a COUNCIL DIRECTIVE amending Directive 2008/118/EC and Directive (EU) 2020/262 (recast) as regards tax-free shops situated in the French terminal of the Channel Tunnel

Delegations will find attached document COM(2021) 817 final.

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2021/0418 (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 2008/118/EC and Directive (EU) 2020/262 (recast) as regards tax-free shops situated in the French terminal of the Channel Tunnel

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Following the United Kingdom's withdrawal from the European Union, this proposal reintroduces in the Excise Directive[1] a former provision of Directive 92/12/EEC recognising the specific status of the Channel Fixed Link and the similarity of its situation with that of a port.

The proposal will restore a previous provision authorising the reopening of tax-free shops in the French terminal of the Channel Fixed Link, as is notably the case in the French ports of Calais and Dunkirk and in the British terminal of the Channel Fixed Link (Folkestone).

The Channel Fixed Link is a twin bored tunnel rail link, with an associated service tunnel, under the English Channel between Folkestone (Kent, United Kingdom) and Coquelles (Pas-de-Calais, France), and terminal areas for control of access to, and egress from, the tunnels. It has the characteristics of a maritime link with border controls at the two access terminals to the Channel Fixed Link.

Directive 92/12/EEC[2] recognised the specific status of the Channel Fixed Link and likened its situation to that of a port as regards the regime of tax-free shops. This was motivated by the concern to take into account this new link between France and the United Kingdom in comparison to the ferries providing the sea link and thus to set a level playing field between the Channel Fixed Link and maritime links.

However, this provision was not carried over when tax-free sales between Member States were abolished in 1999 because the tax-free shops in question did not supply to passengers travelling outside of the Union's fiscal territory.

Therefore, in accordance with the current rules under the Excise Directive, tax-free shops are only permitted in Union airports and ports for sales to passengers who have a destination outside of the Union's fiscal territory. This is justified with a view to avoiding tax evasion and abuse[3].

On 31 December 2020, following the United Kingdom's withdrawal from the European Union, the Channel Fixed Link became a cross-border link between the Union and a third country. As allowed by the Excise Directive, ferry companies reintroduced tax-free sales of goods supplied on board their ships during the sea-crossing to the United Kingdom. Tax-free shops have also opened in the ports of Calais and of Dunkirk. Moreover, the United Kingdom has already granted permission for an outlet at their terminal of the Channel Fixed Link in Folkestone. However, the French terminal of the Channel Fixed Link cannot open tax- free shops under the current rules.

The proposal intends to provide to travellers using the Channel Fixed Link from France to the United Kingdom tax-free facilities which are comparable to those available to persons travelling from a Member State to a third country by sea.

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1 Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJL9, 14.1.2009, p.12) repealed and replaced by Directive (EU) 2020/262 which will come into force 13 February 2023.

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 products (OJ L 76, 23.3.1992, p. 1).

3 Recital 14 of Council Directive 2008/118/EC.

The passengers of the Channel Fixed Link are in the same position as sea passengers leaving the Union's fiscal territory. Once the passengers of the Channel Fixed Link have checked in for their trip and entered the terminal with tax-free shops, they would be in a similar position as those passengers in a port in the sense that those passengers are bound to continue their trip to a third country.

The Channel Fixed Link terminal is not comparable to a railway terminal in that no train stops at this terminal but only shuttles which are only accessible to vehicles and not foot passengers. Passengers using the Channel Fixed Link cannot exit until they reach the destination. Therefore, the risk of non-compliance with the excise duty and tax free import allowances by travellers and consequently the control burden for the customs authorities would be limited and similar to persons travelling by boat or aircraft.

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

According to the current rules, the situations in which tax-free sales to travellers leaving the territory of the Union are allowed is clearly determined with a view to avoiding tax evasion and abuse. The terminal of the Channel Fixed Link has the characteristics of a port and is linked directly to the port of Calais. Both infrastructures allow a sea-crossing under the same conditions.

The traveller's destination is fixed to a third country and it is easier to check the quantity of tax-free goods the traveller has purchased. Thus, the risk of fraud, in particular the risk that passengers purchase tax-free goods without departing the Union is limited.

- **Consistency with other Union policies**

The measure is respectful of the proper functioning of the Single Market and the need to ensure fair competition. It will minimise the differential treatment between the Channel Fixed Link and the ports of Calais and Dunkirk and between its French terminal (Coquelles) and its British terminal (Folkestone), which could be considered as being in a similar legal and factual situation for the purposes of the Excise Directive. Moreover, the transport of passengers through the Channel Fixed Link is competing on the same relevant market as maritime transport. The reintroduction of the special status exclusively concerns the Channel Fixed Link in the French terminal (Coquelles) and not railway terminals. Given this, the measure will not lead to undue distortion of competition or hindering of the functioning of the Single Market.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

The proposed Directive will amend the Excise Directive based on Article 113 of the Treaty on the Functioning of the European Union. That provision provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the European Economic and Social Committee, to adopt provisions to harmonise Member States' rules in the area of indirect taxation.

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

The field of indirect taxation covered by Article 113 of TFEU is not in itself within the exclusive competence of the European Union within the meaning of Article 3 of TFEU.

However, pursuant to Article 14 of Directive 2008/118/EC, tax-free shops are only permitted in union airports and ports for sale to passengers who have destinations outside of the union fiscal territory.

As a result, only an amendment to the Directive 2008/118/EC can authorise the opening of tax-free shops in the French terminal (Coquelles) of the Channel Fixed Link.

- **Proportionality**

The proposal is consistent with the principle of proportionality, as it does not go beyond what is necessary to meet the objectives of the Treaties linked to the smooth functioning of the Single Market

- **Choice of the instrument**

A Directive is proposed in view of amending the Excise Directive.

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

This proposal is a technical amendment of tax-free shops rules and as such does not constitute new policy or a substantial change to the existing policy.

It is a direct consequence of the United Kingdom's withdrawal from the European Union and the fact that the Channel Fixed Link has become a cross-border link between a third country and the Union.

This proposal restores a previous provision[4] which allowed the operation of tax-free shops in the terminals of the Channel Fixed Link. The goal of this provision was explained in the 1996 report of the Commission on the vendor control systems applied by the Member States: "In order to ensure equal treatment with the ferries, the Council also authorised exempted supplies of goods in either of the two Channel Tunnel terminals".

Overall, there are no significant economic impacts on the Single Market as it will be limited to the French terminal of the Channel Fixed Link and thus only apply to one outlet. The potential for tax leakage will be very limited.

Indeed, the Channel Fixed Link terminal is not comparable to a railway terminal in that it is not accessible to foot passengers but only to vehicle. Persons travelling through the Channel Fixed Link cannot move as frequently and freely as compared to persons travelling over land. The risk of fraud is limited.

Moreover, the situation of the Channel Fixed Link is unique in Europe in that it is a tunnel under the sea between an EU country and a third country.

For those reasons, neither impact assessment nor public consultation were deemed necessary.

4. BUDGETARY IMPLICATIONS

Excise duty is not an own resource. Therefore, the proposal does not entail any implications for the Union budget.

5. OTHER ELEMENTS

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

An implementation plan is not necessary. This proposal reintroduces in the Excise Directive a former provision of the Directive 92/12/EEC recognising the specific status of the Channel Fixed Link and likening its situation to that of a port or an airport. The measure will have no

[4] Article 28 of Council Directive 92/12/EEC.

significant economic impacts on the Single Market as it will be limited to the French terminal of the Channel Fixed Link.

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amending Directive 2008/118/EC and Directive (EU) 2020/262 (recast) as regards tax-free shops situated in the French terminal of the Channel Tunnel

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 Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

Whereas:

(1) Article 14(1) of Council Directive 2008/118/EC[3] authorise Member States to exempt from payment of excise duty excise goods supplied in tax-free shops located in Union airports and ports for sale to travellers to a third territory.

(2) The Channel Fixed Link is a twin bored tunnel rail link, under the English Channel between Folkestone (Kent, United Kingdom) and Coquelles (Pas-de-Calais, France). It has an associated service tunnel and terminal areas at either end for control of access to, and egress from, the tunnels. It has the characteristics of a maritime link with border controls at the two access terminals. Both infrastructures allow a sea-crossing under the same conditions.

(3) The terminal of the Channel Fixed Link should therefore be considered equivalent to a port within the meaning of Article 14 of Council Directive 2008/118/EC.

(4) Due to the United Kingdom's withdrawal from the Union which lead to the opening of the tax-free shops in notably the ports of Calais and Dunkirk and in the UK terminal of the Channel Fixed Link in Folkestone, it is appropriate to authorise the opening of tax-free shops in the French terminal of the Channel Fixed Link in Coquelles.

(5) Given that Passengers using the Channel Fixed Link cannot exit until they reach the destination, the risk of non-compliance with the excise duty and tax free import allowances by travellers and consequently the control burden for the customs authorities would be limited. However, to prevent any evasion, avoidance or abuse, France shall take the necessary control measures to ensure the proper application of the tax exemption in the tax-free shops of the French terminal in Coquelles.

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1 OJ C , , p.

2 OJ C , , p. .

3 Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJL9, 14.1.2009, p.12).

(6) Given that Council Directive (EU) 2020/262[4] repeals and replaces Directive 2008/118/EC with effect from 13 February 2023, the corresponding provision in Directive (EU) 2020/262 should also be amended.

(7) Directives 2008/118/EC and (EU) 2020/262 should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Amendment to Directive 2008/118/EC

Article 14 of Directive 2008/118/EC is amended as follows:

(1) the following paragraph 1a is inserted:

‘1a. The exemption provided in paragraph 1 shall also apply to products supplied by tax-free shops situated in the French terminal of the Channel Tunnel in Coquelles to passengers holding transport documents which are valid for a journey to the United Kingdom through the Channel Fixed Link.’;

(2) paragraph 3 is replaced by the following:

‘3. Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1, 1a and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.’.

Article 2

Amendment to Directive (EU) 2020/262

Article 13 of Directive (EU) 2020/262 is amended as follows:

(1) the following paragraph 1a is inserted:

‘1a. The exemption provided in paragraph 1 shall also apply to products supplied by tax-free shops situated in the French terminal of the Channel Tunnel in Coquelles to passengers holding transport documents which are valid for a journey to the United Kingdom through the Channel Fixed Link.’;

(2) paragraph 3 is replaced by the following:

‘3. Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1, 1a and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.’.

Article 3

Where a Member State decides to apply the exemption provided for in Article 14(1) of Directive 2008/118/EC in accordance with Article 1 of this Directive or the exemption provided for in Article 13(1) of Directive (EU) 2020/262 in accordance with Article 2 of this Directive, and adopts the laws, regulations and administrative provisions necessary to give effect to this Directive, it shall forthwith communicate to the Commission the text of those provisions.

[4] Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

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

Article 4

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

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President