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signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 21 April 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Accompanying the document Report from the Commission to the Council  
and the European Parliament on the implementation and evaluation of  
Council Directive 2008/118/EC of 16 December 2008 concerning the  
general arrangements for excise duty

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**COMMISSION STAFF WORKING DOCUMENT**

**On the REFIT evaluation of Directive 2008/118/EC and on the implementation of the Directive**

*Accompanying the document*

**Report from the Commission to the Council and the European Parliament**

**on the implementation and evaluation of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty**

{COM(2017) 184 final}

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## **1. INTRODUCTION**

### **1.1. Purpose of the evaluation**

Council Directive 2008/118/EC<sup>1</sup> Article 45(2) states: “By 1 April 2015, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Directive.” To gather evidence for this report, the Commission requested two external evaluation studies. The first evaluation study, on Chapter V of the Directive (i.e. rules on commercial movements of excise goods on which duty has already been paid) was published in 2015<sup>2</sup>. The second study, which concentrated on Chapters III and IV of the Directive (i.e. provisions on tax warehousing and electronic control system), was published in 2016<sup>3</sup>.

Each of the above studies consisted of a question based survey to Member States and to traders, the results of which were compared to ensure a coherent and consistent view of the issues in question. For both studies a series of case studies, which went into greater depth, were carried out in approximately a third of Member States. The Member States selected are considered representative, based on size of the country, geographical location and whether the Member State is a producer or a consumer of excise goods.

The studies assessed the mandatory evaluation criteria, in accordance with the Better Regulation Guidelines<sup>4</sup>:

- 1) Effectiveness: to what extent have the objectives of the legislation been met? Are direct results and broader impacts of the legislation in line with the objectives?
- 2) Efficiency: are existing arrangements cost-effective? Is there a scope for simplification and administrative burden reduction?
- 3) Coherence: to what extent are customs and excise arrangements coherent? Is the level of harmonisation optimal?
- 4) Continuing relevance: to what extent does the scope of the legislation still match the current needs of Member States and economic operators?
- 5) EU added value: what are the advantages/ benefits of acting at the EU level? Where can further EU action bring most benefits?

### **1.2. Scope of the evaluation**

The functioning of the mechanisms prescribed by Directive 2008/118/EC relies on other legislative acts. The studies supporting the evaluation focussed on Directive 2008/118/EC as the core component of a system based on a wider set of legislation. The resulting assessment has therefore looked at Directive 2008/118/EC not in isolation. The studies covered procedures relating to all excise goods mentioned in Article 1 of

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<sup>1</sup> Council Directive 2008/118/EC of 16.12.2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, OJ L 9 of 14.1.2009.

<sup>2</sup> <http://bookshop.europa.eu/en/evaluation-of-current-arrangements-for-the-cross-border-movements-of-excise-goods-that-have-been-released-for-consumption-pbKP0614146/>

<sup>3</sup> <http://bookshop.europa.eu/en/evaluation-of-current-arrangements-for-the-holding-and-moving-of-excise-goods-under-excise-duty-suspension-pbKP0215865/>

<sup>4</sup> [http://ec.europa.eu/smart-regulation/guidelines/index\\_en.htm](http://ec.europa.eu/smart-regulation/guidelines/index_en.htm)

Directive 2008/118/EC (i.e. energy products, alcohol and manufactured tobacco products.) The time frame covered was 2008–2014, which includes periods both before and after the implementation of the European Movement and Control System (EMCS).

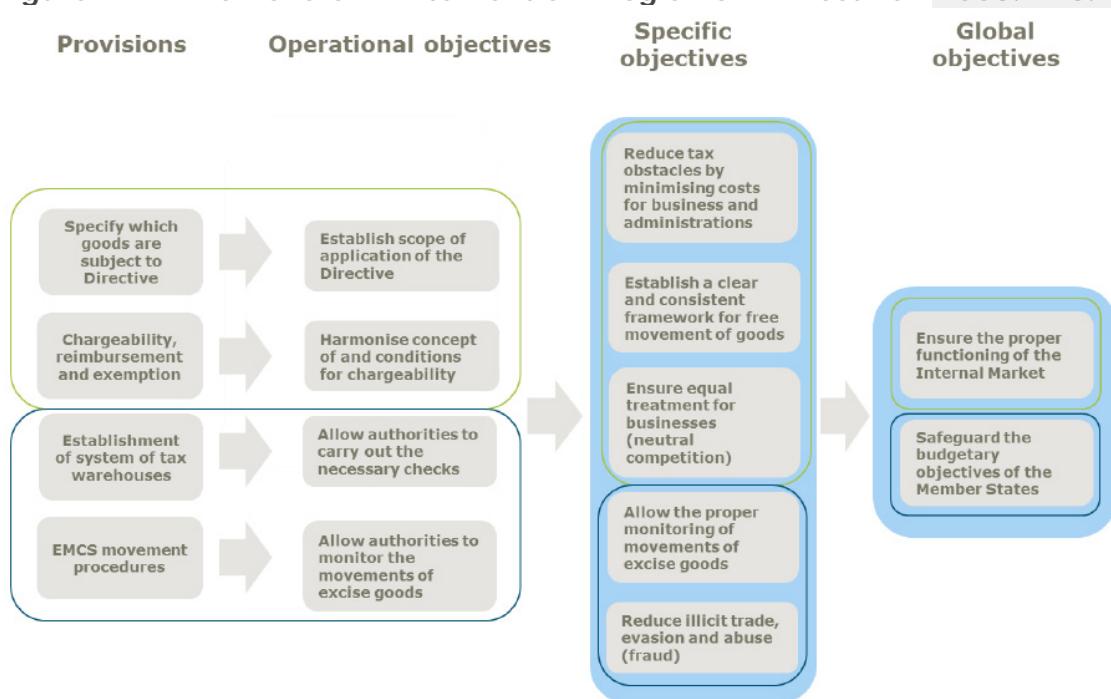
Two separate studies for different Chapters of Directive 2008/118/EC (i.e. Chapters III & IV and Chapter V respectively) were carried out. Chapters III and IV concern duty suspended movements, which are monitored through EMCS and which represent about 99% of all intra-EU movements of excise goods. Chapter V covers duty paid movements, which are still paper based and which represent 1% to 3% of all intra-EU movements of excise duty goods. Accordingly, this report presents the findings of the two evaluation exercises in separate subsections.

## 2. BACKGROUND TO THE INITIATIVE

### 2.1. Description of the initiative

Council Directive 2008/118/EC replaced Council Directive 92/12/EEC<sup>5</sup>. It defines the arrangements for the holding and movement of excise goods within the territory of the European Union, with the exception of a small number of territories<sup>6</sup>, where its provisions do not apply. The Directive's objectives and the manner in which they interact at different levels of policy have been captured in the intervention logic diagram below:

Figure 1: The overall intervention logic of Directive 2008/118/EC



Source: Ramboll Management Consulting A/S, Final evaluation report, 2015

## Chapter I

Chapter I of the Directive specifies which goods are subject to these provisions by referring to specific Directives (the so called vertical and rates Directives)<sup>7</sup>. These

<sup>5</sup> 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, OJ L 076 of 23.3.1992

<sup>6</sup> The so called Third Territories or Special Fiscal Territories that are within the Customs Territory of the European Union, where Directive 2008/118/EC does not apply. For a list of such territories please see Article 5 of the Directive.

<sup>7</sup> Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages OJ L 316 of 31.10.1992; Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages OJ L 316 of 31.10.1992; Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity OJ L 283 of 31.10.2003 and Council

Directives cover the structure of excise duty categories and minimum excise duty rates for alcohol and alcoholic beverages, manufactured tobacco, and energy products and electricity<sup>8</sup>.

Establishing which goods are subject to the Directive is necessary in order to ensure that clear and consistent rules are established for the treatment of the excise good (i.e. the good is treated in the same way in all Member States). This is intended to remove legal uncertainty, distortions of competition (for example differing treatment might result in higher risk of an unexpected tax liability) and possibly increased administrative costs if clarification is needed on the tax treatment. While an analysis of the structure of excise duty categories of excise goods themselves is not within scope of this evaluation, the evaluation looks at the effect of variations that tax treatment of excise goods has on the proper functioning of the internal market.

Chapter I defines excise duty as a tax on consumption and defines concepts such as “authorised warehousekeeper” and “tax warehouse”. Common definitions of economic operator types ensure a clear and consistent framework for the operation of the Directive.

## **Chapter II**

Chapter II establishes the time and place of chargeability, who is liable, the effect of destruction and irretrievable loss, irregularities, refunds and remissions and exemptions.

Chargeability begins with production or the entry of excise goods into the territory of the European Union, as defined in Article 5 of the Directive<sup>9</sup>. Chargeability may be deferred where goods that enter the territory are immediately placed under temporary storage, a customs special procedure<sup>10</sup> or are placed in a free zone. Excise goods produced within the territory may also benefit from a deferral of chargeability, if they are placed under excise duty suspension, i.e. being held in a tax warehouse or being moved under excise supervision. Importation for excise purposes is defined as occurring when goods are released for free circulation after being under customs supervision, or when they are irregularly introduced into the customs territory. Liability for excise duty follows the usual principles of joint and several liability. Destruction and irretrievable loss remove liability for excise duty on the quantities of the product affected. Article 10 deals with irregularities that occur during a movement of excise goods and determines which Member State or States is entitled to claim excise duty in the event of an irregularity. Refunds and remissions are subject to national rules that should prevent fraud and abuse. Finally, exemptions from excise duties cover the categories of person who are entitled to receive excise goods free of excise duty and the operation of duty free shops.

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Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco OJ L 176 of 5.7.2011

<sup>8</sup> Member States may apply other national taxes under certain conditions to excise goods and national indirect taxes to goods and to services not covered by the vertical and rates Directives. These taxes are sometimes described as excise duties, national excise duties, but their specific characteristics are outside the scope of this evaluation.

<sup>9</sup> The territory of the European Union, excluding certain territories where the Directive does not apply.

<sup>10</sup> Customs special procedures are laid out in Title VII of the Union Customs Code, they replace customs suspensive procedures that were laid out in the Community Customs Code

## Chapters III and IV

The major change introduced by Directive 2008/118/EC concerning the holding and movement of excise goods under duty suspension has been the introduction of the Excise Movement and Control System (EMCS). EMCS electronically monitors movements of excise goods under excise duty suspension between authorised and registered locations.

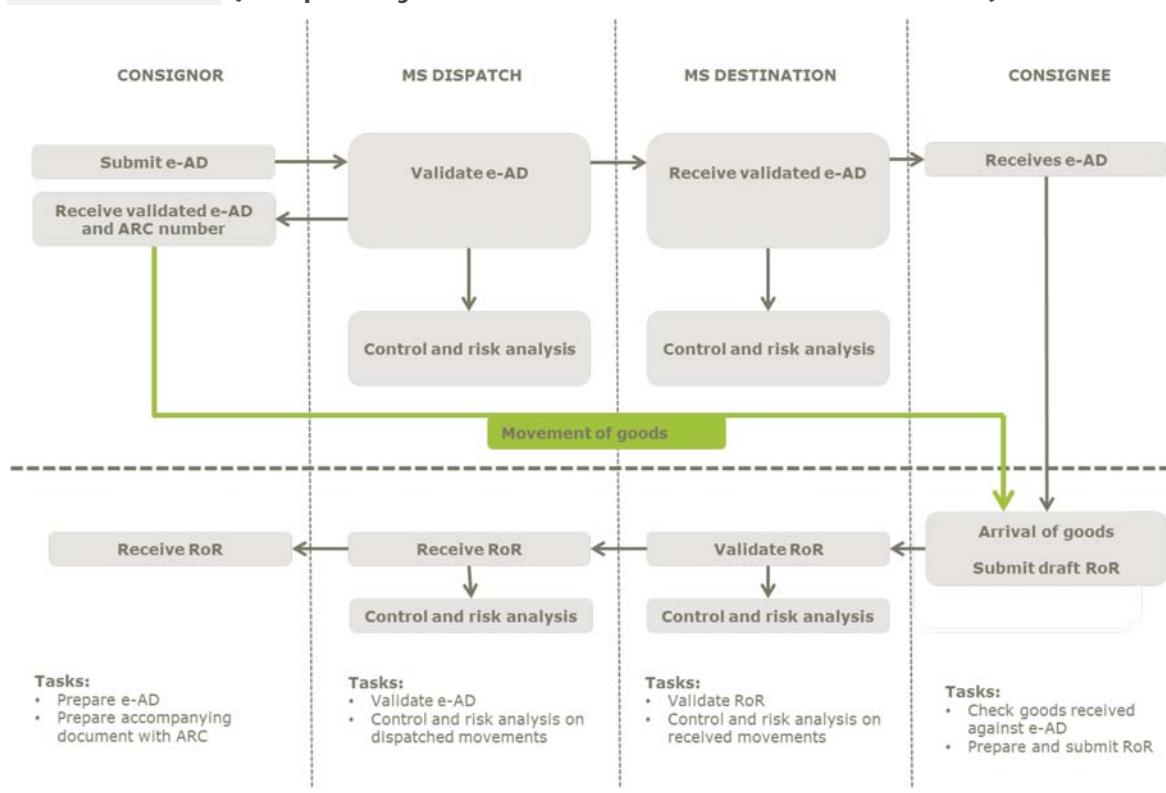
Chapter III takes over the concept of 'tax warehouse' from Directive 92/12/EEC as one of the types of authorised locations where excise goods may be held and produced under excise duty suspension, facilitating checks of the production and storage facilities. The detailed rules for authorisation are decided nationally, but the system as a whole is set out in Chapter III of the Directive. Each tax warehouse is associated with an authorised warehouse keeper who is responsible for the management of the tax warehouse. The tax warehouse and the authorised warehousekeeper each receive a unique excise number.

Chapter IV added two new types of economic operator associated with a location: the 'registered consignee' which can receive but not hold goods under excise duty suspension, and the 'registered consignor,' a type of economic operator that can transport goods under excise duty suspension from a place of importation.

The data provided by the SEED system (System for Exchange of Excise Data) make it possible to check whether an authorisation for the excise number exists and which excise goods can be handled by the trader or tax warehouse concerned. Both consignor and consignee are registered in the SEED database by their respective Member State administration.

The figure below provides a visual representation of the tasks described above for each of the actors involved.

**Figure 2. EMCS basic movement scenario as set out in Directive 2008/118/EC (compulsory use of e-AD from 1 Jan 2011 onwards)**



Sources: FESS v3.61 (Section 2 Core Business – 2.1.1 Basic Scenario); Directive 2008/118/EC.

On 1 January 2012, Phase 3<sup>11</sup> of the EMCS was put into operation. This extended EMCS to include the recording of control actions, the reporting of events that occurred during movements, and the exchange of information for facilitating administrative cooperation between the Member States.

While Chapters III and IV of Directive 2008/118/EC comprise the legal basis for the functioning of the EMCS, Council Regulation (EU) No 389/2012 provides the legal basis for administrative cooperation for excise and the use of EMCS for this purpose as well as the legal base for the registration of economic operators in SEED. Reporting on this Regulation is outside the scope of this evaluation, except where it relates to the registration of economic operator authorisations.

More detailed rules and procedures relating to the exchange of such messages, as well as the structure and content of the messages, are set out in **Commission Regulation (EC) No 684/2009<sup>12</sup>**, **Commission Implementing Regulation (EU) No 612/2013<sup>13</sup>** and **Commission Implementing Regulation (EU) 2016/323<sup>14</sup>**.

## **2.2. Objectives of Chapters III and IV (Holding and moving goods under excise duty suspension)**

### **2.2.1. *Removing tax obstacles to the movement of excise duty goods across borders by minimising costs for both economic operators and tax administrations.***

The proposal for Directive 2008/118/EC<sup>15</sup> stated that amendments to Directive 92/12/EEC were considered necessary “to simplify and modernise the excise procedures,

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<sup>11</sup> The EMCS Project was divided into Phases. Phase 0 covered the development of e-forms for administrative cooperation and the initial development of the register of economic operators, SEED. These developments put in place between 2004 and 2006, in parallel with the continued use of the paper based systems for monitoring excise movement, provided for by Directive 92/12/EEC. Phase 1 comprises the development and agreement of EMCS specifications. This started in 2004 and continues today. EMCS Phase 2 covered the replacement of the paper based AAD system for the supervision under excise duty suspension by EMCS, and the development of a new version of SEED to align with the requirements of the Directive. It came into operation in 2010. Phase 3 incorporated administrative cooperation into EMCS, thereby leading to a phasing out of the Phase 0 e-forms by the end of 2012.

<sup>12</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

<sup>13</sup> COMMISSION IMPLEMENTING REGULATION (EU) No 612/2013 of 25 June 2013 on the operation of the register of economic operators and tax warehouses, related statistics and reporting pursuant to Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties

<sup>14</sup> 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

<sup>15</sup> Proposal for Directive 2008/118/EC, p.2.

with the aim of reducing excise obligations for traders in particular for traders carrying out cross-border business without compromising excise controls.”

Administrative costs may stem from tax obstacles such as resources required to clarify varying interpretations of the Directive, or to resolve instances of double taxation. Tackling these requires simplifying and enforcing EU law, as well as strengthening coordination amongst Member States to more efficiently remedy cross-border tax disputes.<sup>16</sup> These aspects of the internal market are discussed further below.

EMCS aims to do this by providing a paperless (electronic) environment. The importance of designing systems which minimise administrative burden is also underlined in the Strategy for the evolution of the Customs Union.<sup>17</sup>

However, administrative costs relate not only to the EMCS: the evaluation also considered other obligations imposed on stakeholders stemming from the arrangements as a whole. Costs associated with compliance with national rules were also considered (e.g. the consultation procedure after an irregularity, requirements to become an authorised excise operator etc.).

#### *2.2.2. Establish a clear and consistent framework which permits the free movement of goods.*

Chapters III and IV of the Directive aim to introduce a transparent framework which allows excise goods, prior to their release for consumption, to move freely within the EU under suspension of excise duty.<sup>18</sup> Such a framework must have clear rules for the holding and movement of excise goods, which are applied consistently in all Member States.

The importance of clear and consistent rules is highlighted in the 2009 Commission Recommendation on measures to improve the functioning of the single market.<sup>19</sup> However, correct national implementation of the rules is only one aspect. A lack of legal certainty or variation on rules can imply additional tax risks for businesses, or higher compliance costs stemming from having to clarify procedures with the national tax or customs administrations.

The proper functioning of the single market also extends to coherence with other procedures. In the context of Directive 2008/118/EC, legal and technical coherence means that there should be smooth interaction between applications, avoiding legal

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<sup>16</sup> This is mentioned as one of the areas of focus in the DG Taxation and Customs Union, Management Plan 2014. [http://ec.europa.eu/atwork/synthesis/amp/doc/taxud\\_mp\\_en.pdf](http://ec.europa.eu/atwork/synthesis/amp/doc/taxud_mp_en.pdf)

<sup>17</sup> COM(2008) 169 final, p.6. “[...] designing and improving control systems which reduce the interference in the flow of goods as well as the administrative burden to the minimum necessary to achieve other public policy objectives such as security requirements [...]”.

<sup>18</sup> Recital 17 of Directive 2008/118/EC. “It should be possible for excise goods, prior to their release for consumption, to move within the Community under suspension of excise duty.”

<sup>19</sup> Commission Recommendation of 29 June 2009 on measures to improve the functioning of the single market (2009/524/EC), Recital 2. “It is essential for a well-functioning single market to have correctly transposed, applied, enforced, monitored and satisfactorily harmonised Community rules affecting the functioning of the single market.”

“loopholes” and that IT applications should interoperate correctly and smoothly. This is of particular relevance to excise and customs legislation and implementation.

**2.2.3. *Ensure a “level playing field” for businesses operating within the internal market***

Arrangements for the holding and movement of excise goods under duty suspension should provide a “level playing field”. Common rules and procedures should be harmonised across Member States in order to ensure that traders are not put at a disadvantage or face discriminatory conditions based on where they or their customers are established.

There are a number of areas in Chapter III where Member States are entitled to lay down their own rules, such as for the authorisation of tax warehouses and warehouse keepers. The evaluation summarises the impact that these arrangements might have in terms of creating distortions of competition. The level of harmonisation of rules (e.g. conditions to become an authorised excise operator), may also have an important impact on the fight against fraud, which is discussed further below.

The following two objectives are necessary to safeguard the budgetary interests of the Member States (i.e. ensure the proper collection of tax revenues).

**2.2.4. *Allow the proper monitoring of movement of excise goods.***

The protection of financial interests of the Member States in the area of excise hinges on the capacity to be able to properly monitor cross-border movements of excise goods.

Checking trader authorisations using data from the System for Exchange of Excise Data (SEED) in conjunction with EMCS allows authorities to follow cross-border movements and ultimately enable the proper collection of the tax debt when necessary.

EMCS should provide better facilities for monitoring than the previous paper-based system and is designed to improve risk analysis and provide Member States with advance notice of movements.

**2.2.5. *Reduce illicit trade, evasion and abuse (fight against fraud)***

High duty rates that vary widely between Member States and goods that are moved without having to pay excise duty before delivery provide incentives for tax evasion and fraud. One of the core objectives of EMCS was to combat certain types of fraud, as described in the 1998 High Level Group Report on Alcohol and Tobacco Fraud<sup>20</sup> and address a number of weaknesses in the system at the time (i.e. the paper-based arrangement provided for in Directive 92/12/EEC). The most important weaknesses were the lack of control of traders and consignments in the Member State of departure and the lack of advance information in the Member State of arrival, making it impossible to carry out timely, targeted, selective controls, based on risk analysis criteria.<sup>21</sup> Chapters III and IV of the Directive and the related EMCS and SEED specifications were designed to

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<sup>20</sup> High Level Group on fraud in the tobacco and alcohol sectors, Report to Directors General for Customs and Indirect Taxation, 1998.

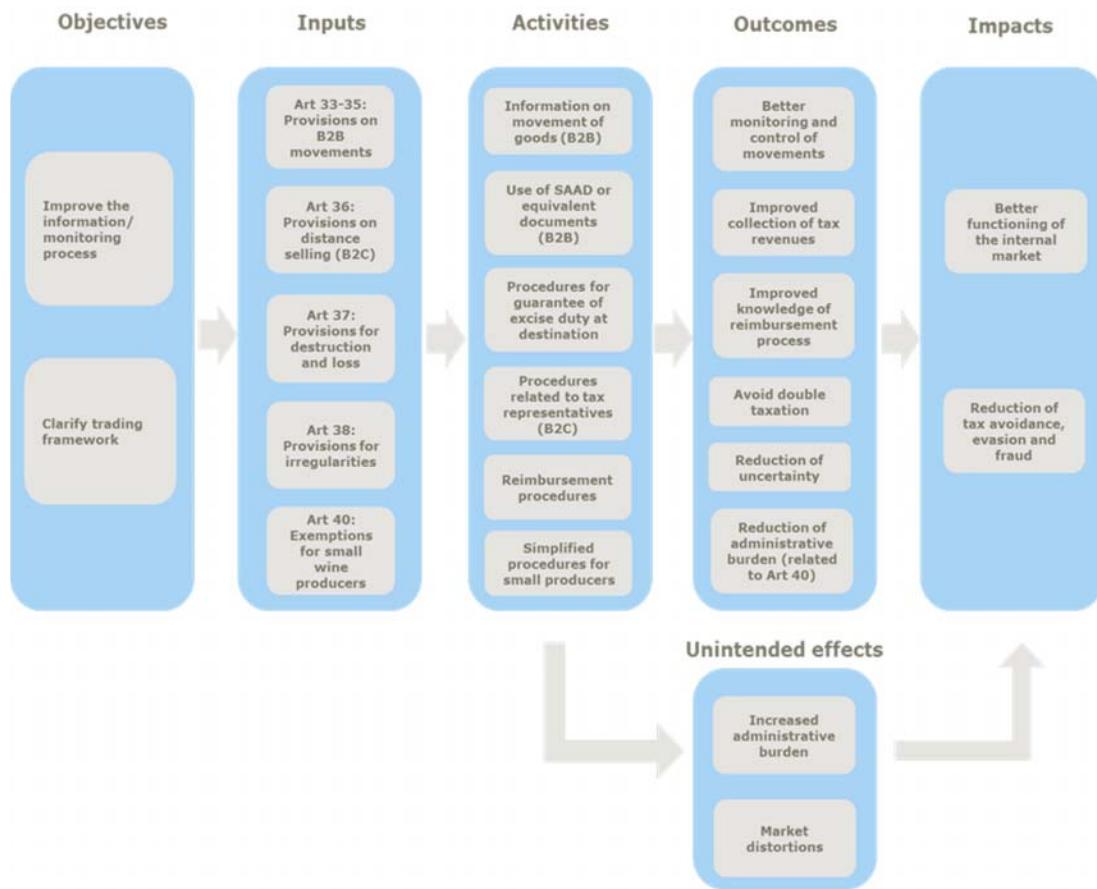
<sup>21</sup> Ibid p.32

address these weaknesses and ensure that Member States had access to appropriate prior information about dispatches.

### 2.3. Objectives of Chapter V (Duty paid movements)

The Directive (Articles 33-38) establishes the common rules for two types of intra-EU commercial movements of excise goods on which duty has already been paid before being dispatched: consignments between traders (B2B)<sup>22</sup> and the distance selling of excise goods to a private individual in another Member State (B2C). The following diagram illustrates the intervention logic for Chapter V of the Directive, showing the relationship between the objectives of the Directive, its provisions and the expected changes it was meant for it to achieve:

**Figure 3: Logic model of Directive 2008/118/EC – Chapter V**



Source: Ramboll Management Consulting A/S, Final evaluation report, 2015

Articles 33 and 34 of the Directive set out the requirements for movements between traders (B2B), and stipulate that movements should be covered by a simplified

<sup>22</sup> Duty paid B2B movements do not require tax warehouses. Therefore the traders can move goods without having any special authorisation. This makes the arrangements potentially interesting for SMEs.

administrative accompanying document (SAAD)<sup>23</sup>, the detail of which is set out in Regulation (EEC) No 3649/92<sup>24</sup>.

The excise duty should be paid in the Member State of destination, at the rate imposed by that Member State (MS), and if relevant, the economic operator may then apply for reimbursement of the excise duty already paid upon release for consumption.

Article 34 states that the person liable to pay the excise duty must:

- Before the goods are dispatched, declare the consignment to the administration in the Member State of destination and guarantee its payment;
- Pay the excise duty in accordance with the procedure of the destination MS;
- Consent to any checks by the Member State of destination to ensure the goods have been received and the excise duty paid.

Article 36 of the Directive sets out the requirements for the movement of excise goods which are sold to a private individual in another Member State, known as distance selling (B2C). Excise duty is chargeable in the Member of State of destination when the goods are delivered. As under B2B, excise duties paid in the Member State of the consignor of the goods may be reimbursed after payment in the Member State of destination.

The vendor, or alternatively an appointed tax representative, is required to:

- Register his identity with the Member State of destination and guarantee payment according to the conditions laid out in that Member State;
- Pay the excise duty after the excise goods arrive;
- Keep accounts of deliveries of excise goods.

Article 37 of the Directive provides that where the excise goods are destroyed or irretrievably lost, as a result of specific events, during the transport in a Member State other than the Member State where they were released for consumption, the excise duty is not chargeable in that Member State. Article 38 of the Directive lays down the provisions in case of irregularities occurring during a movement of duty paid goods. An irregularity is defined by the Directive as a situation in a B2B or distance selling transaction due to which a movement has not duly ended and which neither entails a loss nor a destruction of the goods.

The external evaluation also looked at Article 40 of Chapter V which nevertheless relates to a simplification of a duty suspension arrangement for the movement of wine from small producers.

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<sup>23</sup> Strictly speaking the Regulation refers to a simplified accompanying document but the acronym SAD refers to the single administrative document used for customs declarations. To avoid confusion the alternative name is used.

<sup>24</sup> Commission Regulation (EEC) No 3649/92 of 17 December 1992 on a simplified accompanying document for the intra-Community movement of products subject to excise duty which have been released for consumption in the Member State of dispatch

## **2.4. Baseline**

### **Arrangements for the Holding and Movement of Excise Goods under Duty Suspension**

The only major change between the previous arrangements covered by Directive 92/12/EEC and the current arrangements concern Chapter IV of the Directive, which cover the movement of excise goods under duty suspension and which replace a paper based system with a real time computerised system.

Arrangements for the holding of good under excise duty suspension did not substantially change as a result of the adoption of Chapter III of Directive 2008/118/EC. Authorisations for the operation of tax warehouses were established under Directive 92/12/EEC and have been largely subject to national rules. In 2006 the first version of the SEED system was put into operation, which replaced bilateral exchanges between Member States of operator authorisations by e-mail. Whilst this improved the dissemination and the accuracy of the shared information, any checks on the destination of goods dispatched under excise duty suspension were still done manually and largely by the operators themselves. The introduction of SEED only started to have a major effect when it was combined with checks carried out in EMCS on the basis of SEED data as part of the control of goods moving under duty suspension, as described in Chapter IV of the Directive. Therefore the results of the evaluation of the arrangements under Chapter III of Directive 2008/118/EC can be seen to reflect equally the situation between 1992 and 2008.

Before the introduction of the computerised EMCS system, the movement of excise goods within the EU was covered by Directive 92/12/EEC, which required the use of a paper Accompanying Administrative Document (AAD). Traders had to use the AAD to inform the tax authorities of the Member States of deliveries dispatched or received. This meant that all consignments between Member States were accompanied by an AAD drawn up by the consignor. The following copies were required:

- one to be kept by the consignor,
- one for the consignee,
- one to be returned to the consignor for discharge,
- one for the competent authorities of the Member State of destination.

After a transitional period (April 2010 – Jan 2011) EMCS completely replaced the previous paper-based system; from 1 January 2011 onwards, the use of an electronic Administrative Document (e-AD) was compulsory.

### **Arrangements under Directive 92/12/EEC for the Holding and Movement of Goods that have been released for consumption**

The arrangements under Chapter V of the Directive that have been evaluated do not differ significantly from the arrangements provided for under Directive 92/12/EEC. The structure and content of the SAAD is defined in Commission Regulation (EEC) No 3649/92. Therefore the evaluation of the implementation of Chapter V is considered equally to reflect the situation that existed under Directive 92/12/EEC for the movement of goods under these arrangements.

### 3. EVALUATION QUESTIONS

This section presents the high level evaluation questions for both evaluations. The results of evaluating the answers to these questions can be found in Section 6 of this report

**Table 1. Evaluation questions**

Evaluation Question	Evaluation criteria/Perspective
<b>Duty suspended goods (Chapters III and IV)</b>	
How was Council Directive 2008/118/EC implemented into national law of Member States?	Implementation
To what extent do the arrangements for holding and movement of excise duty goods under suspension contribute to the proper functioning of the Internal Market?	Effectiveness
To what extent are current arrangements protecting the financial interest of the Member States?	Effectiveness
To what extent are these arrangements still relevant to the needs of the Member States and the economic operators?	Relevance
Is there a scope for simplification and administrative burden reduction?	Efficiency
To what extent do the current arrangements work in a coherent manner with the custom applications?	Coherence
Which of the observed impacts of the current arrangements can be reasonably attributed to the EU action?	EU Added value
Which of the problems identified would most merit an EU action (and thus deserve further study by the Commission)?	EU Added value / Recommendations
<b>Duty paid goods (Chapter V)</b>	
What is the reported volume of transactions (per Member State/year), commercial value (by sector) and the tax revenue associated with the current arrangements for excise duties in intra-EU B2B transactions and distance selling situations?	Implementation
To what extent are these arrangements protecting the financial interest of the Member States? Please provide an assessment of the types and magnitude of risk of fiscal fraud associated with these arrangements, including estimates of irregularities and potential revenue loss	Effectiveness
To what extent are the arrangements still relevant to the needs of the Member States and the economic operators,	Relevance

Evaluation Question	Evaluation criteria/Perspective
taking into account the technological progress and the large growth in intra-EU distance selling in recent years? What are the practical experiences and perceived problems as reported by both groups of stakeholders?	
From the point of view of the economic operators and the Member states administrations are these arrangements setting the right balance between revenue collection and administrative burden on traders imposed by compliance with registration, reporting and payment requirements? To what extent these costs constitute an obstacle to cross border trading or lead to discriminatory situations?	Efficiency
To what extent are consumers affected by the current arrangements for buying excise goods from sellers in other Member States? To what extent do they impact their consumer choices and the market for any given good, for example by distorting competition or discouraging consumers from making use of the possibilities available?	Effectiveness
Which of the observed impacts of the current arrangements for excise goods in B2B and distance selling situations can be reasonably attributed to EU action? Which of the problems identified would most merit an EU action (and thus deserve further study by the Commission)? For which problems is an EU action not likely to bring any considerable impact? To what extent do current arrangements promote harmonization of rules throughout the internal market?	EU Added value / Recommendations

## **4. METHODOLOGY**

### **4.1. General methodology**

The studies relied on qualitative and quantitative data, namely existing studies, monitoring data and business statistics, and primary data collected through consultation with all relevant stakeholders (i.e. Member State administrations and economic operators holding and moving excise duty goods under suspension). Primary data collection for the studies involved: (i) a written consultation of all Member States' administrations, followed up by phone interviews; (ii) an online survey of economic operators, and (iii) case studies in Member States involving face-to-face meetings with MS authorities and a sample of economic operators.

In order to reach its final conclusions, the studies used a transparent analytical strategy detailed in the appendices of the studies and triangulated evidence from multiple sources and stakeholders.

### **4.2. Methodology issues specific to the evaluation of Chapter III and IV of the Horizontal Directive**

#### **4.2.1. *Survey of Member States***

In the first phase of data collection, a broad consultation of national tax authorities was undertaken by means of a survey questionnaire.

Member States were consulted between mid-February 2015 and July 2015. Member States were asked to respond in writing, and answers were followed up by phone in order to ensure consistency and avoid possible misunderstandings. The three working languages of the European Commission (English, French and German) were used.

The survey questions can be found in Appendix 2 of the “Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension” pp 165 – 185.

27 out of 28 Member States<sup>25</sup> participated in the study, providing detailed answers to the questionnaire and taking part in follow-up interviews.

#### **4.2.2. *Survey of economic operators***

Economic operators were consulted by means of an online survey between February and September 2015. The online survey was in English, but respondents were able to download PDF versions of the questionnaire in English, French and German. A PDF copy of the survey is attached in Appendix 3 of the “Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension” pp 186 – 208.

The survey was distributed to the European industry associations/federations of relevant sectors, as well as to all the members of the Excise Contact Group. All contacts were invited to disseminate the survey link further to all interested economic operators.

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<sup>25</sup> The exception was Malta

The total number of replies to the survey was 343, and included individual economic operators as well as trade associations and federations. A detailed description of the survey population and the delivery methods can be found in Appendix 4 of the “Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension” pp 209 – 224.

#### 4.2.3. *Case studies*

Six countries (Belgium, France, Germany, Lithuania, Sweden and the United Kingdom) were selected as case study countries. They were chosen on the basis of a pre-analysis of the results of the first round of consultation, as well as of an analysis of the authorisation (SEED)<sup>26</sup> and the operational statistics for the EMCS messages exchanged (CS/MISE).<sup>27</sup> The selection criteria are covered in detail in the Evaluation Report.<sup>28</sup> The case studies were conducted through a series of face-to-face interviews with representatives from Member State authorities and economic operators. Nineteen face-to-face interviews were conducted with all the relevant types of economic operator in the six countries in question. The results of the case studies can be found in Appendix 5 of the “Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension” pp 210 – 331.

### 4.3. **Potential limitations of the evaluation approach**

Although they were partially mitigated, the data collection and analytical approach exhibit a number of inherent limitations which are worth mentioning. Firstly, as with all surveys, the findings of the survey of economic operators are based on the answers from a self-selected sample of the survey population, and not on the answers that would be given by the entire population. Nevertheless, the sample size and composition are considered to be fairly representative. The respondents cover the three product categories and all countries well. The coverage also included operators at different levels of the logistics chain. In this context, the analysis performed at EU level and for each sector can be considered sufficiently accurate. At the level of the individual questions, the survey sample subsets cannot be seen as sufficiently representative to draw definite conclusions about the issues reported at the level of each Member State and sector.

Other factors may also contribute to any errors in the results: for example, respondents may have been unable to answer a question accurately or unwilling to respond honestly. The former was mitigated by including the option “do not know”/“not applicable” or “other” as an option with most questions. The risk of the latter is more difficult to avoid, but can to a certain extent be inferred through the analytical process connected with the data triangulation.

It is also important to consider that those economic operators who were most willing to invest time responding to the survey were those who were generally less satisfied with the provisions of the Directive, thus contributing to a more negative picture than would otherwise be apparent if the entire population had been sampled.

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<sup>26</sup> SEED: The System for Exchange of Excise Data is an online database which permits the verification of excise authorisations

<sup>27</sup> CS/MISE: Central System Services for the Management Information System for Excise

<sup>28</sup> Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension, p.17 -18

While perspectives and viewpoints are presented that reflect the type of stakeholder expressing them, whenever relevant (e.g. Member States, different types of economic operator, trade associations), the final conclusions are based on the triangulation of data from several sources and from different types of stakeholder, and have been subject to the interpretation and judgement of the authors of this study.

#### **4.4. Methodology specific to the evaluation of Chapter V of the Horizontal Directive**

In order to answer the survey questions, the study collected data from a sample of 12 Member States (Austria, Belgium, Czech Republic, France, Germany, Hungary, Ireland, Italy, Latvia, Poland, Spain, and Sweden). Criteria for selection included geographical coverage, size, business structure, trade patterns and use of the current arrangements.

Data collection activities in the sample of 12 Member States included:

- Written questionnaires to tax administrations and follow-up telephone interviews;
- An online survey of economic operators with 432 responses, available in five languages DE, EN, ES, FR, IT;
- Interviews with economic operators (some written responses also received).

A total of 121 interviews with economic operators and consumer organisations were conducted in the 12 sample Member States. It was initially difficult to identify users of the arrangements in some Member States, as the arrangements in some sectors of activity were little used. To address this, the evaluation team focused on specific business sectors (e.g. breweries, mineral oil distributors) and also added more languages to the interviewer teams. The interview sample reflects the most dominant types of relevant economic activity in each Member State. The questionnaires and interviews were complemented by desk research and analysis of EU and national legislation, past studies and economic literature.

The limitations and caveats are similar those noted above for the surveys and case studies on Chapters III and IV.

#### **4.5. Stakeholders' feedback on the evaluation**

Traders and Member States were asked to give their feedback on the completed evaluation studies. Member States confined their comments to correcting factual errors in collected data, whilst traders made some comments on content and conclusions.

For the Chapter I – IV study a stakeholders' meeting, consisting of trade federations and national experts from Member States, was held on 1 March 2016. Written comments were received from 7 Member States and 4 traders.

A Member State pointed out that the current mechanism for developing EMCS penalised small countries, because of the costs that had to be supported by the national authorities. There were requests to extend the scope of EMCS to cover lubricants and some extra tobacco products. Both Member States and Trade Federations were in favour of extending the use of existing EMCS reporting of incidents and irregularities to allow for a more consistent and fairer approach. Some trade federations supported the need for

greater transparency concerning the procedures for granting authorisations and for assuring that guarantees were set at equitable levels.

For the Chapter V study a stakeholders' meeting, consisting of trade federations and national experts from Member States was held on 26 June 2015. Written feedback had been provided previously by 6 Member States and 4 Trade Federations. Overall the stakeholders supported the evaluation findings. Whilst generally being supporting of the recommendations made, some Member State expressed caution about the recommendations on cost grounds (particular for automation of procedures) and said that they would like options for improvements to be investigated further. One stakeholder requested that follow up work should include investigating the possibility of an exemption from taxation and control provisions for small consignments intended for use purely as samples, as is the case under customs legislation.

## **5. IMPLEMENTATION/STATE OF PLAY AND ANSWERS TO THE EVALUATION QUESTIONS**

### **5.1. Chapters I – IV (Duty suspended movements)**

#### **Implementation of Directive 2008/118/EC**

##### **Authorisation of economic operators**

Economic operators that wish to hold and move goods under excise duty suspension must obtain an authorisation. The maximum number of active authorised economic operators within the EU amounted to 104,953 in March 2015. However, the real total number is likely to be smaller, as a single operator can hold multiple types of authorisation across different Member States and across different types of product.

**Figure 4: Number of authorisations per type of operator 2015**

Type of operator	Number of authorisations	Proportion of total number of authorisations in EU-28
Authorised warehouse keeper	75,486	72%
Registered consignee	25,147	24%
Temporary registered consignee	2,143	2%
Registered consignor	2,177	2%

Note: the number of authorisations does not refer to physical persons but to total authorisations per economic operator type. Source: ITSM\_LOT2-SC03-2015-03-EMCS, version 1.00, EMCS Monthly Statistics Report – March 2015, SEED; p.52.

Economic operators apply for different types of authorisation, each of which carries specific rights and obligations. Whilst the implementation of the authorisation requirements and the simplification provisions between the Member States vary, as authorisations remain a national matter, the study has shown that across the Member States authorisations entail similar types of technical, financial and legal requirements.

Except for obligations relating to the set-up and management of guarantees, the economic operators surveyed did not consider the authorisation requirements to be particularly burdensome. On the authorities' side, processing time has been reported to be relatively lengthy (between one and three months), and the thorough checking of each application was found to require significant resources. The authorities emphasised that the time invested was not driven by the requirements of the Directive, but by their individual needs to reduce the risk of fraud.

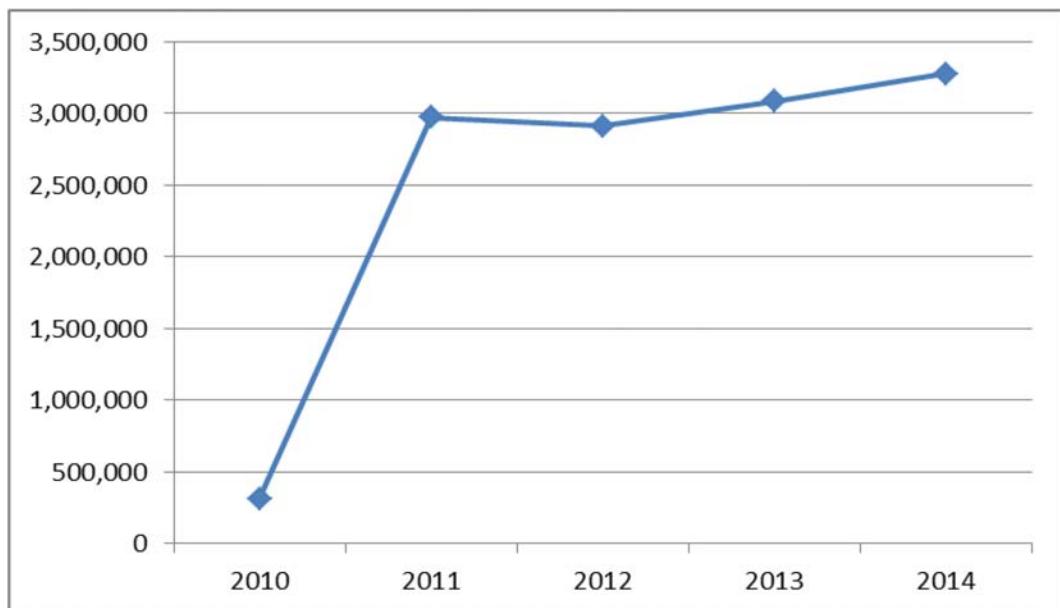
Member States apply a wide range of methods for calculating guarantees. This leads to variation in the levels of guarantee that economic operators must establish. Economic operators considered the levels to be significant burdens, despite the fact that reductions and waivers of guarantees are widely implemented in order to support smaller operators, particular products and tax-compliant operators.

##### **General arrangements for the holding and movement of excise duty goods**

Once authorised, economic operators can use EMCS for the cross-border dispatch of goods under suspension of excise duty, or the receipt of goods under suspension of

excise duty, or both. Almost 99% of all intra-EU movements of excise duty goods take place under suspension of excise duty.

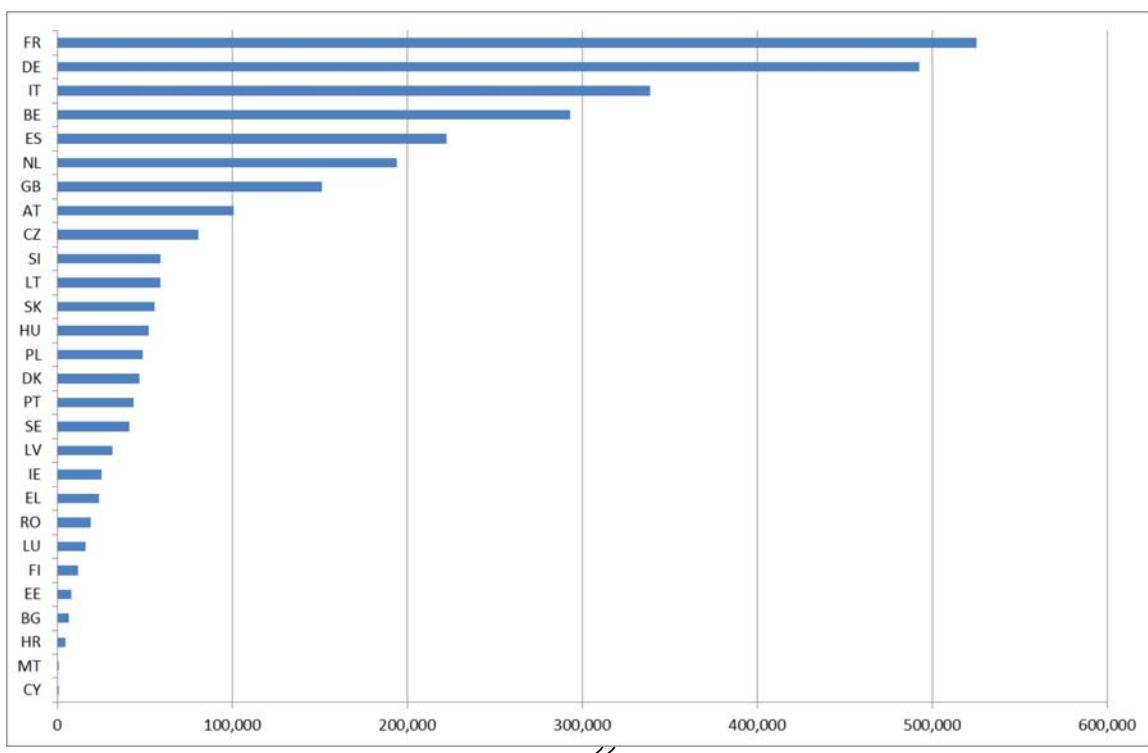
**Figure 5: Number of dispatches 2010 – 2014 (IE801)**



Source: CS/MISE/ITSM statistics platform

Annually, this amounts to approximately 3.5 million individual movements of energy, alcohol and manufactured tobacco products with a total financial value of EUR 270 billion and an associated excise duty of EUR 90 billion.

**Figure 6: Number of dispatches per Member State (IE801) in 2014**  
Source: CS/MISE/ITSM statistics platform



**Figure 7: Total flows of e-ADs between EU Member States in 2014**



Source: Ramboll Management Consulting A/S, Final evaluation report, 2015

While almost all movements under duty suspension complete normally and without any problems, stakeholders continue to face operational problems in a few areas. These issues increase administrative costs for the Member State administrations, create obstacles to trade, and increase the risk of fraud. They are covered in detail later in this report.

### **Special arrangements for particular categories of goods**

Directive 2008/118/EC specifies which goods are subject to the movement and control provisions by reference to specific Directives that cover alcohol and alcoholic beverages, manufactured tobacco, energy products and electricity . However, the required movement and control provisions can vary depending on the type of product, or on who is moving the product.

Both Member States and economic operators reported problems relating to the movement and control of particular energy products. These issues stem from the interaction between Directive 2003/96/EC (Energy Taxation Directive) and Directive 2008/118/EC, meaning that it is not always clear which provisions of the Directive 2008/118/EC should apply. The problem results from uncertainties over whether an energy product should be treated as an excise good or not. The categorisation depends on the intended use of the product, which may be unclear or even unknown to the consignor.

Excise goods that fall under Article 20(1) of Directive 2003/96/EC must be moved in accordance with the ‘movement provisions’ of Directive 2008/118/EC. Energy products that fall under Article 2(1) of Directive 2003/96/EC, but not under Article 20 of the Directive are only considered to be excise goods if they are used for heating or propulsion or as additives and extenders of motor fuels<sup>29</sup>. These products typically have 2 or more uses. When these goods are not intended to be used as fuel or as additives and extenders of fuel, they fall outside the scope of the Horizontal Directive and therefore cannot be moved using EMCS, or the SAAD system. When they are so intended there is no explicit mention of the provisions to be used. This regularly provokes discussion about the correct interpretation of these rules. This issue may be addressed in a further examination of the provisions of Directive 2003/96/EC.

Directive 92/83/EEC exempts denatured alcohol from excise duty: Article 27(1) (a) of the Directive states that completely denatured alcohol (CDA) should be exempted from excise duty and moved using the SAAD arrangements. Article 27(1) (b) provides for the exemption of alcohol denatured in accordance with the requirements of any Member State and used for the manufacture of any product not intended for human consumption. The main problem with the exemption of denatured alcohol does not directly concern the movement, but the classification of the product itself. The basis for the exemption in Article 27(1) (a) of Directive 92/83/EEC creates practical problems and inconsistencies. For CDA (which is moved under the cover of a SAAD), some Member States only accept those denaturants listed by name in the Annex to Regulation 3199/93, whereas others exempt alcohol treated using any of the denaturing methods listed. The case of the exemption of alcohol in accordance with Article 27(1) (b) is even more complex, since the term “not intended for human consumption” is not interpreted consistently across the Member States. A separate study is addressing the issues that relate to the structures of excise duty on alcohol products.

#### *5.1.1. The extent to which the arrangements for holding and movement of excise duty goods under suspension contribute to the proper functioning of the Internal Market*

EMCS was designed to provide a smooth transition to a paperless (electronic) environment from a paper based system, removing taxation-related obstacles to the movement of excise duty goods across borders by minimising costs both for economic operators and for tax administrations. Since its introduction between January 2010 and May 2015, over 13.6 million movements under duty suspension were recorded, 98.1% of which completed normally.

#### **Member States**

Member States are convinced that EMCS has reduced costs by reducing the amount of time needed to administer documents.

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<sup>29</sup> ECJ C515/07 Afton Chemical Ltd v Commissioners for Her Majesty’s Revenue and Customs (Reference for a preliminary ruling from the Chancery Division of the High Court of Justice of England and Wales)

**Figure 8: Time taken to process a typical movement before (paper based system) and after the introduction of EMCS during 2014 (computerised system)**

Member State	Time per movement (paper-based procedure)	Time per movement (EMCS)
<b>BG</b>	No data	5 min.
<b>CZ</b>	30 min.	10 min.
<b>FI</b>	6 min.	0 <sup>30</sup>
<b>HU</b>	120 min	6 min.
<b>LT</b>	30 min.	9 min. (0.15 hrs)
<b>LV</b>	20 min.	No data
<b>PL</b>	3-5 hrs (for alcohol); 0.5 hr (for other goods)	3-5 hrs (for alcohol); 0.25 hrs (for other goods)
<b>RO</b>	No data	0
<b>SI</b>	3 min.	1 min.
<b>SK</b>	60 min	10 min.

Source: Questionnaire to Member States 2015

EMCS has reduced the overall administrative costs for many Member States. The average time saved in hours per movement was reported to be 35 minutes (0.59 hours). This means that in 2014 alone, the EMCS should be credited with saving more than 1,267,026 hours (about 720 full-time individuals, assuming 8 working hours per working day and 220 working days per year) for those administrations of the Member States which reported a positive change.

**Economically quantified, this means that the EMCS resulted in annual savings of between EUR 27.5 million or EUR 37 million (depending of the job profiles of the persons involved) in 2014 alone.<sup>31</sup>** However, it is clear that its advantages cannot merely be viewed in cost terms. The elimination of paper and the associated increase in efficiency, the freeing up of resources in order to focus on higher-risk movements, and the improved control of movements, have all been identified as clear advantages that accrue from the electronic environment.

For the economic operators, the main benefits relate to a reduction of time needed to process excise documents the ability to follow up movements (for both sender and receiver), and the facilitation of logistics and enterprise resource planning. The benefits of EMCS were mentioned by both large and small businesses, although for large businesses the economies of scale associated with the electronic system were more advantageous.

### **Economic operators**

The main benefits reported related to the ability to follow up movements (for both sender and receiver), to ease auditing, and to monitor any increase in the efficiency and quality

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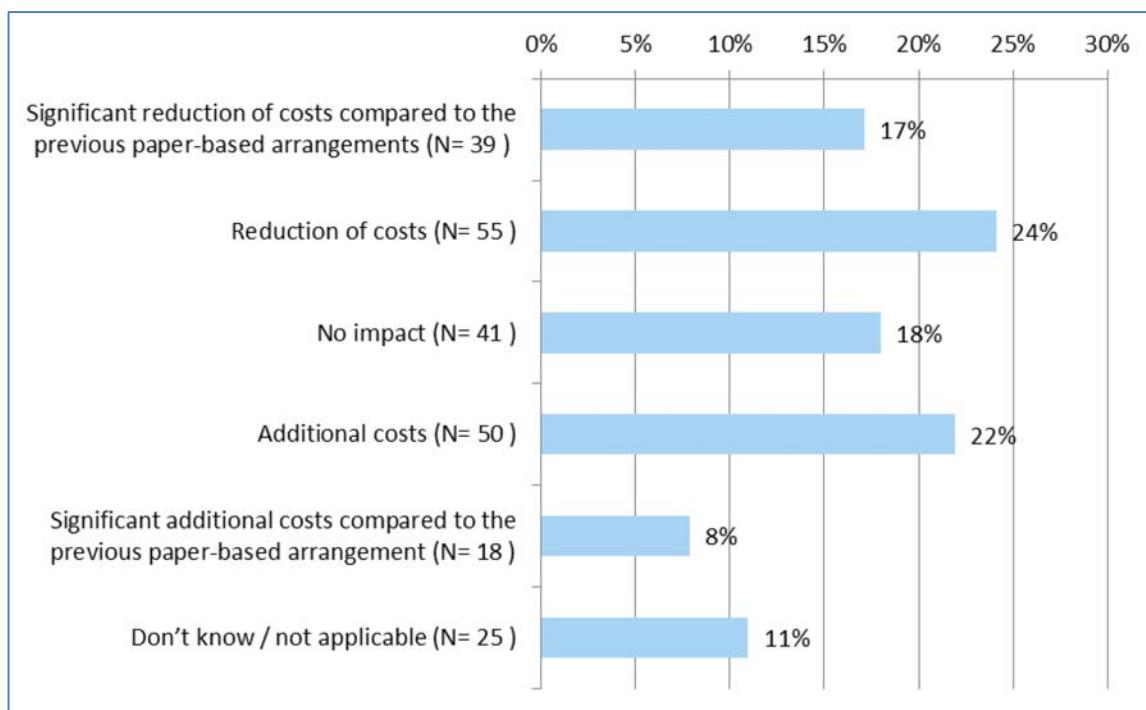
<sup>30</sup> 0 here means that the process is normally completed automatically.

<sup>31</sup> For more details please see: Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension, p. 53

of movement documentation. The responses were mixed in terms of the impact of the EMCS on the costs of compliance with the rules; when movements are completing normally and there are no practical problems, EMCS is more efficient than the previous paper-based arrangements

When asked directly about the impact of the EMCS on the costs of complying with the rules as compared to the previous paper-based system, the economic operators gave a wide range of responses. 17% of the respondents (n=228) indicated a significant reduction of costs, and 24% indicated a reduction of costs. However, 22% of respondents signalled that the EMCS had led to additional costs, and 8% thought it had generated significant additional costs.

**Figure 9: The cost impact of EMCS compared to the previous paper-based arrangements (N=228)**



Source: Survey of economic operators 2015

This pattern is very similar to the findings from a consultation of traders conducted by DG TAXUD in the context of a report on Decision No 1152/2003/EC which covered the creation of the EMCS: 38% of the trader respondents thought that the administrative costs of the operation of the EMCS compared with the costs of operating the previous arrangements under Directive 92/12/EEC were lower (24% - higher; 38% - don't know.) This suggests that EMCS may benefit larger traders proportionately more than smaller traders.

#### *5.1.2. The extent to which current arrangements protect the financial interest of the Member States*

This question investigated the prevention and detection of fraud and the protection of the financial interests of Member States (collection of duties and taxes).

One of the core objectives of EMCS is to combat certain types of fraud, and to address a number of the inherent weaknesses identified in the paper-based arrangements. EMCS, in

conjunction with SEED (System for Exchange of Excise Data) has clearly improved the control of traders and consignments in the Member State of departure. This has been achieved by the validation of the consignee before dispatch using SEED. This prevents documents being issued which would support illegal diversions of goods. EMCS also keeps a record of all ongoing and completed movements and gives access to this information to competent authorities and officials in other Member States, facilitating timely, targeted and selective controls.

Member States view EMCS as an effective early warning system for detecting fraud. Excise fraud is now considered to be more difficult than under the previous paper-based arrangements. There is nevertheless some uncertainty on how fraud may have changed as a consequence of introducing the EMCS. On the one hand, it may be that such operations have decreased because of more effective monitoring; on the other, it could be that the EMCS has given the Member States information about fraudulent movements that was previously unavailable, or has allowed more audits to be undertaken using the same resources, all of which may have resulted in an increase in the number of audits.

There is general agreement that the introduction of the EMCS has reduced the cost of audits. 17 Member States agree or strongly agree with a statement to that effect (DE, DK, EL, IT, LV, PL, PT, CY, RO, BG, CZ, HR, SK, UK). Another 7 Member States (FI, IE, SE, LU, AT, EE, and FR) neither agree nor disagree, or do not know, and only NL and ES disagree. EMCS improves access to movement information and allows for better risk analysis/monitoring. Sixteen Member States that were surveyed highlighted such advantages as “basic data is available at earlier point in time”, “early access to information”, or “information available online and in real-time”. Similarly, sixteen Member States point to the increased availability of information that is used for efficient monitoring and risk analysis. Member States specifically mention that EMCS allows better administrative cooperation, strengthening of the cooperation between Member States, and the facilitation and enhancement of inter-community trade through electronic means. One Member State noted the clear advantage compared to the paper-based system, while 2 other respondents highlighted the better quality of the data (accurate trade statistics and low error rates).

Nevertheless, some weaknesses in the current arrangements were identified:

- There is a lack of important data, according to respondents in SI, DE, FR and SK. This includes the inability to update the data if the transport method is changed, and the absence of checks on the validity of vehicle registration plates or details regarding the transport routes. Other Member States mention that data for monitoring and risk analysis are lacking or are not compulsory (AT); the data are flawed (UK); or entries are inconsistent (IE); and the fact that not all data are included (for example, according to the HU respondent the fact that wine consignments are not always covered by EMCS is a limitation).
- Five Member States (DE, FR, BE, SI and EE) pointed to the absence of a requirement to provide information regarding the start and end times of the transport process, and the lack of an automatic check of the time limits for trips is reported to be a shortcoming. This is reflected in such views as “it is almost impossible to have a good overview of what really happens with the goods”, and “sometimes the movement is marked as taking too long, but in fact this is not the case”.

- Another major concern relates to the recording of fictitious movements according to respondents in SK, BE, IE and HR (such as making multiple use of a single e-AD), plus the fact that the system allows incorrectly identified transport units to be entered (SI).
- Four Member States (SI, NL, LV and EL) pointed to the lack of risk analysis at the EU level, or the lack of common risk parameters.

Opportunities for excise fraud still exist and mainly relate to the type of data being recorded in the system and the inconsistencies in the reporting system. Some Member States pointed to the lack of common risk analysis at the EU level, or to the lack of common risk parameters. Evidently, the majority of excise fraud takes place outside EMCS; however, evidence suggests that EMCS is still very relevant in terms of responding to the type of fraud it set out to combat.

#### *5.1.3. Continued relevance of arrangements to the needs of the Member States and the economic operators*

19 Member States believed (agreeing or strongly agreeing) that there is still a need for the EMCS in their country, despite the evolution in certain types of fraud. Only one Member State disagreed, while the rest of the respondents did not know, or neither agreed nor disagreed.

The need for the EMCS is confirmed by opinions that call for widening the scope of the EMCS to include preventing fraud in “lubricating oils”, “raw tobacco”, the need for “analysing the functional specifications of EMCS and to continue the development”, developing a system to include “duty-paid movements”, and noting that the evolution in the types of fraud does “not reduce the need for the EMCS” and that “EMCS needs to be strengthened”. It was recognised that whatever EMCS changes are proposed, they need to strike a balance between “fraud prevention and trade facilitation”, so as to maximise the benefits of the EMCS.

16 Member States disagreed or strongly disagreed that similar results relating to the fight against fraud could have been achieved without EU action (i.e. through a national / bilateral or international initiative). This is because “only a consistent, binding regulation would be a useful and efficient basis”, “a consistent implementation could not be guaranteed” across the EU, there is “lack of interest for international cooperation in some MSs”, and multitude bilateral agreements would be needed which are difficult to “negotiate because of divergent national interests”. As a result, bilateral or international initiatives “cannot replace the EU action” and “EU action is needed in this area”. However, 12 Member States neither agreed nor disagreed with the proposition or responded “don’t know”. One (SK) stated that cooperation through multilateral control could be achieved, but acknowledged that generally speaking, cooperation across the EU was better achieved on the basis of a “clearly defined legislative framework”. Some of these responses did clarify that it was “more effective to have an EU system instead of bilateral / national [cooperation agreements]”, and that fight against fraud was better achieved at EU level, as this ensured consistency (because at the national level, there are “different aspects and problems”). One Member State believed that the EMCS works well as an extra tool but can be an “additional tool to working on a bilateral level”, while another stated that bilateral initiatives are currently useful to help fight fraud involving mineral oils, but at the same time EMCS is helpful for determining new contacts between warehouses that store alcohol.

Only 2 Member States (EL, SK) believed that similar results connected with combating fraud could have been achieved through a national / bilateral or international initiative, but they did not provide any explanations about how this would have been achieved.

#### 5.1.4. *Scope for simplification and administrative burden reduction*

The objective of this question was (i) to identify administrative and compliance costs resulting from the implementation of the Directive and (ii) seek out measures that may alleviate such costs, while ensuring the same level (or higher) of security for the movement of excise duty goods. A first part of the investigation looked at the efficiency (cost-effectiveness) of the implementation of the provisions and analysed the costs borne by tax administration in ensuring compliance with the Directive. The second part investigated the compliance costs borne by economic operators broken down at the level of activities and, where possible, quantified through interviews and case studies.

- **Authorisations:** Directive 2008/118/EC establishes common EU-level definitions of the different types of economic operator authorised to hold and move excise goods under duty suspension. The implementation of authorisation requirements, as well as any simplification provisions, varies across the Member States, as authorisations remain a national matter. The requirements that must be satisfied in order to receive an authorisation are complex. This can create obstacles for economic operators in the application process and thus make it more time-consuming than would otherwise be necessary. When they were asked about the rules for calculating the guarantees applicable to them, many operators indicated that they did not know them (24%). When analysed by Member State, the data also showed that operators from the same countries, operating in the same sector have provided contradictory information. For example, operators active in Germany (the Member State with the highest participation in the survey) stated that their warehouse guarantees were calculated on the basis of annual turnover (34%), monthly turnover (3%), annual excise liability (16%) and monthly excise liability (21%). This suggests that some of the requirements and provisions are highly complex.

The complexity of accessing and understanding the provisions was also underlined in the case studies. Four Member States reported that economic operators often did not submit complete applications, which required additional working hours to be spent by the authorities.

In most Member States, operators have to lodge both a movement guarantee and an authorisation guarantee. Economic operators considered these to be significant burdens, despite the fact that reductions and waivers of guarantees are widely implemented in order to support smaller operators, particular products and tax-compliant operators.

While in general established economic operators did not report major problems resulting from authorisation requirements, some scope for measures to simplify authorisation procedures and alleviate administrative burdens has been identified. Possible measures concern both established and potential entrants (e.g. the provision of information on requirements and their clarification, the reduction and waivers of guarantees based on reliability), or they take the form of the specific support of small operators through limited requirements and reduced guarantees.

- **Variations between Member States in how shortages, losses and excesses<sup>32</sup> are dealt with, leading to uncertainty both for Member States and for economic operators:** Member States and traders both clearly signalled that the arrangements around shortages and losses (particularly Article 10 of the Directive) need to be clarified, in order to ensure certainty regarding which Member State is competent to levy the tax on any shortages and on how allowable losses should be calculated. The treatment of excesses is not covered by the Directive at all and gives rise to administrative burden and legal uncertainty<sup>33</sup>

Since the study was completed the European Court of Justice has made a ruling on Article 10 of the Directive which clarifies which Member State is entitled to any excise duty liability arising from an actual or assumed release for consumption.<sup>34</sup> Nevertheless the procedure for making claims for shortages is unclear. Claims against economic operators are covered by the Recovery Directive, Directive 2010/24/EU<sup>35</sup>, but the use of the Recovery Directive for recovering excise debt varies between Member States, creating additional administrative burden. There is no basis in the Horizontal Directive to link recovery instruments with the establishment of an excise duty liability. The EMCS specifications<sup>36</sup> provide a means of communication between Member States and traders to establish what liabilities there might be but this facility is little used. EMCS also provides a message for claiming duty that should be sent from claiming Member States to the Member State of Dispatch that is responsible for guarantee management, but this message is as well rarely if ever used.

The treatment of excesses is not explicitly dealt with by the Horizontal Directive and national practice varies. 12 Member States reported that they had no issues with excesses, compared with 8 who reported that they did. The major difference in practice is between Member States which treat an excess as having been irregularly released for consumption and therefore require immediate payment of the corresponding excise duty and those Member States who allow the excess received goods as being under duty suspension and eligible to be held under duty suspension by the consignee if the consignee has an authorisation as an authorised warehouse keeper. Since decisions on the treatment of excesses have no cross-border impact there is not much interest in trying to harmonise these arrangements.

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<sup>32</sup> A shortage occurs where fewer goods are being carried in a consignment than declared in the corresponding e-AD. An excess occurs where more goods are being carried than were declared in the corresponding e-AD. A loss occurs where some or all goods in a consignment are irretrievably lost, e.g. lost at sea, or are totally destroyed,

<sup>33</sup> For more details please see: Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension, p. 75 – 87.

<sup>34</sup> Judgment of the Court (Sixth Chamber) of 28 January 2016 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — BP Europa SE v Hauptzollamt Hamburg-Stadt (Case C-64/15) OJ 2016/C 106/11

<sup>35</sup> Council Directive 2010/24/EU of 16 march 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Official Journal of the European Union L 84/1, 31.3.2010

<sup>36</sup> EMCS specifications are documents which describe the requirements for the EMCS system centrally and nationally and how those requirements are met at a high level (the so called Functional Excise Systems Specifications or FESS and more detailed description contained in a number of different documents).

Concerning losses economic operators report inconsistency in treatment of measurement tolerances<sup>37</sup> and in allowable losses between Member States. One particular issue is a lack of clarity about which measurement tolerance and allowable loss<sup>38</sup> should be applied where a claiming country makes a claim against an economic operator in another Member State. Some Member States do not publish allowable losses, arguing that this can create an incentive to take advantage of the arrangement to deliberately dispatch larger quantities than specified in the corresponding e-AD.

- **Errors in the e-AD:** amending data in the e-AD is not possible once it has been validated and assigned an ARC<sup>39</sup> number. This is intended as a fraud prevention feature. Human data-entry errors (e.g. quantity, type of good) are primarily resolved through communication between the relevant administration and traders. Some stakeholders have pointed to a need for flexibility regarding the modification of non-critical data, so as to increase the efficiency of procedures.

There are currently two ways of dealing with errors. If the goods have not yet left the place of dispatch the e-AD can be cancelled and a new e-AD issued for the same goods. This is in fact the most common reason given for the use of the cancellation message. If the goods have left the place of dispatch cancellation is prohibited because it would result in an irregular release for consumption. The consignor can send an EMCS event report to the Member State of Dispatch indicating the mistake. The primary purpose of the event report, however, is to allow traders to report major incidents that occur during a movement and little use is made of this possibility. In 2014 only 1,160 event reports were sent between Member States, or in approximately 0.04% of the 2.95 million EMCS movements made in that year. This may be due to the lack of a legal base to compel traders to report errors.

Member States are generally unwilling to consider the modification of e-AD data during a movement, due to fear of fraud. Therefore a common approach allowing for the update of movement data is not possible. So a legal provision to oblige the reporting of errors and possibly the obligation to use event reports to report them might be considered.

**Change of destination following the rejection or refusal<sup>40</sup> of a consignment:** Member States have agreed in an expert group that, when goods are rejected or refused, the consignor should issue a change of destination to have the consignment returned to the place of dispatch or to a new consignee. This should become a legal obligation. A further improvement would be if the consignor was obliged to take follow up action in the event

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<sup>37</sup> In principle the calculation of the taxable basis for raising excise duty on a shortage should take into account allowable measurement tolerances derived from the metrology acquis. These include Directive 2009/34/EC of the European Parliament and of the Council of 23 April 2009 relating to common provisions for both measuring instruments and methods of metrological control (Recast) and Directive 2004/22/EC of the European Parliament and of the Council of 31 March 2004 on measuring instruments

<sup>38</sup> Allowable loss is covered by Article 7(4) of the Horizontal Directive

<sup>39</sup> ARC: Administrative Reference Code, a unique number identifying the electronic administrative document notified by the excise authorities to the consignor, also showing that the electronic administrative document has been validated.

<sup>40</sup> In this context ‘rejection’ of a consignment refers to a decision by the consignee to not accept a consignment of goods that are at the place of dispatch, or are moving from the place of dispatch. ‘Refusal’ refers to a decision not to accept goods that have arrived at a place of destination.

that a rejection or refusal message is sent. Two suggestions were submitted for reducing these problems: firstly the specifications should be supported by a legal obligation to send rejection and refusal messages and secondly a legal base should be created so that a refusal or rejection message is automatically followed by a change of destination back to the consignor.

#### *5.1.5. The extent to which the current arrangements work in a coherent manner with the custom applications*

The evaluation assessed the coherence of the current arrangements for the movement of excise duty goods under suspension with the customs arrangements. The clear conclusion can be drawn that there is scope to further optimise the harmonisation of procedures. Overall, the Member State authorities and economic operators consulted agreed that problems exist with the exportation of excise goods. The procedures for importing excise goods were also a concern to Member States, but were shown to create less practical issues for economic operators. Despite the significant number of problems both economic operators and the Member State authorities stressed that the introduction of EMCS had facilitated coordination between excise and customs procedures. Compared with the previous paper based systems, EMCS had improved coordination.

The analysis confirmed the findings of the Customs and Fiscalis Project Group for Coordination of Excise and Customs procedures in relation to movements of excise goods under EMCS which identified the insufficiency of comparison between the data used in the EMCS and the ECS. Document references to EMCS movements in the ECS are not consistently applied. These issues have an impact on the effectiveness and efficiency of the procedures in question. Considerable administrative costs are created, as are opportunities for fraud. The Fiscalis and Customs Project Group has worked on identifying the issues connected with the lack of coordination, their drivers, and proposed preliminary solutions, which include suggestions for the revision of Directive 2008/118/EC.

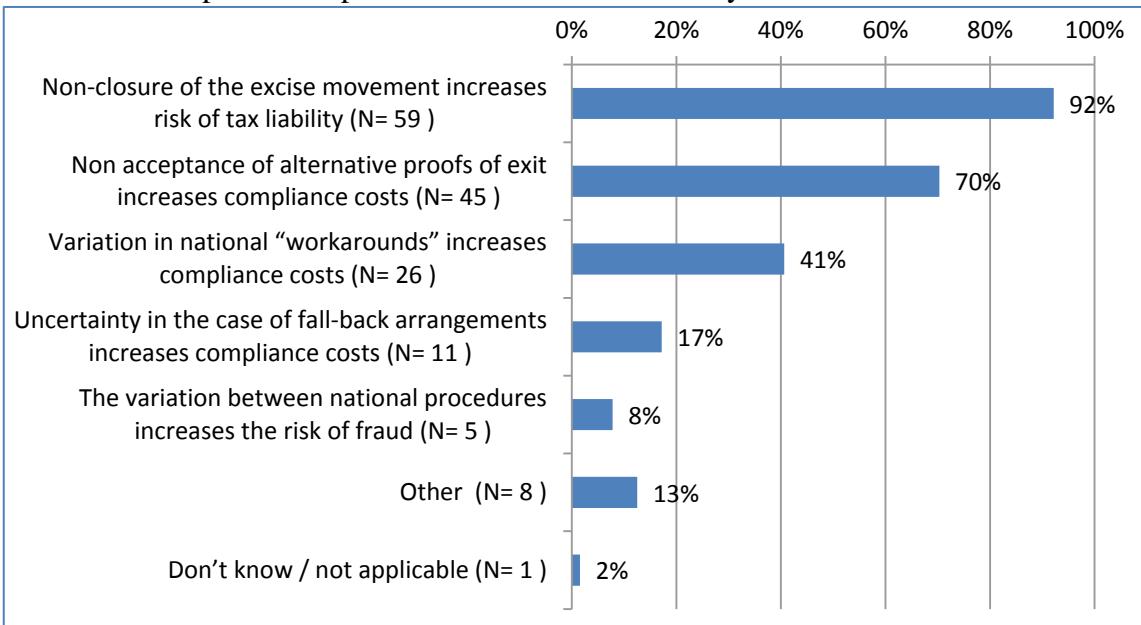
- **Export:**<sup>41</sup> Member State authorities and economic operators recognise the absence of coherence between the excise and export procedures as being problematic. 22 of the 27 Member States (80%) were of the opinion that the current arrangements, obligations and procedures related to the movement of excise duty goods under suspension were not coherent with the arrangements, obligations and procedures applicable to customs operations and export. This translates into increased administrative costs, due to the need to close movements manually. For example in 2014 France reported that they had to close 12 000 export movements manually. 41% of economic operators recognise the absence of coherence between the excise and export procedures as being a problem. The respondents stated they were not satisfied with the coordination between excise and customs procedures.

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<sup>41</sup> For more details on how EMCS and the Export Control System are supposed to coordinate please see: Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension pp 116-117

**Figure 10: Main issues with coordination between excise and customs export procedures (Source: Survey of economic operators 2015)**

64 economic operators reported on the main issues they had with coordination between



excise and customs export procedures. (Economic operators could give more than one answer.) Overwhelmingly the major issue for operators was the risk of non-closure of the excise movement. Economic operators consulted reported that they had to invest between two and four hours of staff time to provide documentation in the event of manual closure and that such manual closures could take place up to 100 times a year.

The underlying drivers of these problems are associated with the lack of coordination between export and excise procedures, meaning that information is not transferred from one set of procedures to the next. In some cases export declarations are lodged which do not contain a reference to the ARC of the e-AD that corresponds to the movement. This is particularly important when the Member State of dispatch is different to the Member State of export. The exit results from ECS will then not be passed on to the EMCS in the Member State of Export, meaning that no Report of Export will be generated. This means that the EMCS movement remains open and often has to be closed manually by the authorities, creating an administrative burden and even carrying a risk of liability for the consignor. In other case it may be that exit results are not received by Office of Export, thereby making it impossible to transmit the necessary information into EMCS. The impact of the reported practical problems with regard to the coherence between customs and export procedures is significant.

Other issues reported relate to variations in national procedures which increase compliance costs and increase the risk of desynchronisation between excise and customs procedures and applications, especially when more than one Member State is involved.

- **Import:** Importation for excise purposes occurs when goods which have entered the European Union from a third country are not placed under a customs special procedure or external transit, or are released from customs supervision. This entails the payment of customs duty, but also the payment of excise duty and VAT, unless the goods are immediately put under an excise duty suspension arrangement (holding under duty suspension in a tax warehouse or dispatched from the place of importation under excise

duty suspension). If the final consignee is in another Member State a movement under excise duty suspension must take place under the supervision of EMCS.

In comparison with export economic operators express fewer concerns, with 17% having some concerns (sample size 125), mainly due to national variations in reporting requirements causing increased costs (55% of those who expressed concerns,) On the other hand 19 out of 27 member States expressed concerns about the lack of coherence between import procedures and the handover to EMCS, indicating that further harmonisation of procedures might help to alleviate administrative burden and compliance costs.

- **Customs transit after export**<sup>42</sup> Some operators prefer to avoid having excise and customs procedures for indirect exports running in parallel by using transit procedures to replace them before the goods leave. In such a case, the export procedure is closed by the transit procedure, which starts at the Office of Exit<sup>43</sup>, doubling as a transit Office of Departure, which is not located at or near the physical place where the goods leave the Union. The goods are then moved under the supervision of the NCTS transit system to the place of exit. The transit is discharged as a result of a transit results message set from the Office of Destination to the Office of Departure. This is considered to be a trade facilitation because it allows for the transport of goods to a central hub under the export procedure, the closure of this procedure and subsequent regrouping and export under the transit procedure.

Of 27 Member States, 11 reported that the combination of an export procedure followed by a transit procedure caused problems. Such a procedure either requires manual closure of the EMCS movement or in some Member States the closure of the export procedure, which triggers a closure of the movement in EMCS and a release of the guarantee, even though the goods are still moving within the EU under the transit procedure.. The information in the EMCS is no longer accurate, as the goods only actually leave the EU once the transit procedure is completed.

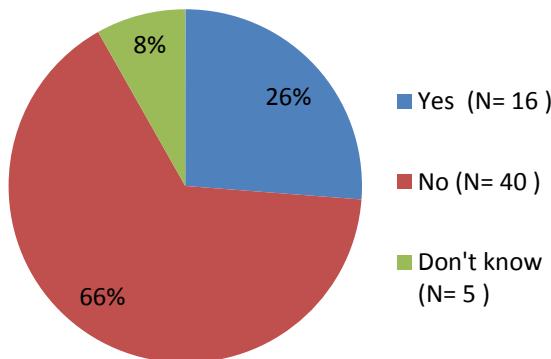
40% of the traders who exported excise duty goods reported using this procedure (45% did not, and 15% did not know if this procedure was used). They listed advantages with regard to the time and costs saved, and to an improved ability to monitor movements. But they also noted that there were problems in terms of the coordination of information across the excise and transit procedures. Procedures that combined an export procedure with a transit procedure for the export of excise goods caused problems for 26% of respondents that used them.

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<sup>42</sup> Transit is a customs special procedure which allows the computerised supervision of the movement of goods using NCTS from one place (departure) to another (destination) within the customs territory of the union. Transit is normally used to move non-union goods from a place where goods enter the European Union to a place where it is more convenient to clear the goods for free circulation. This possibility is covered by excise legislation. Additionally, in practice the export of goods is sometimes ended before the goods leave the EU and supervision is handed over to transit.

<sup>43</sup> The customs office of exit is normally the location of a customs authority at or near a frontier, seaport, or airport, which certifies that goods have left the customs territory of the European Union and that therefore the export of the goods has been completed. Article 329 of the UCC Implementing Act allows other locations within the territory to be treated as an office of exit, thereby completing the export before the goods physically exit the territory. This may or may not close EMCS automatically, depending on the Member State.

**Figure 11: Does the combination of an export procedure followed by a transit procedure for the export of excise goods cause any difficulties? (N=61)**



Note: The “N” in the title refers to the unique number of respondents answering the question, whereas the “N” for each answer refers to the number of responses relating to the particular answer. These may differ when the respondents are operating in more than one country/industry. Only respondents who answered “Yes” to question 107 were asked this question.

Source: Survey of economic operators 2015

#### *5.1.6. Observed impacts of the current arrangements reasonably attributable to the EU action*

The EMCS is one of a number of trans-European IT systems partly financed by the EU’s Fiscalis programmes. Clear efficiency gains accrue from having a common infrastructure that allows the secure and rapid exchange of electronic tax information between Member States. From both a cost and control perspective, the evidence indicates that only a Europe-wide system can provide the uniformity and harmonised conditions necessary to ensure the proper functioning of the internal market. Furthermore, the central coordination role played by the Commission, plus the governance of the EMCS, which covers all 28 Member States, produces clear gains in efficiency compared with any possible bilateral or international initiatives. Having a forum for the agreement and central coordination of common rules (i.e. the legal aspects) and specifications (i.e. the technical aspects) for the functioning of the arrangements helps to prevent duplication of effort.

A clear majority of the Member States indicated that the transition to EMCS has reduced their administrative costs compared to the previous system based on the paper AAD. 19 out of 27 Member States agree or strongly agree that the EMCS has contributed to reducing the administrative costs in their administrations for the handling of movements of excise duty goods under suspension compared to the previous paper-based system.

Advantages identified included:

- reducing labour costs for tasks associated with communicating with economic operators;

- freeing up human resources;
- eliminating the need to handle paper, and
- more time available for officials to control particularly risky movements.

## **5.2. Chapter V (Duty paid arrangements)**

### **Use of Chapter V arrangements (movement of goods already released for consumption)**

In the sample Member States which reported data, the indications are that duty paid arrangements represent between 1 - 10% of total numbers of intra-EU movements of excise goods, depending on the Member State in the sample. By volume, the duty paid arrangements appear to account for between 1-3% by volume of intra-EU movement of excise goods.

This is similar to a 2004 estimate by the Commission, which estimated that the movement of products on which excise duty has already been paid represented no more than 3% of total volume of intra-EU trade in excisable products. This suggests that usage of these arrangements has not changed greatly in volume with the introduction of EMCS.

For movements of excise duty paid products between traders (B2B) only limited data was available from most of the 12 Member States. Depending on the product category, Member States were able to provide some data on number, volume, value and tax revenue of duty paid movements.

Overall the data available suggest that the use of the current arrangements is marginal compared to total movements of excise goods within the EU. However, there are some variations by product sector (alcohol, tobacco and energy products and electricity).

#### **Alcohol**

The alcohol sector represents the highest volumes of duty paid movements reported (measured by shares of total intra-EU movements). This is supported by interviews conducted with economic operators in the 12 sample Member States which found that highest usage of these arrangements was by businesses in the alcohol sector (although the vast majority of movements occur under duty suspension).

Data from the survey of economic operators also suggests relatively high volumes of alcohol moved. Micro-enterprises (employing between 1 - 9 persons) represented the majority of the survey population. Those who said they used the arrangements reported to move an average of 19 000 litres in 2012. This is despite relatively few numbers of movements. Most businesses of this size that were using the duty paid arrangements reported to be engaged in between 5 - 24 movements on average per year.

#### **Tobacco**

Data was only received from 2 Member States (ES, PL). In terms of volume the available data suggests that usage of the duty paid arrangements for movements of tobacco is negligible when compared to the Eurostat data on total intra-EU movement of tobacco products.

Based on data from the 9 operators in the survey who reported to move cigarettes under the duty paid arrangements, an average of approximately 15 million pieces was reportedly moved in 2012 , although there was a wide range reported depending on the respondent, from 3000 to approximately 90 million.

### **Energy products**

Data on the volumes of energy products received in 2012 was provided by four Member States. The reported received volumes in these 4 Member States range from between 18 288 hl received in Latvia to approximately 44 522 hl and 676 933 713 kg in Poland. As reported by Poland, duty paid movements account for approximately 0.4% of intra-EU movements of energy products and electricity. Overall, compared to Eurostat data for these Member States, the reported volumes correspond to approximately 0.37% of total received volumes of energy products.

A number of Member States did report numbers of receipts and dispatches of energy products using the duty paid procedure. Of those Member States in the sample who provided data (AT, BE, CZ, ES, HU, LV and PL), the Czech Republic reported the highest number of receipts (5 004 receipts in 2012 of energy products) and dispatches (8 179 dispatches in 2012).

Only 4 respondents to the survey of economic operators reported to be moving energy products using the duty paid procedure in 2012, with an average number of less than 5 excise duty paid movements per month. While this does not necessarily suggest low usage, it does demonstrate a very low number of businesses using these arrangements in comparison to the alcohol sector (which accounted for the majority of responses).

### **Types of Trader**

Businesses use the duty paid arrangements for reasons related to the size of the business or frequency of transactions. A business may not be eligible to become an authorised warehouse keeper or may prefer to use the duty paid procedure for reasonably infrequent transactions within the EU. These arrangements are predominantly used for small scale B2B transactions.

The alcohol sector appeared to account for the highest levels of usage of the arrangements relative to other sectors. The evaluation found that the vast majority of operators moving energy products did so using established distribution channels, and therefore rarely needed the duty paid arrangements.

Different models of use were identified, particularly in the alcohol sector. For example, one common model was service providers (e.g. logistics companies) handling the administrative steps necessary for duty paid movements and ensure that all customs obligations are met. Service providers typically charged a fee per movement.

### **Distance selling**

In addition to B2B transactions the Chapter V arrangements are also used for distance selling, although extremely rarely. For distance selling, Member States did not consistently collect data and therefore available data on volume, value and tax revenue of distance sales within the EU was extremely scarce. According to Member States this was simply because statistics were not collected on such movements.

Consequently seven Member States indicated that they did not have data available in order to be able to assess the trend in distance sales over the last five years. Spain indicated that there were very few distance sales occurring and consequently assessed the trend as stable. Poland similarly assessed the trend to be stable over the last five years.

Two Member States (DE, FR) considered that the number of distance sales had been increasing over the last five years. Germany concluded this from data on revenues from excise duty on spirits, sparkling wine, and intermediary products (excluding beer and non-sparkling wine). France indicated the importance of wine tourism in this respect as well as the increasing prevalence of online distance sales, although no data was available on the actual number of movements.

Data from the survey of economic operators provides some more insight into the current usage (see Appendix 7). Of those survey respondents who reported to be moving duty paid goods, 91 respondents (approx. 40% of total survey population) indicated that they were currently involved or interested in distance sales.

Of these, 13% indicated that they moved spirits, liqueurs etc. However, the vast majority (95%) indicated that they were distance selling wine). These figures indicate the strong interest of the wine sector in distance selling and must be taken into account when interpreting the survey results.

### **The extent to which current arrangements protect the financial interest of the Member States**

|For B2B the current paper-based procedure makes it challenging to collect information on duty paid movements for the purposes of risk-analysis; there is a need to reinforce the capacity for tax administrations to monitor and control duty paid B2B movements.

There is a lack of clear information about national administrative procedures, which can present a real obstacle to trade for economic operators. The paper-based arrangements are not currently adequate in terms of providing a clear and consistent framework for duty paid movements.

The lack of capacity to track and monitor movements between businesses also applies to the distance selling arrangements. Many of the administrations had even less information on distance sales with few processes in place to consistently collect data on these movements.

The scarcity of available data on distance sales also means that Member States in the sample had very limited audit information on distance sales. Furthermore this meant that consistent estimates could not be made on the amount of fraud that affects distance sales of alcohol.

However, there were indications that fraud associated with the current arrangements was suspected. Some interviewed businesses (e.g. from ES, FR, HU) reported that they simply pay the excise duty in the Member State of dispatch and send the goods directly to the consumers without informing the national tax authorities. It is thus clear that some operators sell their products to consumers in other Member States without following the procedures laid down in Directive 2008/118/EC.

Administrations (e.g. FR) further confirmed that they suspected this was happening regularly although there was no data to support this. Economic operators clearly also suspected that fraud was occurring: in the survey 20% of the economic operators using the distance selling arrangements considered that there was a risk of fiscal fraud occurring under the current arrangements. There a number of indications from the data collected as to why this might be.

Firstly, there is evidence to suggest that some economic operators simply lack knowledge on the proper procedure to follow. In the survey 52% of the respondents involved in distance selling have indicated that they find it difficult to familiarise themselves with which procedures to follow.

Small wine producers in particular reported that it is difficult for them to sell their products abroad using the distance selling arrangements, as they first need to familiarize themselves with the rules in their home country as well as the rules in the Member State of the customer.

Secondly, the costs associated with compliance may to some extent be an incentive for fraud. The evidence collected clearly demonstrated that the current arrangements were considered burdensome, in particular the difficulties associated with finding a tax representative in the Member State of destination and the cost associated with appointing a tax representative.

Especially the small wine producers from France, Spain and Italy expressed frustration with the requirement to appoint a tax representative in the Member State of destination.

As a consequence, some economic operators said they feel forced to carry out distance sales illegally by not complying with the duty paid arrangements (e.g. in IT, DE). There were a number of identified instances where economic operators sent their products to other EU Member States without respecting the current rules in order to circumvent these administrative burdens. This could include not appointing a tax representative or not paying the excise duty due in the Member State of destination

Lastly, there are reported instances of situations where the final consumer may be unaware of the rules as to how and where the excise duty on alcohol products is levied. There were reported instances where distance selling providers were exploiting this lack of knowledge to sell their products in other Member States. For example some online shops advertise to consumers abroad that they can buy alcohol products over the internet in their shop located abroad at local prices. However, the consumers may then be asked indirectly to arrange for the transportation themselves, or not made aware of all the costs associated with the transaction.

### **Continued relevance of arrangements to the needs of the Member States and the economic operators**

For B2B transactions the paper-based procedure is burdensome and time-consuming for tax administrations and overall the time spent on the administration of such movements was reported to be reasonably high. Latvia was able to provide some estimates for the time taken to press a duty paid B2B movement:

#### **Handling B2B movements in Latvia**

For an **outbound B2B movement**, it usually takes the Latvian administration 30 minutes to process a SAAD. An additional 8 hours for processing of the application for

reimbursement in case of goods with fiscal stamps and 4 hours in case of goods not subject to tax stamps. One officer processes the SAAD, another one processes reimbursement and a third officer is responsible for fiscal marks. If a physical check is needed then two extra officers are involved.

For an **inbound B2B movement**, they further indicated spending 30 minutes for processing of the SAAD. An additional 30 minutes was needed to process information submitted prior to dispatch of goods. If a guarantee is submitted then an additional hour is needed. Finally, the administration reported typically spending 30 minutes producing the statement of payment of excise duty.

### **Striking the right balance between revenue collection and the lightening of administrative burden on economic operators. Possible discrimination and trading obstacles**

Evidence suggests that the current arrangements are imposing a substantial burden on businesses and are not compatible with the objective of encouraging the free movement of goods within the single market.

The practical problems reported suggested that variation between national requirements (e.g. documentary requirements for reimbursement) as well as a lack of clear information about the duty paid procedures can lead to discriminatory situations for businesses.

The majority of businesses consider the B2B duty paid arrangements to be more burdensome than using EMCS. However, the needs of smaller businesses must be taken into account, particularly if they face barriers to using EMCS.

Any proposal for modification of the current arrangements must take into the cost implied by these changes, as well as the overall usage of the duty paid arrangements.

For distance selling the requirement to appoint a tax representative, which most Member States have applied, imposes a significant burden on vendors. Economic operators report that the cost implied by this requirement is a significant barrier to market access. The fees charged for such tax representation services can in some cases exceed the charges raised by postal and express courier services for customs clearance of packages from non-EU countries. A number of interviewed businesses reported that in some cases it was easier to sell products to non-EU countries than to distance sell to consumers in other EU Member States.

In some countries, it was reported that the structure of the market meant that it is currently virtually impossible to legally distance sell alcohol into some EU countries at a reasonable cost. This was the case particularly in those countries where the only potential tax representatives were large shipping companies who were ill-equipped to deal with small consignments (typically 6 or 12 bottles), and would therefore either refuse to offer a service, or charge an unfeasibly high fee.

**Figure 12: Reported example costs of tax representatives**

Country of dispatch – country of destination	Reported average cost of tax representative (excluding duties and cost of wine, except where indicated)
<b>FR to NL</b>	30-100 EUR per declaration, excluding transport
<b>FR to BE</b>	20-40 EUR per consignment (service company including and transport; minimum 12 bottles)
<b>FR to BE</b>	40-70 EUR per consignment
<b>FR to UK</b>	60 EUR per consignment (for an order of 12 bottles)
<b>BE to UK</b>	100 GBP per declaration (excluding transport)

Source: Ramboll Management Consulting A/S, Final evaluation report, 2015

Other issues related to tax representatives identified in the survey were language barriers and information on tax representatives not being available, making it difficult to find out which steps to follow. No significant differences in the perceptions of burdensome activities and obstacles to distance selling were evident between the distance sellers in the different Member States (either in the survey or from the interviews carried out in the 12 Member States).

A number of interviewed businesses indicated that as a result of these issues they do not consider the distance selling arrangements feasible based on a pure cost assessment, as any revenue from a sale is offset by elevated costs of appointing a tax representative, familiarisation with rules etc. There was also evidence that this led to non-compliance and goods being sent directly to the consumer.

Practical problems experienced include a lack of clear information about which procedures to follow and a lack of clarity about the commercial aspect of the movement (i.e. the scope of Article 33 and Article 36).

None of the administrations in the sample was able to provide any estimates on time spent on processing a distance selling movement. To illustrate, the French authorities indicated that they spent a lot of time explaining the rules to interested economic operators, but they do not know whether the operators execute the transaction in the end or give up due to the current legislation.

The Italian administration was unable to answer as distance selling movements are handled locally, with the result that the central administration has no knowledge on this. Other Member States were not able to provide any estimates or did not have experience with distance selling movements.

In their responses to the questionnaire and the follow-up interviews, the majority of tax administrations signalled that the current arrangements for distance selling were not sufficient in some respect. Many of the concerns raised about the B2B procedure in terms of effort required to handle paper were also brought up for distance selling.

### **Impact on consumers of current arrangements, particularly for the distance selling of excise goods, possible distortion of competition**

Based on qualitative data collected, there appears to be a strong potential market for distance sales. Intra-EU online sales of alcohol are not in line with growth of e-commerce in Europe.

Consumers are willing to buy products from abroad if it is not available in their own country and value quality and availability. However consumers expect quick delivery and are often not aware of how the product is taxed.

There are reported instances of situations where the final consumer may be unaware of the rules as to how and where the excise duty on alcohol products is levied. There were reported instances where distance selling providers were exploiting this lack of knowledge to sell their products in other Member States. For example some online shops advertise to consumers abroad that they can buy alcohol products over the internet in their shop located abroad at local prices. However, the consumers may then be asked indirectly to arrange for the transportation themselves, or not made aware of all the costs associated with the transaction.

### **Observed impacts of the current arrangements reasonably attributable to the EU action**

Evidence from the data collected suggests that the duty paid arrangements are relevant to businesses who mainly use them for reasons of volume of trade (i.e. infrequent movements) and scale of the business (i.e. small businesses with less substantial commercial and IT infrastructure). Certain product categories (e.g. exempt energy products, denatured alcohol) are also required to be moved using the simplified administrative accompanying document (SAAD).

Although current levels of distance selling of alcohol appeared to be relatively low, there were high levels of interest in distance-selling, particularly from small wine-producers in wine-growing countries such as France, Italy and Spain.

Qualitative evidence from the interviews and survey suggests that there is a high potential market for distance sales of alcohol to consumers, but that it is currently not expanding in line with e-commerce growth in other sectors.

The analysis indicates that consumers either do not buy because it is too expensive, or because the vendor does not offer this service to them; or consumers buy wine, but they ignore that vendors do not comply with the legal requirements when selling and moving the wine to them. Vendors should make consumers aware of the tax rules when buying alcohol, and it can be argued that this a requirement implied by consumer legislation.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

### **6.1. Conclusions**

On the whole the arrangements for the authorisation of economic operators to hold, move and receive goods under excise duty supervision are working well. The compulsory automation of movement control under the EMCS is judged to be a success by all stakeholders. In 2014 the EMCS reduced annual administrative burden by between EUR 27.5 million and EUR 37 million (depending on the job profiles of the persons involved). For economic operators the results were mixed, although more felt that EMCS had reduced compliance costs (41%) than those who felt that EMCS had increased costs (30%) whilst 18% said that EMCS made no difference. EMCS has reduced the probability of certain types of fraud, but more needs to be done to make use of the data produced by the system, and certain types of fraud are difficult to eliminate within the single market due to the (necessary) absence of systematic physical control of goods being moved under these arrangements. Nevertheless, there are possibilities for further improvement, particularly in the coordination of excise and customs procedures and in the handling of exceptional situations where movements do not complete normally.

In contrast, the arrangements for moving goods already released for consumption to another Member State are much less satisfactory: current arrangements are inefficient, insufficient to provide for the free movement of excise goods and potentially open to tax evasion and fraud. Traders who used the duty paid arrangements reported a mean time of 221 minutes per movement taken up by compliance formalities. Member States reported times of between 4 and 8 hours taken up with administrative tasks associated with the processing of duty paid documentation. Distance selling is effectively impossible under the current arrangements, due to the high costs involved relative to the small size of the consignments and the arrangements provided for in the legislation appear to be rarely if ever used. This is a particular issue for Small and Medium Enterprises, who make the most use of these arrangements.

### **6.2. Recommendations**

The following table summarises the recommendations of the consultants based on the two studies.

Table 3: Recommendations for Chapters I to IV<sup>44</sup>

Number	Study Recommendation
1	Member States should ensure that information on <b>authorisation</b> requirements and procedures is clear, transparent and made available to economic operators (preferably by being published online).
2	Member States should ensure that <b>guarantees</b> are set at a level which is adequate to cover the risk of holding and moving the goods, but not to the extent that they discourage entry into the market by legitimate economic operators.
3	In order to ensure that EMCS is an effective tool for combating fraud, the European Commission and Member States should explore how the <b>maximum journey time</b> for a movement can be reduced, possibly by adapting it to the mode of transport and/or estimated journey distance.
4	The European Commission and Member States should explore the feasibility of implementing a European <b>risk analysis</b> system. Such a system could include, <i>inter alia</i> , a database of movements, as well as the development of risk parameters for detecting unusual patterns (e.g. an alcohol producer intending to move cigarettes), with data being provided by all Member States in relation to how long an operator has been in operation, where else it trades, and whether there are any current investigations involving the operator.
5	The European Commission should take steps to clarify Article 10 of the Directive, so that the competence to collect the tax is clear in the case of <b>exceptions</b> (e.g. irregularities, shortages). Such a clarification may require revision of the Directive.
6	Administrations and traders should seek to make full use of the existing message options available in the EMCS to ensure effective <b>communication</b> between actors (e.g. between consignor and Member State of destination; or between consignor and consignee in the case of a change of destination). Based on careful cost-benefit analysis, additional EMCS functionality to aid communication should be considered (e.g. a standardised form or template).
7	The European Commission should clarify the application of Directive 2008/118/EC to specific <b>energy products</b> , particularly those not mentioned in Article 20(1) Directive 2003/96/EC. In addition, in order to improve control, the European Commission and Member States should consider bringing particular products into the scope of the EMCS (e.g. lubricating oils).
8	The European Commission and Member States should continue their efforts to clarify the categorisation of <b>denatured alcohol</b> .
9	The on-going work of the Fiscals and Customs 2020 Project Group for Coordination of Excise and <b>Customs</b> procedures in relation to movements of excise goods under EMCS should be continued, and its solutions should be implemented by the European Commission and Member States.

**Table 4: Recommendations for Chapter V<sup>45</sup>**

<b>Number</b>	<b>Study Recommendation</b>
<b>10</b>	Member States should ensure that sufficient data is collected on duty paid movements (B2B and distance selling) in order to improve surveillance and monitoring capacity.
<b>11</b>	Further clarification should be provided as to the scope of Article 33 and Article 36 of Directive 2008/118/EC.
<b>12</b>	In order to remove inconsistencies in how the SAAD is used, further guidance should be provided on the data to be entered into the form
<b>13</b>	Further specify conditions and procedures related to reimbursement of excise duties (B2B arrangements) in the Member State of dispatch.
<b>14</b>	Further analyse options to include B2B duty paid movements in EMCS (Excise Movement and Control System), taking careful account of the needs of all business types and the costs of computerization.
<b>15</b>	Analyse possible ways to replace the requirement of Member States to use a tax representative in the Member State of destination for distance selling.

## 7. TABLE OF ABBREVIATIONS

<b>Abbreviation</b>	<b>Meaning</b>
<b>AAD</b>	Accompanying Administrative Document
<b>ARC</b>	Administrative Reference Code
<b>C&amp;C</b>	Counterfeit and contraband
<b>CCCIP</b>	Community Customs Code Implementing Provisions
<b>CDA</b>	Completely denatured alcohol
<b>CED</b>	Committee on Excise Duty
<b>CoD</b>	Change of destination
<b>CS/MISE</b>	Central System Services for the Management Information System for Excise
<b>DDNXA</b>	Design Document for National Export Application (ECS)
<b>e-AD</b>	Electronic Administrative Document
<b>EC</b>	European Commission
<b>ECP</b>	Excise Computerisation Project
<b>ECS</b>	Export Control System
<b>ECWP</b>	EMCS Computerisation Working Party
<b>EMCS</b>	Excise Movement and Control System
<b>ETD</b>	Energy Taxation Directive
<b>EU</b>	European Union
<b>FESS</b>	Functional Excise System Specification
<b>HMRC</b>	Her Majesty's Revenue and Customs
<b>LNG</b>	Liquefied natural gas
<b>MS</b>	Member State
<b>REFIT</b>	Regulatory Fitness and Performance
<b>RoR</b>	Report of Receipt
<b>SAAD</b>	Simplified Administrative Accompanying Document
<b>SAD</b>	Single Administrative Document
<b>SEED</b>	The System for Exchange of Excise Data is an online database which permits the verification of excise authorisations
<b>UCC</b>	Union Customs Code