

## I

(Legislative acts)

## REGULATIONS

## COUNCIL REGULATION (EU) 2023/246

of 30 January 2023

**amending Regulation (EU) No 389/2012 as regards the exchange of information maintained in the electronic registers concerning economic operators who move excise goods between Member States for commercial purposes**

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 <sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee <sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) According to Article 36 of Council Directive (EU) 2020/262 <sup>(3)</sup>, the movement of excise goods which have 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 there for commercial purposes is to take place under cover of an electronic simplified administrative document. That Directive thus extends the use of the computerised system set out in Decision (EU) 2020/263 of the European Parliament and of the Council <sup>(4)</sup> for monitoring the movement of excise goods, which is used to monitor movements of excise goods under duty suspension arrangements, to the monitoring of excise goods released for consumption in the territory of one Member State and then moved to the territory of another Member State in order to be delivered for commercial purposes. That extension of the use of the computerised system is to start to apply on 13 February 2023.
- (2) In order to reflect that extension of the use of the computerised system, it is necessary to extend the scope of Article 15(1), point (d), Article 19(4), first subparagraph, and Article 20(1) of Council Regulation (EU) No 389/2012 <sup>(5)</sup> to all excise goods concerned, irrespective of whether a duty suspension arrangement has occurred.

<sup>(1)</sup> Opinion of 13 December 2022 (not yet published in the Official Journal).

<sup>(2)</sup> Opinion of 14 December 2022 (not yet published in the Official Journal).

<sup>(3)</sup> 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).

<sup>(4)</sup> Decision (EU) 2020/263 of the European Parliament and of the Council of 15 January 2020 on computerising the movement and surveillance of excise goods (OJ L 58, 27.2.2020, p. 43).

<sup>(5)</sup> 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).

- (3) Article 19(2), point (c), of Regulation (EU) No 389/2012 requires Member States to maintain in the electronic registers the excise product category (CAT) and/or the excise product code (EPC) of the products covered by the authorisation referred to in Annex II, code list 11, to Commission Regulation (EC) No 684/2009 <sup>(6)</sup>. However, as from 13 February 2023, Regulation (EC) No 684/2009 will be replaced by Commission Delegated Regulation (EU) 2022/1636 <sup>(7)</sup>. Therefore, it is appropriate to reflect that replacement in Article 19(2), point (c), of Regulation (EU) No 389/2012.
- (4) Since the objective of this Regulation, namely to provide for the exchange of the information which each Member State maintains in the electronic register concerning the economic operators moving goods released for consumption in the territory of one Member State and then moved to the territory of another Member State in order to be delivered there for commercial purposes, cannot be sufficiently achieved by the Member States but can rather, by reason of the scale of the action, namely ensuring the harmonised functioning of the computerised system across Member States, 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 Regulation does not go beyond what is necessary in order to achieve that objective.
- (5) This Regulation respects the fundamental rights and observes the principles which are recognised by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data. The processing of such data carried out within the framework of this Regulation does not go beyond what is necessary and proportionate for the purpose of the protecting the legitimate fiscal interest of the Member States.
- (6) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council <sup>(8)</sup>.
- (7) In order to align the date of application of this Regulation with the date of application of Chapter V, Section 2, of Directive (EU) 2020/262, and to allow the Member States adequate time to prepare for the changes resulting from this Regulation, it should apply from 13 February 2023.
- (8) Regulation (EU) No 389/2012 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

### **Amendments to Regulation (EU) No 389/2012**

Regulation (EU) No 389/2012 is amended as follows:

- (1) in Article 15(1), point (d) is replaced by the following:

‘(d) where the total destruction or irretrievable loss of excise goods has occurred;’

<sup>(6)</sup> 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).

<sup>(7)</sup> Commission Delegated Regulation (EU) 2022/1636 of 5 July 2022 supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing a threshold for the losses due to the nature of the goods (OJ L 247, 23.9.2022, p. 2).

<sup>(8)</sup> Regulation (EU) 2018/1725 of the European Parliament and the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).

(2) Article 19 is amended as follows:

(a) in paragraph 2, point (c) is replaced by the following:

‘(c) the excise product category (CAT) and/or the excise product code (EPC) of the products covered by the authorisation referred to in Annex II, code list 10, to Commission Delegated Regulation (EU) 2022/1636 (\*);

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(\* ) Commission Delegated Regulation (EU) 2022/1636 of 5 July 2022 supplementing Council Directive (EU) 2020/262 by establishing the structure and content of the documents exchanged in the context of movement of excise goods, and establishing a threshold for the losses due to the nature of the goods (OJ L 247, 23.9.2022, p. 2).;

(b) in paragraph 4, the first subparagraph is replaced by the following:

‘The information contained in the respective national registers as referred to in paragraph 2 concerning economic operators engaged in movements of excise goods referred to in Chapter IV and Chapter V, Section 2, of Council Directive (EU) 2020/262 (\*) shall be automatically exchanged via a central register.

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(\* ) 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).;

(3) in Article 20(1), the first sentence is replaced by the following:

‘The Commission shall ensure that persons involved in the movement of excise goods referred to in Chapter IV and Chapter V, Section 2, of Directive (EU) 2020/262 can obtain confirmation by electronic means of the validity of excise numbers held in the central register referred to in Article 19(4) of this Regulation.’.

#### *Article 2*

#### **Entry into force**

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

It shall apply from 13 February 2023.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 30 January 2023.

*For the Council*  
*The President*  
P. KULLGREN

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