Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast)

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laying down the general arrangements for excise duty

(recast)

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[(1)],

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

Acting in accordance with a special legislative procedure,

Whereas:

(1) Council Directive 2008/118/EC[(3)] has been substantially amended several times. Since further amendments are to be made, that Directive should be recast in the interests of clarity.

(2) Conditions for charging excise duty on goods covered by Directive 2008/118/EC 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 Directives 92/83/EEC[(4)], 92/84/EEC[(5)], 2003/96/EC[(6)] and 2011/64/EU[(7)].

(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 Union rules relating to indirect taxes, Member States should comply with certain essential elements of those rules.

(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 between the territories which are defined as being part of the customs territory of the Union but which are excluded from the scope of this Directive and territories to which this Directive does apply.

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(7) 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 Union level when excise goods are released for consumption and who is liable to pay the excise duty.

(8) Since excise duty is a tax on the consumption of goods, duty should not be charged in respect of excise goods which, under certain circumstances, have been totally destroyed or are irretrievably lost.

(9) In addition to total destruction or irretrievable loss of goods, partial losses may occur due to the nature of the goods. Except under duly justified circumstances, no duty should be charged for those partial losses insofar as they do not exceed the pre#established common partial loss thresholds.

(10) In case of unintentional excess of goods discovered during a movement under a duty suspension movement, Member States should be able to permit the excess goods to be introduced in a tax warehouse under duty suspension.

(11) In order to ensure uniform treatment of partial losses throughout the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of determining the common partial loss thresholds. When determining these partial loss thresholds, the Commission should take into account in particular aspects related to the physical and chemical characteristics of the goods (such as nature of excise goods, especially energy products (volatility), the ambient temperature during movement, the distance of movement or time consumed during movement). It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(8)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(12) 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.

(13) In the event of an irregularity during movements of excise goods under a duty suspension arrangement, excise duty should be due in the Member State in the territory of which the irregularity leading to a release for consumption has been committed or, if it is not possible to establish where the irregularity has been committed, it should be due in the Member State where the irregularity 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.

(14) In addition to the cases of reimbursement provided for in this Directive, Member States should, where the purpose of this Directive so requires, reimburse excise duty paid on excise goods released for consumption.

(15) 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.

(16) In order to ensure uniform conditions regarding the form of the exemption certificate, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(9)].

(17) The situations in which tax-free sales to travellers leaving the territory of the Union 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.

(18) Since checks need to be carried out in production and storage facilities in order to ensure that the duty 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. It should be understood that holding or storing of excise goods implies physical possession of these goods.

(19) It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and economic operators without authorised warehousekeeper status.

(20) It should be possible for excise goods, prior to their release for consumption, to move within the Union 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.

(21) 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 or store, the goods from that place of importation.

(22) In order to ensure the proper application of the provision concerning the end of the movement of excise goods under suspension, it should be clarified that the movement ends when the consignee is in a position to know precisely what quantity of goods he has actually received. The unloading and entering into the accounts may be used as evidence for the end of the movement.

(23) In order to allow the use of the external transit procedure following the export procedure, the customs office of exit should become a possible destination of a movement under excise duty suspension. The moment when the duty suspension arrangement ends in that case should be specified. It should be specified that the

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competent authorities in the Member State of export should complete the report of export on the basis of the confirmation of exit which the customs office of exit sends to the customs office of export at the start of the external transit procedure. In order to allow the external transit procedure to take over the responsibilities for the excise goods under this Directive, Article 189 of Commission Delegated Regulation (EU) 2015/2446[10] has been amended by Commission Delegated Regulation (EU) 2018/1063[11]. Consequently, Union excise goods should also be allowed to be placed under the external transit procedure.

(24) In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration at importation when excise goods released for free circulation are moved from the place of importation under duty suspension, information on the consignor and the consignee and a proof that imported goods will be dispatched from the Member State of importation to another Member State should be provided by the person who declares the excise goods for importation to the competent authorities in the Member State of importation.

(25) 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.

(26) Several Member States already grant a guarantee waiver for the movement of energy products by fixed pipelines as that type of movement presents a very low fiscal risk. In order to harmonise the requirements for the provision of a guarantee in such cases, it is appropriate to waive the guarantee requirement for movements of energy products by fixed pipelines in all Member States.

(27) In order to ensure a speedy completion of the necessary formalities and facilitate the supervision of movements of excise goods moved under suspension of excise duty, it is appropriate to use the computerised system under Decision (EU) 2020/263 of the European Parliament and of the Council[12] for the exchange of electronic administrative documents between the persons and competent authorities concerned (‘the computerised system’).

(28) In order to ensure that the documents used in the context of movement of excise goods under a duty suspension arrangement are readily understandable in all Member States and can be processed by the computerised system, including when the computerised system is not available, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of laying down the structure and content of those documents.

(29) In order to ensure uniform conditions for the completion, presentation and submission of documents used in the context of movement of excise goods under a duty suspension arrangement, including when the computerised system is not available, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(30) It is appropriate to lay down the procedure by which economic operators inform the competent authorities of the Member States of dispatch and destination of consignments of excise goods. 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.

(31) 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.

(32) In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration for export in cases where excise goods are moved under duty suspension before being taken out of the territory of the Union, the person who declares the excise goods for export should inform the competent authorities in the Member State of export of the unique administrative reference code.

(33) In order to enable the Member State of dispatch to take appropriate action, the competent authority in the Member State of export should inform the competent authority in the Member State of dispatch of any irregularities that occur during the export or of the fact that the goods are no longer to be taken out of the territory of the Union.

(34) In order to enable the consignor to assign a new destination to the excise goods, the Member State of dispatch should inform the consignor that the goods are no longer to be taken out of the territory of the Union.

(35) In order to improve the possibility of carrying out controls during a movement of excise goods, the person accompanying the excise goods, or where there is no accompanying person, the transporter or carrier, should be able to present the unique administrative reference code, in any form, to the competent authorities to allow them to retrieve details of the excise goods.

(36) It is necessary to determine the procedures to be used in a case in which the computerised system is not available.

(37) In order to align the procedures under this Directive with those provided for in Article 335(4) of Commission Implementing Regulation (EU) 2015/2447[(13)], and in order to simplify the recognition of alternative evidence of exit in the Member State of dispatch, a minimum list of standard alternative evidence of exit, proving that the goods have been taken out of the territory of the Union, should be established.

(38) Member States should be allowed to provide for a special arrangement for the movement of excise goods under suspension of duty which takes place entirely within their territory, or conclude bilateral or multilateral agreements with other Member States to allow simplification. Member States that are not party to bilateral or multilateral agreements should not be obliged to accept special arrangement made under such an agreement.