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NOTE

From: Netherlands delegation

To: Delegations

Subject: Practical implementation of Naples II Convention
- Application of Naples II Convention in the area non-harmonised excise duties and cash controls

Definitions:

Article 1 of Naples II establishes that the scope of this act covers:

- preventing and detecting infringements of national customs provisions, and
- prosecuting and punishing infringements of Community and national customs provisions.

Article 4.1. of this Convention defines national customs provisions, which include non-harmonised excise duties.

‘national customs provisions’: all laws, regulations and administrative provisions of a Member State the application of which comes wholly or partly within the jurisdiction of the customs administration of the Member State concerning:

- non-harmonised excise duties;

The Explanatory Report on the Convention clarifies that:

It is important to note the ‘wholly or partly’ aspect of this definition, because the competences of customs administrations differ widely between Member States. Article 4(7) of the Convention defines ‘customs administrations’ and provides that other law enforcement agencies may apply the provisions of the Convention when they have jurisdiction in relation to national customs provisions.

This implies that national tax administrations may act as ‘Customs Administrations’ and that Naples II is applicable to them.

Criminal Proceedings

According to Article 1 of the Convention, Member States may use this act in order to exchange information / evidence for the purposes of criminal or administrative proceedings in excise cases, as appropriate.

Questions:

- Are there any (national, legal or practical) obstacles to the use of Naples II?
- Are other administrations, besides Customs, competent for non-harmonised excises / cash controls?