Commission Implementing Regulation (EU) 2016/323 of 24 February 2016 laying down detailed rules on cooperation and exchange of information between Member States regarding goods under excise duty suspension pursuant to Council Regulation (EU) No 389/2012

COMMISSION IMPLEMENTING REGULATION (EU) 2016/323

of 24 February 2016

laying down detailed rules on cooperation and exchange of information between Member States regarding goods under excise duty suspension pursuant to Council Regulation (EU) No 389/2012

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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[(1)], and in particular, Article 9(2), Article 15(5) and Article 16(3) thereof,

After consulting the European Data Protection Supervisor;

Whereas:

(1) A computerised system is principally to be used for the exchanges of information provided for under Articles 8, 15 and 16 of Regulation (EU) No 389/2012 regarding goods under excise duty suspension. It is therefore necessary to lay down the structure and content of the mutual administrative assistance documents that convey that information.

(2) In order to allow for effective control of goods under excise duty suspension, the requesting authority should be able to request the history of a movement of goods under excise duty suspension within the Union from another competent authority by supplying the administrative reference code of the relevant electronic administrative document, assigned in accordance with Article 21(3) of Council Directive 2008/118/EC[(2)]. Requested authorities should be able to provide automatic responses to such requests. The response should include all electronic documents and other information exchanged in accordance with the provisions of Articles 21 to 25 of Directive 2008/118/EC.

(3) Where the requesting authority does not know the administrative reference code of the electronic administrative document under the cover of which a movement of goods under excise duty suspension within the Union takes place, that requesting authority should be able to obtain the relevant administrative reference code by supplying other relevant information concerning the movement.

(4) Some investigations of trader compliance with the provisions of Chapter III and Chapter IV of Directive 2008/118/EC require the collection of information that can only be found outside of the computerised system. Therefore the computerised system should,

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/323. (See end of Document for details)*

for the purposes of finding such information, support the transmission of requests for administrative cooperation and of responses to such requests. The computerised system should also support the sending of legally justified refusals by requested authorities.

(5) The computerised system should provide standard formats for mutual administrative assistance documents to support the mandatory exchange of information where an irregularity or an infringement of legislation on excise duties has occurred, or is suspected to have occurred.

(6) It should be ensured that the computerised system is used for information that is optionally exchanged in the same way as for information that is exchanged on a mandatory basis. The same mutual administrative assistance documents should be used in both cases.

(7) It should be possible for the competent authorities of the Member States to request and receive feedback by uniform means on the follow-up action taken on the basis of information that has been exchanged.

(8) Detailed rules should be laid down allowing for the exchange of information for the purposes of administrative cooperation when the computerised system is not available and for the recording of that information in the computerised system when it becomes available again.

(9) The situations under which Member States should use fall-back mutual administrative assistance documents for the mandatory exchange of information should be established.

(10) The measures provided for in this Regulation are in accordance with the opinion of the Committee on Excise Duty,

HAS ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter

For the purposes of cooperation and exchange of information between Member States regarding goods under excise duty suspension, this Regulation lays down detailed rules concerning the following:

(a) the structure and content of the mutual administrative assistance documents exchanged through the computerised system referred to in Article 2 (8) of Regulation (EU) No 389/2012 for the purposes of Articles 8, 15 and 16 of that Regulation;

(b) the structure and content of communications of feedback on follow-up action taken as a result of cooperation on request or of optional communication of information;

(c) the rules and procedures to be used by competent authorities exchanging mutual administrative assistance documents;

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/323. (See end of Document for details)*

(d) the structure and content of fall-back mutual administrative assistance documents and the rules and procedures relating to their use.

[F1 Article 2

Definition

For the purposes of this Regulation, 'movement' means a movement between two or more Member States of goods under excise duty suspension within the meaning of Chapter IV of Directive 2008/118/EC.**]**

Textual Amendments

F1 Substituted by Commission Implementing Regulation (EU) 2018/505 of 7 March 2018 amending Implementing Regulation (EU) 2016/323 laying down detailed rules on cooperation and exchange of information between Member States regarding goods under excise duty suspension pursuant to Council Regulation (EU) No 389/2012.

Article 3

Structure and content of mutual administrative assistance documents

1 Mutual administrative assistance documents shall be drawn up in accordance with Annex I.

2 Where codes are required for the completion of certain data fields in the mutual administrative assistance documents in accordance with Annex I to this Regulation, the codes listed in Annex II to this Regulation, Annex II to Commission Implementing Regulation (EU) No 612/2013[3] and Annex II to Commission Regulation (EC) No 684/2009[4] shall be used as set out in the tables of Annex I to this Regulation.

CHAPTER II

COOPERATION ON REQUEST

SECTION I

Requests for download of information contained in the computerised system

Article 4

Request for download of information where the administrative reference code of a movement is known to the requesting authority

1 Where the administrative reference code of the electronic administrative document under cover of which a movement takes place, assigned in accordance with the third subparagraph of Article 21(3) of Directive 2008/118/EC, is known to the requesting authority, it may make a request for any document referred to in Annex I to Regulation (EC) No 684/2009 and any other document relating to the movement.

Changes to legislation: *There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/323. (See end of Document for details)*

For that purpose the requesting authority shall send a 'Movement download request' document, as set out in Table 1 of Annex I, to the requested authority in the Member State of dispatch. The request shall state the administrative reference code of the electronic administrative document under cover of which the movement takes place.

2 Where the administrative reference code is known to the requested authority, it shall respond to requests made in accordance with paragraph 1 using a 'Movement download answer' document, as set out in Table 2 of Annex I, indicating the status of the movement.

The requested authority shall also send a 'History of a movement' document, as set out in Table 3 of Annex I, containing a copy of the electronic administrative document under cover of which the movement takes place and of any other documents relating to that movement.

3 Where the administrative reference code is not known to the requested authority, it shall respond to requests made in accordance with paragraph 1 using a 'Movement download answer' document with the 'Status' data element set to 'None.'

Article 5

Request for download of information where the administrative reference code is unknown to the requesting authority

1 Where the administrative reference code or codes of one or more electronic administrative documents for which the requesting authority is searching are not known and the requesting authority believes another Member State to be the Member State of dispatch, the requesting authority may request a search to be carried out by the competent authority of another Member State for a list of electronic administrative documents under cover of which relevant movements take place.

For that purpose, the requesting authority shall send a 'Common request' document, as set out in Table 4 of Annex I, to the requested authority. The request shall state the relevant search criteria and include any information which supports the selection of those criteria.

2 The requested authority shall respond to requests made in accordance with paragraph 1 by returning a list of electronic administrative documents matching the search criteria selected in accordance with the second subparagraph of paragraph 1, identified by their administrative reference codes using the 'List of e-AD as a result of a general query' document, as set out in Table 5 of Annex I.

3 Where no document meets the search criteria selected in accordance with the second subparagraph of paragraph 1, or the number of administrative reference codes meeting the selected search criteria is greater than 99, the requested authority shall send the requesting authority a 'Refusal of common request' document, as set out in Table 6 of Annex I.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Implementing Regulation (EU) 2016/323. (See end of Document for details)*

SECTION II

Requests for information not contained in the computerised system

Article 6

Requests for information and administrative enquiries

1 Requests for information regarding goods under excise duty suspension that is not contained in the computerised system shall be made by sending an 'Administrative cooperation common request' document, as set out in Table 7 of Annex I. The request type shall be set to 'Administrative cooperation'.

2 Each request made in accordance with paragraph 1 may concern one or more economic operators registered in the Member State of the requesting authority in accordance with Article 19(1)(a) of Regulation (EU) No 389/2012. It shall concern no more than one economic operator registered in the Member State of the requested authority.

3 Having completed any necessary enquiries, the requested authority shall send the results of those enquiries to the requesting authority by means of an 'Administrative cooperation results' document, as set out in Table 10 of Annex I.

[[F2]SECTION IIA

Requests for manual closure

Article 6a

Request for manual closure

For the purpose of Article 8(1) of Regulation (EU) No 389/2012, when the movement of excise goods under duty suspension arrangement cannot be closed under Article 24 or 25 of Directive 2008/118/EC, the requesting authority may request the competent authority in the Member State of dispatch to close a movement of excise goods under excise duty suspension manually. Such a request shall be made by sending a 'Manual Closure Request' document set out in Table 15 of Annex I.**]**

Textual Amendments

F2 Inserted by Commission Implementing Regulation (EU) 2019/2223 of 13 December 2019 amending Implementing Regulation (EU) 2016/323 as regards the data required for mutual administrative assistance documents used for the purpose of the exchange of information regarding excise goods under suspension of excise duty.