

Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

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concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Whereas:

- (1) 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⁽³⁾ has been substantially amended several times. Since further amendments are to be made, it should be replaced in the interests of clarity.
- (2) Conditions for charging excise duty on the goods covered by Directive 92/12/EEC, hereinafter 'excise goods', need to remain harmonised in order to ensure the proper functioning of the internal market.
- (3) It is appropriate to specify the excise goods to which this Directive applies and to refer for that purpose to Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes⁽⁴⁾, Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes⁽⁵⁾, Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages⁽⁶⁾, Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages⁽⁷⁾, Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco⁽⁸⁾ and Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity⁽⁹⁾.
- (4) Excise goods may be subject to other indirect taxes for specific purposes. In such cases, however, and in order not to jeopardise the useful effect of Community rules relating to indirect taxes, Member States should comply with certain essential elements of those rules.

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- (5) In order to ensure free movement, taxation of goods other than excise goods should not give rise to formalities connected with the crossing of frontiers.
- (6) It is necessary to ensure the application of formalities when excise goods are moving from the territories which are defined as being part of the customs territory of the Community but which are excluded from the scope of this Directive to territories which are also so defined but to which this Directive does apply.
- (7) Since suspensive procedures under Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code⁽¹⁰⁾ provide for adequate monitoring whilst excise goods are subject to the provisions of that Regulation, there is no need for the separate application of an excise monitoring system for the time that the excise goods are subject to a Community customs suspensive procedure or arrangement.
- (8) Since it remains necessary for the proper functioning of the internal market that the concept, and conditions for chargeability, of excise duty be the same in all Member States, it is necessary to make clear at Community level when excise goods are released for consumption and who the person liable to pay the excise duty is.
- (9) Since excise duty is a tax on the consumption of certain goods, duty should not be charged in respect of excise goods which, under certain circumstances, have been destroyed or irretrievably lost.
- (10) Arrangements for the collection and reimbursement of duty have an impact on the proper functioning of the internal market and should therefore follow non-discriminatory criteria.
- (11) In the event of an irregularity, excise duty should be due in the Member State on whose territory the irregularity has been committed which has led to the release for consumption or, if it is not possible to establish where the irregularity has been committed, it should be due in the Member State where it has been detected. Where excise goods do not arrive at their destination and no irregularity has been detected, the irregularity shall be deemed to have occurred in the Member State of dispatch.
- (12) In addition to the cases of reimbursement provided for in this Directive, Member States should be able, where the purpose of this Directive so allows, to reimburse excise duty paid on excise goods released for consumption.
- (13) The rules and conditions for the deliveries which are exempt from the payment of excise duty should remain harmonised. For the exempted deliveries to organisations situated in other Member States, use should be made of an exemption certificate.
- (14) The situations in which tax-free sales to travellers leaving the territory of the Community are allowed should be clearly determined with a view to avoiding evasion and abuse. Since persons travelling over land can move more frequently and more freely as compared to persons travelling by boat or aircraft, the risk of non-respect of the duty and tax free import allowances by the traveller and consequently the control burden for the customs authorities is substantially higher in the case of travel over land. It is therefore appropriate to provide that excise duty-free sales at land borders should not be allowed, as is already the case in most Member States. A transitional period should

however be provided for during which Member States are authorised to continue to exempt from excise duty goods supplied by existing tax-free shops situated at their land border with a third country.

- (15) Since checks need to be carried out in production and storage facilities in order to ensure that the tax debt is collected, it is necessary to retain a system of warehouses, subject to authorisation by the competent authorities, for the purpose of facilitating such checks.
- (16) It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and traders without authorised warehousekeeper status.
- (17) It should be possible for excise goods, prior to their release for consumption, to move within the Community under suspension of excise duty. Such movement should be allowed from a tax warehouse to various destinations, in particular another tax warehouse but also to places equivalent for the purposes of this Directive.
- (18) The movement of excise goods under suspension of duty should also be allowed from their place of importation to those destinations and accordingly provision should be made with regard to the status of the person allowed to dispatch, but not allowed to hold, the goods from that place of importation.
- (19) In order to safeguard the payment of excise duty in a case of non-discharge of the excise movement, Member States should require a guarantee, which should be lodged by the authorised warehousekeeper of dispatch or the registered consignor or, if the Member State of dispatch so allows, by another person involved in the movement, under the conditions set by the Member States.
- (20) It is necessary, in order to ensure the collection of taxes at the rates laid down by Member States, for the competent authorities to be in a position to follow the movements of excise goods and provision should therefore be made for a monitoring system for such goods.
- (21) For that purpose, it is appropriate to use the computerised system established by Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products⁽¹¹⁾. Use of that system, as opposed to a paper-based system, accelerates the necessary formalities and facilitates the monitoring of movement of excise goods under suspension of excise duty.
- (22) It is appropriate to lay down the procedure by which traders inform the tax authorities of the Member States of consignments of excise goods dispatched or received. Due regard should be had to the situation of certain consignees not connected to the computerised system but who may receive excise goods moving under suspension of duty.
- (23) In order to ensure the proper functioning of the rules relating to movement under suspension of excise duty, the conditions for the start of the movement as well as the end, and the discharge of responsibilities, should be clarified.
- (24) It is necessary to determine the procedures to be used in a case in which the computerised system is not available.

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- (25) Member States should be allowed to provide a special arrangement for the movement of excise goods under suspension of duty which takes place entirely on their territory, or conclude bilateral agreements with other Member States to allow simplification.
- (26) It is appropriate to clarify the taxation and procedural rules relating to the movement of goods on which excise duty has already been paid in a Member State without changing their general structure.
- (27) Where excise goods are acquired by private individuals for their own use and transported from one Member State to another by them, excise duty should be paid in the Member State in which the goods are acquired, in accordance with the principle governing the internal market.
- (28) In cases where, following their release for consumption in a Member State, excise goods are held for commercial purposes in another Member State, it is necessary to establish that excise duty is due in the second Member State. For these purposes, it is necessary, in particular, to define the concept of ‘commercial purposes’.
- (29) Where excise goods are acquired by persons who are not authorised warehousekeepers or registered consignees and do not carry out an independent economic activity, and are dispatched or transported directly or indirectly by the vendor or on his behalf, excise duty should be paid in the Member State of destination and provision should be made for a procedure to be followed by the vendor.
- (30) In order to avoid conflicts of interest between Member States and double taxation in cases in which excise goods already released for consumption in one Member State move within the Community, provision should be made for situations in which excise goods, following their release for consumption, are subject to irregularities.
- (31) Member States should be able to provide that goods released for consumption carry tax markings or national identification marks. The use of these markings or marks should not place any obstacle in the way of intra-Community trade.
Since the use of these markings or marks should not give rise to a double taxation burden, it should be made clear that any amount paid or guaranteed to obtain such markings or marks is to be reimbursed, remitted or released by the Member State which issued the marks if excise duty has become chargeable and has been collected in another Member State.
However, in order to prevent any abuse, Member States which issued such markings or marks should be able to make reimbursement, remittance or release conditional on the presentation of evidence that they have been removed or destroyed.
- (32) Application of the normal requirements relating to the movement and monitoring of excise goods could put a disproportionate administrative burden on small wine producers. Therefore, Member States should be able to exempt those producers from certain requirements.
- (33) Account should be taken of the fact that, with regard to excise goods used as stores for boats and aircraft, no suitable common approach has yet been found.

- (34) With respect to excise goods used for the construction and maintenance of cross-border bridges between Member States, those Member States should be allowed to adopt measures derogating from the normal rules and procedures applying to excise goods moving from one Member State to another, in order to reduce the administrative burden.
- (35) Measures for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹²⁾.
- (36) In order to allow a period of adjustment to the electronic control system for the movement of goods under suspension of excise duty, Member States should be able to benefit from a transitional period during which such movement may continue to be carried out subject to the formalities laid down by Directive 92/12/EEC.
- (37) Since the objective of this Directive, namely ensuring common arrangements in relation to certain aspects of excise duty, cannot be sufficiently achieved by the Member States and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective,

HAS ADOPTED THIS DIRECTIVE:

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- (1) Opinion of 18.11.2008 (not yet published in the Official Journal).
- (2) Opinion of 22.10.2008 (not yet published in the Official Journal).
- (3) OJ L 76, 23.3.1992, p. 1.
- (4) OJ L 316, 31.10.1992, p. 8.
- (5) OJ L 316, 31.10.1992, p. 10.
- (6) OJ L 316, 31.10.1992, p. 21.
- (7) OJ L 316, 31.10.1992, p. 29.
- (8) OJ L 291, 6.12.1995, p. 40.
- (9) OJ L 283, 31.10.2003, p. 51.
- (10) OJ L 302, 19.10.1992, p. 1.
- (11) OJ L 162, 1.7.2003, p. 5.
- (12) OJ L 184, 17.7.1999, p. 23.