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Answer given by Mr Hoekstra
on behalf of the European Commission
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Article 34 of the Treaty on the Functioning of the European Union (TFEU) prohibits quantitative restrictions on imports between Member States. Under Article 36 thereof, the provisions of Article 34 do not preclude restrictions on imports on grounds of public policy or the protection of human health.

With regard to excise duty, if a private individual purchases excise goods in one EU Member State and transports them to another, the exemption from paying excise duty in the destination Member State applies only if the goods are for their personal use. Article 32(3) of Council Directive (EU) 2020/262¹ sets criteria, including quantity of tobacco products, for assessing own use. Member States may lay down guide levels, as a form of evidence regarding the intended use of goods.

Recital 41 of Directive (EU) 2020/262 notes that varying excise duty levels, driven by fiscal and public health policies, create risks of fraud and health threats. To address it Member States should be able to take proportionate measures to verify whether excise goods acquired by private individuals are for personal use. The Commission emphasises the need to balance internal market functioning, national health policies and effective excise duty collection.

The competence of the EU to act in the field of excise duties is conferred by Article 113 TFEU, which empowers the Council to adopt harmonised rules, necessary to ensure the functioning of the internal market and to avoid distortions of competition.

¹ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty, OJ L 58, 27.2.2020, p. 4–42.