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## PROPOSAL

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	25 May 2018
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2018) 346 final
Subject:	Proposal for a COUNCIL DIRECTIVE laying down the general arrangements for excise duty (recast)

Delegations will find attached document COM(2018) 346 final.

Encl.: COM(2018) 346 final



EUROPEAN  
COMMISSION

Brussels, 25.5.2018  
COM(2018) 346 final

2018/0176 (CNS)

Proposal for a

## **COUNCIL DIRECTIVE**

**laying down the general arrangements for excise duty (recast)**

{SEC(2018) 255 final} - {SWD(2018) 260 final} - {SWD(2018) 261 final}

## EXPLANATORY MEMORANDUM

### 1. CONTEXT OF THE PROPOSAL

#### • Reasons for and objectives of the proposal

Council Directive 2008/118/EC sets out general arrangements for goods subject to excise duty, with particular emphasis on the production, storage and movement of excise goods between Member States. Council Directive 2008/118/EC has replaced Council Directive 92/12/EEC<sup>1</sup>. The main objective of the Directive is to allow the free movement of goods while at the same time ensuring that the correct tax debt is ultimately collected by the Member States,

A REFIT initiative was announced in Annex II of the Commission Work Programme for 2017<sup>2</sup> at the same time as a REFIT initiative for Directive 92/83/EEC. Therefore a proposal to amend Directive 92/83/EEC will also be presented to the Council along with this proposal.

The Commission carried out an evaluation of Directive 2008/118/EC in the framework of the Commission's REFIT programme and submitted a report to the Council and the European Parliament on the implementation and evaluation of Council Directive 2008/118/EC on 21.4.2017<sup>3</sup>. The results of the evaluation were largely echoed by Council Conclusions, which were adopted on 5.12.2017<sup>4</sup>.

The Commission report and the Council conclusions reflected a general satisfaction with the functioning of the Excise Movement and Control System (EMCS). However, certain areas of improvement were identified. The main areas highlighted concerned the improvement of the alignment between excise and customs procedures and the partial or full automation of intra-EU movements of excise goods that have been released for consumption.

An external study was carried out in 2017 to prepare for an impact assessment for this proposal. The study and the impact assessment focussed on the same main areas mentioned in the Commission report and the Council conclusions: customs and excise interaction and the automation of intra-EU movements of excise goods released for consumption.

The following additional areas are addressed in the proposal:

- with regard to consignors who carry out an independent economic activity and who wish to dispatch excise goods, released for consumption in one Member State, to persons, in another Member State, not carrying out any independent economic activity: the introduction of the possibility for the consignor to use a tax representative and the deletion of the possibility for the competent authority of the Member State of destination to require a tax representative;
- a common solution for natural partial losses during a movement;
- automation of the exemption certificate and its handling for movements of excise products to consignees exempted from the payment of excise duties;
- a guarantee waiver for energy products moved by pipelines;

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<sup>1</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>2</sup> COM(2016) 710 final.

<sup>3</sup> COM(2017) 184 final.

<sup>4</sup> FISC 271 ECOFIN 957.

The following areas identified in the Commission report or the Council conclusions or in both are not addressed in this proposal:

- The Commission report underlined a need to create a simplified system for the movement of excise goods of low fiscal risk. This was not taken further as there was no consensus between Member States concerning what constituted a low risk movement. The Council conclusions reiterated this concern.
- The Commission report and the Council conclusions highlighted that distance selling of excise products could be improved. This is why a proposal to improve distance selling was held back until the One Stop Shop for VAT for distance selling had been established. It is important that excise arrangements for distance selling should be compatible with VAT arrangements. To this end, later in 2018 the Commission will be studying options for new arrangements for the distance selling of excise goods.
- The Council suggested a further examination of possible distortions of competition caused by variations in the minimum standard requirements or conditions for guarantees of payment of the excise duty required for the authorisation of tax warehouses<sup>5</sup>. These issues were not considered further as there were no clear conclusions from the Council about possible ways forward. The Evaluation of the Directive of 2015 contains a recommendation for Member States to set guarantees at a level which is adequate to cover the excise risk.
- The Council called on the Commission to explore the possibilities for revising the provisions on guidelevels for intended own use of alcohol and tobacco, ensuring that they remain fit for purpose to balance the objectives of public revenues and health protection. The Commission will launch a separate study on the guidelevels.
- The Council mentioned the possibility to create common direct delivery definitions and the working towards a better functioning of provisions on boats and aircrafts. These areas were not raised as a problem by stakeholders during the evaluation studies, or in the open public consultation.

The Directive has been substantially amended several times and further amendments are to be made. The Directive also contains several references to outdated legislation which should be updated at the same time. Consequently the Commission has decided to recast Directive 2008/118/EC in the interest of clarity.

- **Consistency with existing policy provisions in the policy area**

The proposal follows the existing objectives of Directive 2008/118/EC to ensure the smooth functioning of the internal market and the need to ensure effective taxation.

The proposal is consistent with the other legal acts that define the EU system for harmonised excise duties, i.e. energy products and electricity covered by Directive 2003/96/EC, alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC and manufactured tobacco covered by Directive 2011/64/EU. A proposal to amend Directive 92/83/EC will also be presented to the European Parliament and Council along with this proposal.

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<sup>5</sup> A tax warehouse is a location where excise goods can be manufactured, processed and stored without paying excise duty until the goods are removed from the location.

Due to the extension of the EMCS to the movements of excise goods to other Member States after their release for consumption by this proposal, changes are to be made in other legal acts:

- Decision n° 1152/1993/EC on computerising the movement and surveillance of excisable products needs to include intra-EU movements of excise goods released for consumption. This decision currently only allows for the computerisation of movements during which the excise duties are suspended. A recast of the Decision is proposed due to the great number of modifications.
- The new procedures for intra-EU movements of excise goods released for consumption require the registration of consignors and consignees making use of these procedures in the central and national registers of economic operators. Registration currently only applies to economic operators who make use of the arrangements in Chapters III and IV of Directive 2008/118/EC. This proposal requires an amendment of Council Regulation (EU) n° 389/2012 on administrative cooperation.
- **Consistency with other Union policies**

The proposal is linked to Regulation (EU) n° 952/2013 on the Union Customs Code and its delegated act (Regulations (EU) n° 2446/2015) in order to ensure the synchronisation of customs and excise provisions. The proposal replaces obsolete references to customs legal provisions and terminology with the current terms from Regulation (EU) no 952/2013.

Article 189 of Regulation (EU) n° 2446/2015, as amended by Regulation (EU) N° XXX<sup>6</sup>, will enable excise goods, which have Union status, to be placed under the external transit procedure, thereby allowing for the use of external transit for the supervision of excise goods being taken out of the territory of the EU.

## 2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

### • Legal basis

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

### • Subsidiarity (for non-exclusive competence)

The objectives of the proposal cannot be sufficiently achieved by the Member States for the following reasons:

Only a common legal framework providing for synchronisation between excise and customs legislation can secure a potential excise debt and can improve the handling of excise goods at import and export. In the absence of action at EU level Member States will continue to use different rules, which creates confusion to economic operators and increases their costs.

Automation of procedures applied to intra-EU movements of excise goods released for consumption cannot be improved without EU-wide coordination because of the need to share common data and to use common interoperability standards.

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<sup>6</sup> C(2018) 2794

This proposal will lead to a uniform application, transparency and simplification for the following exceptional situations:

- Natural losses (e.g. evaporation) during a movement should be treated uniformly in the Member States;
- a common electronic exemption certificate facilitates the use of the certificate;
- a common guarantee waiver for movements of energy products by pipelines facilitates the treatment of such movements throughout the Union, at no additional risk.
- **Proportionality**

The initiative seeks to keep a balance between the need to facilitate legitimate cross-border trade and the need to ensure that effective controls and monitoring are in place so that the excise debt is collected.

Most of the actions in this initiative aim to reduce regulatory costs for both Member States and economic operators by automation of current paper-based procedures and by defining common rules or by synchronising better excise and customs procedures.

This initiative aims to reduce fraud by a more efficient monitoring of movements of excise goods by automation and by data cross-checks between excise and customs business domains.

- **Choice of the instrument**

The proposal is a Directive.

### **3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS**

- **Ex-post evaluations/fitness checks of existing legislation**

A REFIT initiative was announced in Annex II of the Commission Work Programme for 2017<sup>7</sup>. The Commission carried out an evaluation of Directive 2008/118/EC in the framework of the Commission's REFIT programme and submitted a report 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" from 21/04/2017 (COM(2017) 184 final). This report was based on two external studies. The first study, on Chapter V of the Directive (i.e. intra-EU movement for excise goods released for consumption) was published in 2015<sup>8</sup>. The second study, which concentrated on Chapters III and IV of the Directive (i.e. provisions on tax warehousing and electronic control system, for duty suspension procedures), was published in 2016<sup>9</sup>. The results of the evaluation show that Member States' authorities and economic operators are generally satisfied with the functioning of the Directive, but show as well that there are areas for improvement. The results of the evaluation were largely echoed by Council Conclusions, which were adopted on 5.12.2017. The "Study contributing to an Impact Assessment on Council Directive 2008/118/EC concerning the general arrangements for excise duty", which took the results of the evaluation into account, was completed in 2017.

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<sup>7</sup> COM(2016) 710 final.

<sup>8</sup> <https://publications.europa.eu/en/publication-detail/-/publication/0cbff781-33f7-449d-8e8a-7ff031fa91bd>

<sup>9</sup> <https://publications.europa.eu/en/publication-detail/-/publication/18eef1c0-b9c0-11e5-8d3c-01aa75ed71a1>

- **Stakeholder consultations**

The consultation strategy has focused on three main groups of stakeholders: Member States' administrations, economic operators and citizens. The in-depth consultation programme was intended to gain a better understanding of the overall functioning of the mechanisms established by the Directive, the logic underlying the intervention, details of the issues at stake, the number and type of stakeholders involved and their roles, and the Directive's connection to other relevant EU policies. In addition, the objective of the consultation activities was to gather the views of the main stakeholders on a set of possible options for the revision of Directive 200/118/EC.

The main consultation activities that were carried out were:

- An open public consultation conducted to gather the views of citizens, non-government organisations, economic operators and other stakeholders on a set of possible options for the revision of the Directive;
- An economic operators' consultation including a series of interviews, as well as a detailed questionnaire sent to the most relevant stakeholders (e.g. EU customs' trade contact group, Excise Contact Group).
- A written questionnaire for all Member States authorities complemented by a series of interviews to selected Member State, taking into account geography and volume of excise trade. More specifically, this consultation targeted customs, excise and health national authorities.

All consultation activities took place between April and July 2017<sup>10</sup>. Further details on the consultations can be found in Annex 2 'Synopsis report' of the impact assessment accompanying this proposal.

- **Collection and use of expertise**

The results of a study on intra-EU movement for excise goods released for consumption and the results of a study on movements during which the excise duty is suspended were considered in the study contributing to the impact assessment. This study gathered and analysed evidence on costs and benefits to determine the scale of the problems identified in the Commission report to the Council and the European Parliament on the implementation and evaluation of Directive 2008/118/EC. The results of the consultations, carried out in the framework of the study contributing to the impact assessment, were taken up in the study contributing to the impact assessment. Due to the potential impact on public health (but also on tax loss and fraud), some health related questions with regard to the guidelevels used for cross-border purchases of alcohol and tobacco were as well included in the consultation, but in an advanced stage of the external study for the impact assessment. These questions will be examined in a separate study.

- **Impact assessment**

The impact assessment for the proposal was considered by the Regulatory Scrutiny Board on 24 January 2018. The Board gave a positive opinion to the proposal with recommendations that have been taken on board. The opinion of the Board, the recommendations and an explanation of how they were taken into account are included in Annex 1 of the Staff Working Document accompanying this proposal.

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<sup>10</sup> [https://ec.europa.eu/taxation\\_customs/consultations-get-involved/customs-consultations/publicconsultation-general-arrangements-excise-duty-harmonisation-and-simplification\\_en](https://ec.europa.eu/taxation_customs/consultations-get-involved/customs-consultations/publicconsultation-general-arrangements-excise-duty-harmonisation-and-simplification_en)

- **Regulatory fitness and simplification**

### **Summary of costs and benefits**

With the proposed simplifications, mainly via automation or harmonisation of procedures, the following yearly benefits are expected:

- EUR 14.55 million of administrative cost savings for Member States
- EUR 32.27 million of regulatory cost savings for Economic Operators

Some simplifications (e.g. automation of procedures for the intra-EU movement of excise goods released for consumption) are also expected to have a positive impact on the fight against fraud and on SMEs.

The preferred options incur some regulatory costs, mostly due to the evolutions of IT systems and to the registration of Economic Operators for to-be-automated procedures:

- EUR 17.63 million initial one-off costs and EUR 3.89 million yearly recurrent costs for Member States
- EUR 14.5 million initial one-off costs and EUR 4.35 million yearly recurrent costs Economic Operators

## **4. BUDGETARY IMPLICATIONS**

The proposal does not entail any implications for the Union budget.

The budgetary impact of the central development and operation of EMCS will be covered by the FISCALIS budget within the appropriations already foreseen in the official financial programming. No additional resources will be required from the EU budget. Moreover, this initiative does not intend to prejudge the Commission's proposal on the next Multiannual Financial Framework.

## **5. OTHER ELEMENTS**

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Committee on Excise Duty, an advisory committee on excise issues in which representatives of all Member States participate, chaired by the Commission, is responsible for the monitoring of the implementation of the computerised system following the Master and Management Plans referred to in Decision [...] /EU<sup>11</sup>. Council Regulation (EU) No 389/2012 provides for the automatic extraction of data from the computerised system for the generation of reports. Every five years the Commission will prepare a report on the implementation of the Directive

- **Explanatory documents (for directives)**

No explanatory documents on the transposition of the provisions of this proposal are considered necessary.

### **Simplification**

The recast of Directive 2008/118 EC provides for better alignment of legislation with business needs, while simplifying administrative procedures for public authorities (EU and national) and for economic operators.

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<sup>11</sup> COM(2018) 341

## **Repeal of existing legislation**

Directive 2008/118/EC will be repealed.

### **• Explanation of the proposal**

The proposed Recast Directive contains improvements as suggested in the report to the Council and the European Parliament and in the conclusions of the Council on the implementation and evaluation of Directive 2008/118/EC.

At the same time it aligns provisions of Directive 2008/118/EC with the evolution of customs and other relevant legislation and to procedural requirements resulting from the Treaty of Lisbon.

The overall structure of the Directive and the elements that are not covered by the following explanation remain the same.

The modifications envisaged can be classified as follows:

#### *3.1. Excise and customs interaction*

- Export: a new obligation for the declarant<sup>12</sup>, as defined in Article 5(15) of Regulation (EU) n° 952/2013, to provide the competent authorities with the unique administrative reference number (ARC) when the export declaration is lodged. This ensures that an electronic administrative document for excise goods under duty suspension, which presented for export, has been validated and that therefore there is an excise guarantee available for the movement of the goods.
- A new obligation for the competent authorities to ensure consistency between the electronic administrative document and the customs declaration provides significant benefits to the fight against fraud and in securing the excise debt at a relatively low cost for Member States and economic operators.
- Given the high administrative benefits and negligible regulatory costs highlighted by all stakeholders, a common list of documents is proposed, which must be taken into account as evidence of exit for excise goods.
- Allowing the use of the external transit procedure after the export procedure for excise goods: The objective of legal clarity and provision of sufficient guarantees for all exports of excise goods would be fully achieved by allowing external transit after the end of the export procedure for excise goods. These goods lose their Union status when placed under the external transit procedure and will therefore be under customs supervision until the goods are taken out of the customs territory of the Union. This has clear benefits for trade and presents negligible additional enforcement costs. The proposal contains a provision allowing the external transit procedure to take over monitoring and supervision from the computerised system. The fiscal obligations are taken over by the transit principal.
- Import: A new obligation for the declarant to provide the unique excise number<sup>13</sup> of the consignor and the consignee referred to in Article 19(2) (a) of Regulation (EU) n° 389/2012 to the competent authorities in the Member State of importation responsible for release for free circulation. This should enable the competent authorities to ensure that that the evidence for claims for exemption from paying excise duty on import are consistent with the details submitted via the computerised system, when moving excise

<sup>12</sup> The declarant is the person making a customs declaration. Here, a person making a declaration for free circulation (importation) or an export declaration.

<sup>13</sup> Otherwise known as the SEED number, this is the unique number given to economic operators authorised or registered to carry out excise operations.

goods from a place of importation under excise duty. A proof that imported goods will be dispatched from the Member State of importation to another Member State under excise duty suspension should be provided to the competent authorities in the Member State of dispatch, such as the administrative reference code of the electronic administrative document. Given that the details of the alignment between customs and excise procedures at import is a national matter it is proposed that Member States may decide that this information only needs to be submitted on request.

### *3.2. Intra-EU movements of excise goods released for consumption.*

In order to computerise procedures applied to intra-EU movements of excise goods released for consumption that are to be delivered for commercial purposes and in order to do this by extending the existing computerised system the following changes will be made to the Directive:

- determining when excise duty on the goods is chargeable and who is liable to pay the excise duty;
- creating two new economic operator roles, the certified consignor and the certified consignee, to allow for the identification in the computerised system of the economic operators using these procedures;
- aligning the arrangements for guarantees with those under duty suspension;
- allowing authorised warehousekeepers and registered consignors to act as a certified consignors. Authorised warehousekeepers and the registered consignees should be able to act as a certified consignee;
- determining the general rules governing the automated procedure;
- replacing the reference to the paper document accompanying the excise goods released for consumption in one Member State and which are moved to another Member State by a reference to the new electronic simplified administrative accompanying document.
- in order to ensure the proper functioning of the procedures and the computerised system supervising the procedures, the power to adopt delegated and implementing acts in accordance with Articles 290 and 291 TFEU, should be delegated to the Commission in respect of the rules under Article 34.

### *3.3. Other*

To improve the handling of allowable losses under Article 7 common thresholds will be introduced below which no irregularity should be assumed. An empowerment for a delegated act for this purpose will be proposed.

In order to improve the handling of exemption certificates under Article 13 the conferral of an implementing power is proposed to cover the form of the exemption certificate.

Some Member States allow for a guarantee waiver for the movement of energy products by fixed pipelines. Since this type of movement presents a very low fiscal risk and with a view to harmonise the procedures a common guarantee waiver is introduced in the Directive.

In order to assess the costs and benefits of the computerised system a common obligation for Member States to provide information for the preparation of statistics and reports for stakeholders should be introduced.

## Detailed explanation of the specific provisions of the proposal

### *Chapter I: General Provisions*

Article 3 – *Application of the Union Customs Code to excise goods* - provides that the formalities relating to importation or exportation also applies in case where the excise goods are entering or leaving those parts of the territory of Union where this Directive applies from or to an area which is defined as the Customs territory, but where this Directive does not apply. Paragraph 4 is modified by deletions of reference to the "customs suspensive procedure" as this term no longer exists and Articles 15 to 47 do not apply to non-Union goods because they are under custom supervision.

Article 4 – *Definitions* - provides a number of definitions. First of all, since the term "customs suspensive procedure" no longer exists, the definition is removed. As a consequence in order to align with the customs legislation a definition of "importation" also has to be updated. Moreover two new definitions are introduced: a definition of "certified consignor" and a definition of "certified consignee" in the framework of the computerisation of intra-EU movements of excise goods released for consumption. "Certified consignor" refers to a consignor of excise goods released for consumption in one Member State and moved to another Member State in order to be delivered for commercial purposes. "Certified consignee" refers to a consignee of excise goods released already for consumption in another Member State. The definition of "Member State of destination" is shifted from Article 36 to Article 4 in order to address this term for the whole Directive.

### *Chapter II: Chargeability, Irregularities during a movement under Duty Suspension, Reimbursement and Remission, Exemption*

#### Section 1: Chargeability, Irregularities during a movement under Duty Suspension

Article 7 – *Time and place of chargeability, destruction and irretrievable losses* – stipulates the time and the place where excise duty becomes chargeable, at the same time clarifying the meaning of release for consumption. A new paragraph 5 clarifies that partial loss due to the nature of the goods that occurs under duty suspension arrangements will not be considered as a release for consumption where the amount of loss falls below the common partial loss threshold for excise goods. In order to ensure uniform treatment for partial losses throughout the Union the Commission will be empowered to adopt delegated acts concerning the common partial loss thresholds.

#### Section 3: Exemptions

Article 13 – *Exemption certificate* – stipulates the content of the exemption certificate used for movements of excise goods under a suspension arrangement to consignees listed in Article 12. Paragraph 2 explains that the exemption certificate provided in this Article may be used by Member States to cover other fields of indirect taxation. In paragraph 3 in order to ensure uniform conditions regarding the form of an exemption certificate and procedures for its use implementing powers are conferred on the Commission.

Article 14 – *Excise duty payment exemptions for passengers traveling to third countries* – current paragraph 4 is deleted. A transitional period provided in this provision during which Member States were authorised to continue to exempt from excise duty goods supplied by existing tax-free shops situated at their land border with a third country has expired.

### *Chapter IV: Movement of excise goods under suspension of excise duty*

#### Section 1: General provisions

Article 17 – *General provisions for the place of dispatch and of destination of the movement* – defines a concept called the 'duty suspension arrangement', and defines the valid starting points for a movement under duty suspension.

In paragraph 1 subparagraph a) a new point (v) is introduced in order to allow the use of the external transit procedure following the export procedure continuing until the exit of the excise goods from the territory of the Union. Therefore the customs office of exit becomes a possible excise destination, where the goods are taken over under the external transit procedure. The customs office of exit will be at the same time the customs office of departure for the external transit procedure.

A new paragraph 2 is introduced to improve alignment between excise and customs import procedures. In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration at importation, information on the consignor and the consignee and evidence that imported goods will be dispatched from the Member State of importation to another Member State will be provided to the competent authorities in the Member State of dispatch. Member State will have the possibility to require the evidence mentioned above only upon request.

Article 18: *Guarantee* – provides rules for a guarantee required for the movement under suspension of excise duty. The modification of this Article waives the guarantee for movements of energy products by fixed pipelines in all Member States. Currently already several Member States allow a guarantee waiver for the movement of energy products by fixed pipelines because this type of movement presents a very low fiscal risk.

Article 20 – *Beginning and end of movements of excise goods under duty suspension* – in paragraph 2 a new letter (iii) is introduced in order to establish the end of the movement where the export procedure is followed by the external transit procedure in accordance with Article 189 of Regulation (EU) 2015/2446.

Section 2: Procedure to be followed for movements of excise goods under suspension of excise duty

Article 21 – *Electronic administrative document* – Paragraph 5 is moved to the new Article 22 which will cover the handling of the electronic administrative document for goods being exported. Paragraphs 6 will become paragraph 5 with its wording slightly updated in order to clarify that in cases where there is nobody physically accompanying the excise goods (for example, a container being moved by rail or by sea), the consignor will need to provide the unique administrative code (ARC) to the transporter or carrier. The consignor will have the possibility to decide how the ARC will be provided.

Article 22 – *Handling of the electronic administrative document for goods being exported* – this is a new article which stipulates the rules to be followed when excise goods are to be exported or taken out of the territory of the Union. Paragraph 1 contains the wording of the old Article 21 (5). Paragraph 2 introduces the obligation on the declarant to inform the competent authorities in the Member State of export of the unique administrative reference code which should ensure consistency between the electronic administrative document and the customs declaration at export. Paragraph 3 stipulates that before the release for export of the goods, the competent authorities of the Member State of export should verify whether the data contained in electronic administrative document corresponds to the data from the customs declaration. In case of incoherencies, the information should be passed from the competent authorities of Member State of export to the competent authorities in the Member State of dispatch (paragraph 4). Paragraph 5 specifies that in order to enable the Member State of dispatch to take appropriate action, the competent authority in the Member State of export

should inform the competent authority in the Member State of dispatch immediately if the goods are no longer to be taken out of the territory of the Union. At the same time the Member State of dispatch should inform the consignor that the goods are no longer taken out of the territory of the Union.

Article 23 – *Special arrangements for movements of energy products* – a new paragraph 3 has been introduced in order to exclude export of energy products from the special arrangement for movements of those excise goods.

Article 26 – *Formalities at the end of a movement of goods being exported* – the modification concerns formalities in the situation where the export procedure is followed by external transit procedure providing that a 'report of export', a proof that the excise movement has ended correctly, has to be completed by the competent authorities of Member State of export on the basis of information received from the customs office of exit which is at the same time the customs office of departure for the external transit procedure.

Article 27 – *Unavailability of the computerised system* - lays down the procedures to be used when the computerised system is not available in the Member State of dispatch. A new paragraph 6 lays down the rules in the cases of the normal export procedure and in cases where the export procedure is followed by the external transit procedure.

Article 28 – *Fallback documents at destination or in cases of export* – in paragraph 2 the notification that the goods will no longer be taken out of the Union has been introduced.

Article 29 – *Alternative proofs of receipt and evidence of exit* – stipulates that alternative proof of the correct ending of a movement must be provided in the absence of the report of receipt or the report of export. In order to align with customs procedures and in order to simplify the recognition of alternative evidence of exit, a new paragraph 4 sets a standard minimum list for alternative evidence of exit which should be taken into account by the Member State of dispatch to determine that the goods have been taken out of the territory of the Union.

Article 30 – *Delegation of power and conferral of implementing powers with respect to the documents to be exchanged under duty suspension arrangement* – the wording of the provision is modified – in order to ensure that the documents used in the context of the movement of excise goods under a duty suspension arrangement are understandable in all Member States and can be processed by the computerised system, the power to adopt delegated acts should be conferred on the Commission in respect of laying down the structure and content of the electronic administrative documents exchanged through the computerised system and of the paper documents used under Articles 27 and 28 for goods moved under the duty suspension arrangement. In order to ensure uniform conditions for the completion, presentation and submission of documents used for movements of excise goods under a duty suspension arrangement, including when the computerised system is not available, implementing powers should be conferred on the Commission.

#### *Chapter V: Movement and taxation of excise goods after release for consumption*

Section 2 Procedures to be followed for movements of excise goods which have been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes.

Article 34 – *General* – provides some modifications to the current rules for excise goods which have already been released for consumption in one Member State and are moved for commercial purposes to the territory of another Member State. For the purpose of this Article and in order to avoid uncertainty in interpretation of "holding for commercial purposes" the definition of "holding for commercial purposes" is replaced by the definition of "delivered for

commercial purposes". Paragraphs 3 and 4 define when a movement of excise goods to be delivered for commercial purposes shall be deemed to begin and end.

Article 35 – *Chargeable event* – defines the person responsible for payment of the excise duty and the moment when the excise duty needs to be paid.

Article 36 – *Conditions for a movement of excise goods under this Section* – a partially new Article provides a base for the use of the computerised system for movements of excise goods that have been released for consumption in one Member State and are moved for commercial purposes to another Member State. It stipulates responsibilities of the economic operators involved in such movements. Aligning with the existing suspension procedures in Chapter IV, paragraph 3 introduces clear rules for a guarantee required for the movement under this Section, the person who has to provide a guarantee and where it is valid. Paragraph 6 and 7 gives a possibility to authorised warehousekeepers or registered consignors to act as certified consignors and authorised warehousekeepers or registered consignees a possibility to act as certified consignees.

Article 37 – *Electronic simplified administrative document* – provides for rules concerning the submission of an electronic simplified document using the computerised system developed under Decision No 1152/2003/EC. In particular, the Articles provide for the assignment of a unique simplified administrative reference code (SARC) which must be available throughout the movement. Paragraph 5 lays down specific provisions concerning the possibility to change the destination of the movement.

Article 38 – *Report of receipt* – provides for the use of an electronic 'report of receipt' as proof that the movement has ended correctly and describes the subsequent document flow. The last paragraph allows a remission or reimbursement of excise duty paid in the Member State of dispatch on the basis of a report of receipt.

Article 39 – *Fallback and recovery at dispatch* – lays down the procedures to be used when the computerised system is not available in the Member State of dispatch.

Article 40 – *Fallback and recovery of data - report of receipt* – lays down the procedures to be used when the computerised system is not available in the Member State of destination.

Article 41 – *Alternative proofs of receipt* - stipulates that alternative proof for the delivery of the excise goods in the absence of the report of receipt may be provided.

Article 42 – *Derogation for certified consignors and certified consignees from the obligation to use the computerised system* – provides the possibility for economic operators dispatching or receiving excise goods (released for consumption) occasionally to use a fallback form of the electronic simplified administrative document. Such permission may be limited to a specific quantity of excise goods, a single movement, a single consignor /consignee or a specific period of time.

Article 43 – *Movement of goods released for consumption between two places in the territory of the same Member State via the territory of another Member State* – paragraph 1(b) has been deleted due to the automation of movements of excise goods released for consumption. The electronic simplified administrative document will replace a declaration which the consignor currently has to send to the competent authorities of the place of departure.

Article 44 – *Delegation of power and conferral of implementing power for the movement of goods to be delivered for commercial purposes* – in order to ensure that the documents used in the context of the intra-EU movement of excise released for consumption are understandable in all Member States and can be processed by the computerised system, the power to adopt delegated acts should be conferred on the Commission in respect of laying down the structure

and content of the electronic documents exchanged through the computerised system and of the fallback documents used under Articles 39, 40 and 42 for the intra-EU movement of excise goods released for consumption. In order to ensure uniform conditions for the completion, presentation and submission of documents used for intra-EU movements of excise goods released for consumption, including when the computerised system is not available, implementing powers should be conferred on the Commission.

Article 45 – *Distance Selling* – introduces the choice for the consignor to use a tax representative to comply with the requirements of the Member State where the consignor, who carries out an independent economic activity, wants to move excise goods released for consumption in one Member State to a person not carrying out any independent economic activity in another Member State. The possibility to require the use of a tax representative will be deleted.

#### Section 4 Destruction and loss

Article 46 – *Destruction and loss* – a new paragraph 2, in a same way as under duty suspensions, stipulates that in the case of the partial losses of goods resulting from their nature, excise duty should not be chargeable when the amount of loss falls within the common partial loss threshold for those excise goods.

#### Section 5 Irregularities during the movement of excise goods

Article 47 – *Irregularities during the movement of excise goods* – in paragraph 3 a joint and several liability for payment of excise duty is introduced.

#### Chapter VII: Exercise of the delegation and Committee Procedure

Article 52 – *Exercise of the delegation* – sets the general rules for the delegation of power.

#### Chapter VIII: Reporting and Transitional and Final provisions

Article 54 – *Reporting on the implementation of this Directive* – introduces a regular evaluation obligation on the Commission.

Article 55 – *Transitional provisions* – provides for transitional periods for the application of Articles 33-35 and 22(5).

Article 56 – *Transposition* – establishes the obligation concerning adoption, publications and communication by Member States of provisions necessary to comply with this Directive.

Article 57 – *Repeal* – As a consequence of the recast Directive 2008/118/EC is repealed.

Article 58 – *Entry into force and application* – The Directive enters into force on the twentieth day following that of its publication in the Official Journal. However there are different applications dates for provisions which have substantially changed and for provisions which have not substantially changed.

Proposal for a

## COUNCIL DIRECTIVE

~~concerning~~ ☒ laying down ☒ the general arrangements for excise duty ~~and repealing Directive 92/12/EEC~~ (recast)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ~~establishing the European Community~~ ☒ on the Functioning of the European Union ☒, and in particular Article 93 ☒ 113 ☒ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

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

Acting in accordance with a special legislative procedure,

Whereas:

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↓ 2008/118/EC recital 1 (adapted)

- (1) ☒ Council Directive 2008/118/EC<sup>14</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<sup>15</sup>~~ has been substantially amended several times. Since further amendments are to be made, ~~it~~ ☒ that Directive ☒ should be ~~replaced~~ ☒ recast ☒ in the interests of clarity.
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↓ 2008/118/EC recital 2 (adapted)

- (2) Conditions for charging excise duty on ~~the~~ goods covered by Directive ☒ 2008/118/EC ☒ ~~92/12/EEC, hereinafter ‘excise goods’~~, need to remain harmonised in order to ensure the proper functioning of the internal market.
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↓ 2008/118/EC recital 3

- (3) It is appropriate to specify the excise goods to which this Directive applies and to refer for that purpose to ~~Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes<sup>16</sup>, Council Directive 92/80/EEC of 19 October~~

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<sup>14</sup> Council Directive of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).

<sup>15</sup> OJ L 76, 23.3.1992, p. 1.

<sup>16</sup> OJ L 316, 31.10.1992, p. 8.

~~1992 on the approximation of taxes on manufactured tobacco other than cigarettes<sup>17</sup> Council Directive 2011/64/EU<sup>18</sup>, Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages<sup>19</sup>, Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages<sup>20</sup>; Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco<sup>21</sup> and Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity<sup>22</sup>.~~

↓ 2008/118/EC recital 4 (adapted)

- (4) Excise goods may be subject to other indirect taxes for specific purposes. In such cases, however, and in order not to jeopardise the useful effect of ~~Community~~ ☒ Union ☒ rules relating to indirect taxes, Member States should comply with certain essential elements of those rules.

↓ 2008/118/EC recital 5 (adapted)

- (5) In order to ensure free movement, taxation of goods other ~~than~~ ☒ than ☒ excise goods should not give rise to formalities connected with the crossing of frontiers.

↓ 2008/118/EC recital 6 (adapted)

- (6) It is necessary to ensure the application of formalities when excise goods are moving ~~from~~ ☒ between ☒ the territories which are defined as being part of the customs territory of the ~~Community~~ ☒ Union ☒ but which are excluded from the scope of this Directive ~~to~~ ☒ and ☒ territories ~~which are also so defined but~~ to which this Directive does apply.

↓ 2008/118/EC recital 7 (adapted)

~~Since suspensive procedures under Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>23</sup> provide for adequate monitoring whilst excise goods are subject to the provisions of that Regulation, there is no need for the separate application of an excise monitoring system for the time that the excise goods are subject to a Community customs suspensive procedure or arrangement.~~

<sup>17</sup> ~~OJ L 316, 31.10.1992, p. 10.~~

<sup>18</sup> ~~Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24).~~

<sup>19</sup> ~~Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 21).~~

<sup>20</sup> ~~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, 31.10.1992, p. 29).~~

<sup>21</sup> ~~OJ L 291, 6.12.1995, p. 40.~~

<sup>22</sup> ~~Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).~~

<sup>23</sup> ~~OJ L 302, 19.10.1992, p. 1.~~

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↓ 2008/118/EC recital 8 (adapted)

- (7) Since it remains necessary for the proper functioning of the internal market that the concept, and conditions for chargeability, of excise duty be the same in all Member States, it is necessary to make clear at ~~Community~~ ☒ Union ☒ level when excise goods are released for consumption and who ~~the person~~ ☒ is ☒ liable to pay the excise duty ~~is~~.
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↓ 2008/118/EC recital 9 (adapted)

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

- (9) In addition to total destruction or irretrievable loss of goods, partial losses may occur due to the nature of the goods. No duty should be charged for those partial losses insofar as they do not exceed the pre-established common partial loss thresholds.
- (10) In order to ensure uniform treatment of partial losses throughout the Union, the power to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of determining the common partial loss thresholds. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>24</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
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↓ 2008/118/EC recital 10

- (11) Arrangements for the collection and reimbursement of duty have an impact on the proper functioning of the internal market and should therefore follow non-discriminatory criteria.
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↓ 2008/118/EC recital 11  
(adapted)

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

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<sup>24</sup> OJ L 123 of 12.5.2016, p.1.

excise goods do not arrive at their destination and no irregularity has been detected, the irregularity shall be deemed to have occurred in the Member State of dispatch.

↓ 2008/118/EC recital 12  
⇒ new

- (13) In addition to the cases of reimbursement provided for in this Directive, Member States should ~~be able~~, where the purpose of this Directive so ~~⇒ requires~~ ~~⇐ allows~~, to reimburse excise duty paid on excise goods released for consumption.

↓ 2008/118/EC recital 13

- (14) The rules and conditions for the deliveries which are exempt from the payment of excise duty should remain harmonised. For the exempted deliveries to organisations situated in other Member States, use should be made of an exemption certificate.

↓ new

- (15) In order to ensure uniform conditions regarding the form of the exemption certificate, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>25</sup>.

↓ 2008/118/EC recital 14  
(adapted)

- (16) The situations in which tax-free sales to travellers leaving the territory of the ~~Community~~ ~~☒~~ Union ~~☒~~ are allowed should be clearly determined with a view to avoiding evasion and abuse. Since persons travelling over land can move more frequently and more freely as compared to persons travelling by boat or aircraft, the risk of non-respect of the duty and tax free import allowances by the traveller and consequently the control burden for the customs authorities is substantially higher in the case of travel over land. It is therefore appropriate to provide that excise duty-free sales at land borders should not be allowed, ~~as is already the case in most Member States. A transitional period should however be provided for during which Member States are authorised to continue to exempt from excise duty goods supplied by existing tax-free shops situated at their land border with a third country.~~

↓ 2008/118/EC recital 15  
(adapted)

- (17) Since checks need to be carried out in production and storage facilities in order to ensure that the ~~tax debt~~ ~~☒~~ duty ~~☒~~ is collected, it is necessary to retain a system of warehouses, subject to authorisation by the competent authorities, for the purpose of facilitating such checks.

<sup>25</sup> Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

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↓ 2008/118/EC recital 16  
(adapted)

- (18) It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and ~~traders~~ ☒ economic operators ☒ without authorised warehousekeeper status.
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↓ 2008/118/EC recital 17  
(adapted)

- (19) It should be possible for excise goods, prior to their release for consumption, to move within the ~~Community~~ ☒ Union ☒ under suspension of excise duty. Such movement should be allowed from a tax warehouse to various destinations, in particular another tax warehouse but also to places equivalent for the purposes of this Directive.
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↓ 2008/118/EC recital 18  
⇒ new

- (20) The movement of excise goods under suspension of duty should also be allowed from their place of importation to those destinations and accordingly provision should be made with regard to the status of the person allowed to dispatch, but not allowed to ~~hold~~ ⇒ store ⇐, the goods from that place of importation.
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⇓ new

- (21) In order to allow the use of the external transit procedure following the export procedure, the customs office of exit should become a possible destination of a movement under excise duty suspension. The moment when the duty suspension arrangement ends in that case should be specified. It should be specified that the competent authorities in the Member State of export should complete the report of export on the basis of the confirmation of exit which the customs office of exit sends to the customs office of export at the start of the external transit procedure. In order to allow the external transit procedure to take over the responsibilities for the excise goods under this Directive, Article 189 of Regulation (EU) n° 2015/2446 has been amended by Regulation (EU) n° [...]. Consequently, Union excise goods should also be allowed to be placed under the external transit procedure.
- (22) In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration at importation when excise goods released for free circulation are moved from the place of importation under duty suspension, information on the consignor and the consignee and a proof that imported goods will be dispatched from the Member State of importation to another Member State should be provided by the person who declares the excise goods for importation ('declarant') to the competent authorities in the Member State of importation.
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↓ 2008/118/EC recital 19

- (23) In order to safeguard the payment of excise duty in a case of non-discharge of the excise movement, Member States should require a guarantee, which should be lodged

by the authorised warehousekeeper of dispatch or the registered consignor or, if the Member State of dispatch so allows, by another person involved in the movement, under the conditions set by the Member States.

↓ new

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

↓ 2008/118/EC recital 20

~~It is necessary, in order to ensure the collection of taxes at the rates laid down by Member States, for the competent authorities to be in a position to follow the movements of excise goods and provision should therefore be made for a monitoring system for such goods.~~

↓ 2008/118/EC recital 21  
(adapted)  
⇒ new

- (25) ~~For that purpose,~~ ⇒ In order to ensure a speedy completion of the necessary formalities and facilitate the supervision of movements of excise goods moved under suspension of excise duty, ⇐ it is appropriate to use the computerised system established by Decision No 1152/2003/EC of the European Parliament and of the Council ~~of 16 June 2003 on computerising the movement and surveillance of excisable products~~<sup>26</sup> ☒ for the exchange of electronic administrative documents between the persons and competent authorities concerned ☒ . ~~Use of that system, as opposed to a paper-based system, accelerates the necessary formalities and facilitates the monitoring of movement of excise goods under suspension of excise duty.~~

↓ new

- (26) In order to ensure that the documents used in the context of movement of excise goods under a duty suspension arrangement are readily understandable in all Member States and can be processed by the computerised system established by Decision (EU) [...], including when the computerised system is not available, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of laying down the structure and content of those documents.
- (27) In order to ensure uniform conditions for the completion, presentation and submission of documents used in the context of movement of excise goods under a duty suspension arrangement, including when the computerised system is not available, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

<sup>26</sup> Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products (OJ L 162, 1.7.2003, p. 5).

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↓ 2008/118/EC recital 22  
(adapted)

- (28) It is appropriate to lay down the procedure by which ~~traders~~ ☒ economic operators ☒ inform the ~~tax~~ ☒ competent ☒ authorities of the Member States of ☒ dispatch and destination of ☒ consignments of excise goods ~~dispatched or received~~. Due regard should be had to the situation of certain consignees not connected to the computerised system but who may receive excise goods moving under suspension of duty.
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↓ 2008/118/EC recital 23

- (29) In order to ensure the proper functioning of the rules relating to movement under suspension of excise duty, the conditions for the start of the movement as well as the end, and the discharge of responsibilities, should be clarified.
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↓ new

- (30) In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration for export in cases where excise goods are moved under duty suspension before being taken out of the territory of the Union, the person who declares the excise goods for export ('declarant') should inform the competent authorities in the Member State of export of the unique administrative reference code.
- (31) In order to enable the Member State of dispatch to take appropriate action, the competent authority in the Member State of export should inform the competent authority in the Member State of dispatch of any irregularities that occur during the export or of the fact that the goods are no longer to be taken out of the territory of the Union.
- (32) In order to enable the consignor to assign a new destination to the excise goods, the Member State of dispatch should inform the consignor that the goods are no longer to be taken out of the territory of the Union.
- (33) In order to improve the possibility to carry out controls during a movement of excise goods the person accompanying the excise goods, or where there is no accompanying person, the transporter or carrier, should be able to present the unique administrative reference code, in any form, to the competent authorities to allow them to retrieve details of the excise goods.
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↓ 2008/118/EC recital 24

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

- (35) In order to align the procedures under this Directive with customs procedures and in order to simplify the recognition of alternative evidence of exit in the Member State of

dispatch, a minimum list of standard alternative evidence of exit, proving that the goods have been taken out of the territory of the Union, should be established.

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↓ 2008/118/EC recital 25  
(adapted)  
⇒ new

- (36) Member States should be allowed to provide ☒ for ☒ a special arrangement for the movement of excise goods under suspension of duty which takes place entirely ~~on~~ ☒ within ☒ their territory, or conclude bilateral ⇒ or multilateral ⇐ agreements with other Member States to allow simplification.
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↓ 2008/118/EC recital 26

- (37) It is appropriate to clarify the taxation and procedural rules relating to the movement of goods on which excise duty has already been paid in a Member State, without changing their general structure.
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↓ 2008/118/EC recital 27  
(adapted)

- (38) Where excise goods are acquired by private individuals for their own use and transported from ☒ the territory of ☒ one Member State to ☒ the territory of ☒ another ☒ Member State ☒ by them, excise duty should be paid in the Member State in which the goods are acquired, in accordance with the principle governing the internal market.
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↓ 2008/118/EC recital 28  
⇒ new

- (39) In cases where, following their release for consumption in a Member State, excise goods are ~~held~~ ⇒ delivered ⇐ for commercial purposes in another Member State, it is necessary to establish that excise duty is due in the second Member State. For those purposes, it is necessary, in particular, to define the concept of ‘⇒ delivered for ⇐ commercial purposes’.
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↓ new

- (40) The computerised system, which is currently used for the movement of excise goods under duty suspension, should be extended to the movement of excise goods which have been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes. The use of that computerised system will simplify the monitoring of such movements and ensure the proper functioning of the internal market.

- (41) Where excise goods are released for consumption in the territory of one Member State and are moved to the territory of another Member State to be delivered there for commercial purposes, it is appropriate to clarify who is liable to pay the duty and when the duty is chargeable.

- (42) To avoid unnecessary investment, the computerisation of the movement of excise goods which are released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes should be set up reusing as much of the existing arrangements for movements under duty suspension as possible. For that purpose and in order to facilitate such movements the guarantee provisions for those movements should be aligned to the guarantee provisions for movements under excise duty suspension in order to widen the choice of guarantors.
- (43) In order to facilitate the existing registration of economic operators dealing with the duty suspension arrangements it is necessary to give a tax warehouse and a registered consignor the possibility, after informing the competent authorities of the Member State of dispatch, to act as a certified consignor for excise goods which are released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes. At the same time a tax warehouse or a registered consignee should be able to act as a certified consignee for those excise goods.
- (44) It is necessary to determine the procedures to be used where the computerised system is not available and a fallback document is to be used.
- (45) In order to ensure that the documents used in the context of movement of excise goods considered to be delivered for commercial purposes are readily understandable in all Member States and can be processed by the computerised system established by Decision (EU) [...], including when the computerised system is not available, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of laying down the structure and content of those documents.
- (46) In order to ensure uniform conditions for the completion, presentation and submission of documents used in the context of movement of excise goods considered to be delivered for commercial purposes, including when the computerised system is not available, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

↓ 2008/118/EC recital 29  
(adapted)  
⇒ new

- (47) Where excise goods are acquired by persons who are not authorised warehousekeepers or registered consignees and ~~who~~ ~~do not carry out an independent economic activity, and~~ those goods ~~are dispatched or transported by the vendor~~ ⇒ a consignor who carries out an independent economic activity ~~or~~ who dispatches or transports the goods ~~on his or her own behalf~~, excise duty should be paid in the Member State of destination. ~~and a~~ Provision should be made for a procedure to be followed by the ~~vendor~~ ⇒ consignor for payment of the excise duty. ~~.~~ ⇒ In order to ensure the payment in the Member State of destination the consignor or his or her tax representative should register his or her identity and guarantee payment of the excise duty with the competent office specifically designated under the conditions laid down by the Member State of destination. In order to facilitate these arrangements the consignor should be able to choose whether or not to use a tax representative to comply with requirements of registration and payment of guarantee. If neither the consignor nor the tax representative fulfils these requirements, the

consignee should be held liable to pay the excise duties in the Member State of destination ↩ .

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↓ 2008/118/EC recital 30  
(adapted)

- (48) In order to avoid conflicts of interest between Member States and double taxation in cases in which excise goods already released for consumption in ☒ the territory of ☒ one Member State move within the ☒ Union ☒ Community, provision should be made for situations in which excise goods, following their release for consumption, are subject to irregularities.
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↓ 2008/118/EC recital 31  
(adapted)

- (49) Member States should be able to provide that goods released for consumption carry tax markings or national identification marks. The use of ~~these~~ ☒ those ☒ markings or marks should not place any obstacle in the way of ~~intra-Community~~ ☒ intra-Union ☒ trade. Since the use of ~~these~~ ☒ those ☒ markings or marks should not give rise to a double taxation burden, it should be made clear that any amount paid or guaranteed to obtain such markings or marks is to be reimbursed, remitted or released by the Member State which issued the marks if excise duty has become chargeable and has been collected in another Member State. However, in order to prevent any abuse, Member States which issued such markings or marks should be able to make reimbursement, ~~remittance~~ ☒ remission ☒ or release conditional on the presentation of evidence that they have been removed or destroyed.
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↓ 2008/118/EC recital 32

- (50) Application of the normal requirements relating to the movement and monitoring of excise goods could put a disproportionate administrative burden on small wine producers. Therefore, Member States should be able to exempt those producers from certain requirements.
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↓ 2008/118/EC recital 33

- (51) Account should be taken of the fact that, with regard to excise goods used as stores for boats and aircraft, no suitable common approach has yet been found.
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↓ 2008/118/EC recital 34  
(adapted)

- (52) With respect to excise goods used for the construction and maintenance of cross-border bridges between Member States, those Member States should be allowed to adopt measures derogating from the normal rules and procedures applying to excise goods moving from ☒ the territory of ☒ one Member State to ☒ the territory of ☒ another ☒ Member State ☒ , in order to reduce the administrative burden.

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↓ 2008/118/EC recital 35

~~Measures for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>27</sup>.~~

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↓ 2008/118/EC recital 36  
(adapted)

In order to allow a period of adjustment to the electronic control system for the movement of goods ~~under suspension of excise duty~~, Member States should be able to benefit from a transitional period during which such movement may continue to be carried out subject to the formalities laid down by Directive ~~92/12/EEC~~. ☒ 2008/118/EC ☒.

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↓ 2008/118/EC recital 37  
(adapted)

(53) Since the objective of this Directive, namely ensuring common arrangements in relation to certain aspects of excise duty, cannot be sufficiently achieved by the Member States ~~and~~ ☒ but ☒ can ☒ rather ☒ ~~therefore~~, by reason of its scale and effects, be better achieved at ~~Community~~ ☒ Union ☒ level, the ~~Community~~ ☒ Union ☒ may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty ☒ on European Union ☒. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.

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↓ new

(54) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.

(55) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of the Directives set out in Annex I, Part B,

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<sup>27</sup> ~~OJL 184, 17.7.1999, p. 23.~~

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### GENERAL PROVISIONS

#### Article 1

##### ☒ Subject matter ☒

1. This Directive lays down general arrangements ~~in relation to~~ ☒ for ☒ excise duty which is levied directly or indirectly on the consumption of the following goods (~~hereinafter~~ 'excise goods'):

- (a) energy products and electricity covered by Directive 2003/96/EC;
- (b) alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC;
- (c) manufactured tobacco covered by Directives 2011/64/EU 95/59/EC, 92/79/EEC and 92/80/EEC.

2. Member States may levy other indirect taxes on excise goods for specific purposes, provided that those taxes comply with the ~~Community~~ ☒ Union ☒ tax rules applicable ~~for~~ ☒ to ☒ excise duty or value added tax as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned, but not including the provisions on exemptions.

3. Member States may levy taxes on:

- (a) products other than excise goods;
- (b) the supply of services, including those relating to excise goods, which cannot be characterised as turnover taxes.

However, the levying of such taxes may not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

#### Article 2

##### ☒ Chargeable event ☒

Excise goods shall be subject to excise duty at the time of:

- (a) their production, including, where applicable, their extraction, within the territory of the ☒ Union ☒ ~~Community~~;
- (b) their importation into the territory of the ☒ Union ☒ ~~Community~~.

### Article 3

#### ~~Application of the Union Customs Code to excise goods~~

1. The formalities laid down by the ~~Community~~ Union customs provisions for the entry of goods into the customs territory of the ~~Community~~ Union shall apply *mutatis mutandis* to the entry of excise goods into the ~~Community~~ territory of the Union from one of the territories ~~a territory~~ referred to in Article 5(2).

2. The formalities laid down by the ~~Community~~ Union customs provisions for the exit of goods from the customs territory of the ~~Community~~ Union shall apply *mutatis mutandis* to the exit of excise goods from the ~~Community~~ territory of the Union to a territory one of the territories referred to in Article 5(2).

3. By way of derogation from paragraphs 1 and 2, Finland shall be authorised, for movements of excise goods between its the territory ~~as defined in Article 4(2)~~ of that Member State and the territories referred to in Article 5(2)(c), to apply the same procedures as those applied for such movements ~~on its territory as defined in Article 4(2)~~ within the territory of that Member State.

~~4. Chapters III and IV shall not apply to excise goods covered by a customs suspensive procedure or arrangement.~~

↓ new

4. Articles 15 to 47 shall not apply to excise goods which have the customs status of non-Union goods as defined in Article 5(24) of Regulation (EU) No 952/2013 of the European Parliament and of the Council<sup>28</sup>.

↓ 2008/118/EC (adapted)

⇒ new

### Article 4

#### ~~Definitions~~

For the purpose of this Directive ~~as well as its implementing provisions~~, the following definitions shall apply:

~~(1)~~ ‘authorised warehousekeeper’ means a natural or legal person authorised by the competent authorities of a Member State, in the course of his the business of that person, to produce, process, ~~hold~~ store, receive or dispatch excise goods under a duty suspension arrangement in a tax warehouse;

~~(2)~~ ‘Member State’ and ‘territory of a Member State’ means the territory of each a Member State of the Community to which the Treaty is Treaties are applicable, in accordance with ~~Article 299 thereof~~ Articles 349 and 355 of the Treaty on the Functioning of the European Union, with the exception of third territories;

<sup>28</sup> Regulation (EU) No 952/2013 of the European Parliament and of the Council of 9 October 2013 laying down the Union Customs Code (OJ L 269, 10.10.2013, p. 1).

~~(3)3.~~ 'Community' and 'territory of the ☒ Union ☒ Community' means the territories of the Member States as defined in point 2;

~~(4)4.~~ 'third territories' means the territories referred to in Article 5(2) and (3);

~~(5)5.~~ 'third ☒ countries ☒ country' means any State or territory to which the Treaty is ☒ Treaties are ☒ not applicable;

~~6.~~ 'customs suspensive procedure or arrangement' means any one of the special procedures as provided for under Regulation (EEC) No 2913/92 relating to the customs supervision to which non-Community goods are subjected upon their entry into the Community customs territory, temporary storage, free zones or free warehouses, as well as any of the arrangements referred to in Article 84(1)(a) of that Regulation;

~~(6)7.~~ 'duty suspension arrangement' means a tax arrangement applied to the production, processing, **holding** ☒ storage ☒ or movement of excise goods **not covered by a customs suspensive procedure or arrangement**, ☒ whereby ☒ excise duty **being** ☒ is ☒ suspended;

↓ 2008/118/EC (adapted)

⇒ new

~~(7)8.~~ 'importation of excise goods' means **the entry into the territory of the Community of excise goods unless the goods upon their entry into the Community are placed under a customs suspensive procedure or arrangement, as well as their release from a customs suspensive procedure or arrangement** ☒ the release of goods for free circulation in accordance with Article 201 of Regulation (EU) No 952/2013 ☒ ;

~~(8)9.~~ 'registered consignee' means a natural or legal person authorised by the competent authorities of the Member State of destination, in the course of ~~his~~ ☒ the ☒ business ☒ of that person ☒ and under the conditions fixed by those authorities, to receive excise goods moving under a duty suspension arrangement from ☒ the territory of ☒ another Member State;

~~(9)10.~~ 'registered consignor' means a natural or legal person authorised by the competent authorities of the Member State of importation, in the course of ~~his~~ ☒ the ☒ business ☒ of that person ☒ and under the conditions fixed by those authorities, to only dispatch excise goods under a duty suspension arrangement upon their release for free circulation in accordance with Article ~~79~~ 201 of Regulation (EU) No 952/2013 ~~(EEC) No 2913/92~~;

~~(10)11.~~ 'tax warehouse' means a place where excise goods are produced, processed, ~~held~~ ☒ stored ☒, received or dispatched under duty suspension arrangements by an authorised warehousekeeper in the course of ~~his~~ ☒ the ☒ business ☒ of that person ☒ , subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located;

↓ new

(11) 'certified consignor' means a natural or legal person registered with the competent authorities of the Member State of dispatch in order to dispatch excise

goods that have been released for consumption in the territory of one Member State and then moved to the territory of another Member State;

(12) 'certified consignee' means a natural or legal person registered with the competent authorities of the Member State of destination in order to receive excise goods that have been released for consumption in the territory of one Member State and then moved in the territory of another Member State.

↓ 2008/118/EC (adapted)

⊠ (13) 'Member State of destination' means the Member State where the consignee takes delivery of the excise goods. ⊠

## Article 5

### ⊠ Territorial application ⊠

1. This Directive and ~~the Directives referred to in Article 1~~ ⊠ 2003/96/EC, 92/83/EEC, 92/84/EEC and 2011/64/EU ⊠ shall apply to the territory of the ⊠ Union ⊠ ~~Community~~.

2. This Directive and ~~the Directives referred to in Article 1~~ ⊠ 2003/96/EC, 92/83/EEC, 92/84/EEC and 2011/64/EU ⊠ shall not apply to the following territories forming part of the customs territory of the ⊠ Union ⊠ ~~Community~~:

(a) the Canary Islands;

↓ 2013/61/EU Art. 2.1

(b) the French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union;

↓ 2008/118/EC (adapted)

→ 2013/61/EU Art. 2.2

⇒ new

(c) the Åland Islands;

(d) the Channel Islands.

3. This Directive and ~~the Directives referred to in Article 1~~ ⊠ 2003/96/EC, 92/83/EEC, 92/84/EEC and 2011/64/EU ⊠ shall not apply to the territories within the scope of Article ~~299(4)~~ ⊠ 355(3) ⊠ of the Treaty ⊠ on the Functioning of the European Union ⊠, nor to the following other territories not forming part of the customs territory of the ⊠ Union ⊠ ~~Community~~:

(a) the Island of Heligoland;

(b) the territory of Büsingen;

(c) Ceuta;

(d) Melilla;

(e) Livigno;

~~(f) Campione d'Italia;~~

~~(g) the Italian waters of Lake Lugano.~~

4. Spain may give notice, by means of a declaration, that this Directive and ~~the Directives referred to in Article 1~~ ☒ 2003/96/EC, 92/83/EEC, 92/84/EEC and 2011/64/EU ☒ shall apply to the Canary Islands — subject to measures to adapt to their extreme remoteness — in respect of all or some of the excise goods referred to in Article 1, ~~as~~ from the first day of the second month following deposit of such declaration.

5.  $\rightarrow$  France may give notice, by means of a declaration, that this Directive and ~~the Directives referred to in Article 1~~ ☒ 2003/96/EC, 92/83/EEC, 92/84/EEC and 2011/64/EU ☒ apply to the territories referred to in point (b) of paragraph (2), subject to measures to adapt to ~~the~~ ☒ their ☒ extreme remoteness ~~of those territories~~, in respect of all or some of the excise goods referred to in Article 1, ~~as~~ from the first day of the second month following the deposit of such declaration.  $\leftarrow$

6. The provisions of this Directive shall not prevent Greece from maintaining the specific status granted to Mount Athos as guaranteed by Article 105 of the Greek Constitution.

## Article 6

### ☒ Special territorial status ☒

1. In view of the conventions and treaties concluded with France, Italy, Cyprus and the United Kingdom respectively, the Principality of Monaco, San Marino, the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, and the Isle of Man shall not be regarded, for the purposes of this Directive, as third countries.

2. Member States shall take the measures necessary to ensure that movements of excise goods originating in or intended for:

- (a) the Principality of Monaco are treated as movements originating in or intended for France;
- (b) San Marino are treated as movements originating in or intended for Italy;
- (c) United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as movements originating in or intended for Cyprus;
- (d) the Isle of Man are treated as movements originating in or intended for the United Kingdom.

3. Member States shall take the measures necessary to ensure that movements of excise goods originating in or intended for Jungholz and Mittelberg (Kleines Walsertal) are treated as movements originating in or intended for Germany.

## CHAPTER II

### CHARGEABILITY, ~~IRREGULARITIES DURING A MOVEMENT UNDER DUTY~~ SUSPENSION, ~~REIMBURSEMENT~~ AND REMISSION ~~, EXEMPTION~~

#### SECTION 1

#### ~~TIME AND PLACE OF~~ CHARGEABILITY ~~, IRREGULARITIES DURING A~~ MOVEMENT UNDER DUTY SUSPENSION

##### Article 7

##### ~~Time and place of chargeability, destruction and irretrievable losses~~

1. Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.
2. For the purposes of this Directive, 'release for consumption' shall mean any of the following:
  - (a) the departure of excise goods, including irregular departure, from a duty suspension arrangement;
  - (b) the ~~holding~~  $\Rightarrow$  processing or storage  $\Leftarrow$  of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of ~~Community~~ ~~Union~~ law and national legislation;
  - (c) the production of excise goods, including irregular production, outside a duty suspension arrangement;
  - (d) the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.
3. The time of ~~release for consumption~~ departure from a duty suspension arrangement as referred to in paragraph 2(a) shall be deemed to be:
  - (a) ~~in the situations referred to in Article 17(1)(a)(ii)~~, the time of receipt of the excise goods by the registered consignee in the situations referred to in Article 17(1)(a)(ii) ;
  - (b) ~~in the situations referred to in Article 17(1)(a)(iv)~~, the time of receipt of the excise goods by the consignee in the situations referred to in Article 17(1)(a)(iv) ;
  - (c) ~~in the situations referred to in Article 17(2)~~, the time of receipt of the excise goods at the place of direct delivery in the situations referred to in Article 17(4) .
4. The total destruction or irretrievable loss of excise goods under a duty suspension arrangement, as a result of ~~the actual nature of the goods~~, of unforeseeable circumstances or force majeure, or as a consequence of an ~~authorisation~~ to destroy the goods by the competent authorities of the Member State, shall not be considered a release for consumption.

For the purposes of this Directive, goods shall be considered totally destroyed or irretrievably lost when they are rendered unusable as excise goods.

↓ new

5. Partial loss due to the nature of the goods that occurs under a duty suspension arrangement shall not be considered a release for consumption in so far as the amount of loss falls below the common partial loss threshold for those excise goods. That part of a partial loss which exceeds the common partial loss threshold for those excise goods shall be treated as a release for consumption.

↓ 2008/118/EC (adapted)

⇒ new

6. The ~~total destruction or irretrievable~~ loss of the excise goods ~~in question~~ ☒ as referred to in paragraph 4 ☒ ☐ and 5 ☐ shall be proven to the satisfaction of the competent authorities of the Member State where the ~~total destruction or irretrievable~~ loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

~~5. Each Member State shall lay down its own rules and conditions under which the losses referred to in paragraph 4 are determined.~~

↓ new

The guarantee lodged in accordance with Article 18 shall be released upon the production of satisfactory proof.

7. The Commission shall adopt delegated acts in accordance with Article 55 establishing the common partial loss thresholds referred to in paragraph 6 of this Article and Article 46 (2) having regard the nature of the goods, specifying the excise goods, the corresponding common partial loss threshold as a percentage of the total quantity and other relevant aspects related to storage and transport of the goods.

↓ 2008/118/EC (adapted)

⇒ new

## Article 8

### ☒ Person liable to pay excise duty ☒

1. The person liable to pay the excise duty that has become chargeable shall be:
  - (a) in relation to the departure of excise goods from a duty suspension arrangement as referred to in Article 7(2)(a):
    - (i) the authorised warehousekeeper, the registered consignee or any other person releasing the excise goods or on whose behalf the excise goods are released from the duty suspension arrangement and, in the case of irregular departure from the tax warehouse, any other person involved in that departure;
    - (ii) in the case of an irregularity during a movement of excise goods under a duty suspension arrangement as defined in Article 10(1), (2) and (4): the

authorised warehousekeeper, the registered consignor or any other person who guaranteed the payment in accordance with Article 18(1) and (32) and any person who participated in the irregular departure and who was aware or who should reasonably have been aware of the irregular nature of the departure;

(b) in relation to the ~~holding~~ ⇒ processing or storage ⇐ of excise goods as referred to in Article 7(2)(b): the person ~~holding~~ ⇒ processing or storing ⇐ the excise goods and any other person involved in the ~~holding~~ ⇒ processing or storage ⇐ of the excise goods;

(c) in relation to the production of excise goods as referred to in Article 7(2)(c): the person producing the excise goods and, in the case of irregular production, any other person involved in their production;

(d) in relation to the importation of excise goods as referred to in Article 7(2)(d): ⇒ the declarant as defined in Article 5(15) of Regulation (EU) n° 952/2013. ⇐ ~~the person who declares the excise goods or on whose behalf they are declared upon importation~~ and, in the case of irregular importation, any other person involved in the importation.

2. Where several persons are liable for payment of ~~one~~ ☒ the same ☒ excise duty ~~debt~~, they shall be jointly and severally liable for such debt.

#### Article 9

##### ☒ Chargeability conditions and rates of excise duty to be used ☒

The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which ☒ the ☒ duty becomes chargeable in the Member State where release for consumption takes place.

Excise duty shall be levied and collected and, where appropriate, reimbursed or remitted, according to the procedure laid down by each Member State. Member States shall apply the same procedures to national goods and to those from other Member States.

#### Article 10

##### ☒ Irregularities during movements of excise goods under duty suspension ☒

1. Where an irregularity has occurred during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), the release for consumption shall take place in ☒ the territory of ☒ the Member State where the irregularity occurred.

2. Where an irregularity has been detected during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred ~~in~~ ☒ on the territory of ☒ the Member State in which and at the time when the irregularity was detected.

3. In the situations referred to in paragraphs 1 and 2, the competent authorities of the Member States where the goods have been or are deemed to have been released for consumption shall inform the competent authorities of the Member State of dispatch.

4. Where excise goods moving under a duty suspension arrangement have not arrived at their destination and no irregularity giving rise to their release for consumption in accordance with Article 7(2)(a) has been detected during the movement, an irregularity shall be deemed to have occurred in the Member State of dispatch ~~and~~ at the time when the movement began, unless, within a period of four months from the start of the movement in accordance with Article 20(1), evidence is provided, to the satisfaction of the competent authorities of the Member State of dispatch, of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

Where the person who guaranteed the payment in accordance with Article 18 has not been, or could not have been, informed that the goods have not arrived at their destination, a period of one month from the date of communication of this information by the competent authorities of the Member State of dispatch shall be granted to enable ~~him~~ ☒ that person ☒ to provide evidence of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

5. ~~However, In~~ the situations referred to in paragraphs 2 and 4, if, before the expiry of a period of three years from the date on which the movement began, in accordance with Article 20(1), it is ascertained in which Member State the irregularity actually occurred, ~~the provisions of~~ paragraph 1 shall apply.

~~In these situations, The~~ competent authorities of the Member State where the irregularity occurred shall inform the competent authorities of the Member State where the excise duty was levied, which shall reimburse or remit it as soon as evidence of the levying of the excise duty in the other Member State has been provided.

6. For the purposes of this Article, ‘irregularity’ shall mean a situation occurring during a movement of excise goods under a duty suspension arrangement, other than the one referred to in Article 7(4) ☒ and (5), ☒ due to which a movement, or a part of a movement of excise goods, has not ended in accordance with Article 20(2).

## SECTION 2

### REIMBURSEMENT AND REMISSION

#### *Article 11*

##### *☒ Reimbursement and remission ☒*

In addition to the cases referred to in Article ~~33(6)~~ 38(4), Article ~~453(5)~~ 453(5), and Article ~~473(3)~~ 473(3), as well as those provided for by the Directives ☒ 2003/96/EC, 92/83/EEC, 92/84/EEC and 2011/64/EU ☒ ~~referred to in Article 1~~, excise duty on excise goods which have been released for consumption may, at the request of a person concerned, be reimbursed or remitted by the competent authorities of the Member State where those goods were released for consumption in the situations fixed by the Member States and in accordance with the conditions that ☒ the ☒ Member States shall lay down for the purpose of preventing any possible evasion or abuse.

Such reimbursement or remission may not give rise to exemptions other than those provided for in Article 12 or by ~~one of the Directives referred to in Article 1~~ ☒ 2003/96/EC, 92/83/EEC, 92/84/EEC or 2011/64/EU ☒.

## SECTION 3

### EXEMPTIONS

#### *Article 12*

##### *⊠ Exemptions from payment of excise duty ⊠*

1. Excise goods shall be exempted from payment of excise duty where they are intended to be used:

- (a) in the context of diplomatic or consular relations;
- (b) by international organisations recognised as such by the public authorities of the host Member State, and by members of such organisations, within the limits and under the conditions laid down by the international conventions establishing such organisations or by headquarters agreements;
- (c) by the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;
- (d) by the armed forces of the United Kingdom stationed in Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus dated 16 August 1960, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;
- (e) for consumption under an agreement concluded with third countries or international organisations provided that such an agreement is allowed or authorised with regard to exemption from value added tax.

2. Exemptions shall be subject to conditions and limitations laid down by the host Member State. Member States may grant the exemption by means of a refund of excise duty.

#### *Article 13*

##### *⊠ Exemption certificate ⊠*

1. ~~Without prejudice to Article 21(1),~~ Excise goods moving under a duty suspension arrangement ~~to a consignee~~ ⊠ and subject to the exemption ⊠ referred to in Article 12(1) shall be accompanied by an exemption certificate. ⇒ The exemption certificate shall specify the nature and quantity of the excise goods to be delivered, the value of the goods and the identity of the exempt consignee and the host Member State certifying the exemption. ⇐

~~2. The Commission shall, in accordance with the procedure referred to in Article 43(2), lay down the form and content of the exemption certificate.~~

↓ new

2. Member States may use the exemption certificate referred to in paragraph 1 to cover other fields of indirect taxation and to ensure that the exemption certificate is compatible with conditions and limitations for the grant of exemptions in their national law.

3. The Commission shall adopt implementing acts establishing the form to be used for the exemption certificate. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

↓ 2008/118/EC (adapted)  
⇒ new

~~43.~~ The procedure laid down in Articles 21 to ~~2827~~ shall not apply to the movements of excise goods under a duty suspension arrangement to the armed forces referred to in Article 12(1)(c), if they are covered by a procedure which is directly based on the North Atlantic Treaty.

However, Member States may provide that the procedure laid down in Articles 21 to ~~2827~~ shall be used for such movements taking place entirely ~~on~~ ☒ within ☒ their territory or, by agreement between the Member States concerned, between their territories.

#### Article 14

##### ☒ Excise duty payment exemptions for passengers travelling to third countries or third territories ☒

1. Member States may exempt from payment of excise duty excise goods supplied by tax-free shops which are carried away in the personal luggage of travellers to a third territory or to a third country taking a flight or sea-crossing.

2. Goods supplied on board an aircraft or ship during the flight or sea-crossing to a third territory or a third country shall be treated in the same way as goods supplied by tax-free shops.

3. Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1 and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.

~~4. Member States which, at 1 July 2008, have tax-free shops situated elsewhere than within an airport or port may, until 1 January 2017, continue to exempt from excise duty excise goods supplied by such shops and carried away in the personal luggage of travellers to a third territory or to a third country.~~

~~45.~~ For the purposes of this Article, the following definitions shall apply:

(a) ‘tax-free shop’ means any establishment situated within an airport or port which fulfils the conditions laid down by the competent authorities of the Member States, pursuant in particular to paragraph 3;

(b) ‘traveller to a third territory or to a third country’ means any passenger holding a transport document, for air or sea travel, stating that the final destination is an airport or port situated in a third territory or a third country.

## CHAPTER III

### PRODUCTION, PROCESSING AND ~~HOLDING~~ ☒ STORAGE ☒

#### Article 15

##### ☒ General provision ☒

1. Each Member State shall determine its rules concerning the production, processing and ~~holding~~ ☒ storage ☒ of excise goods, subject to this Directive.
2. The production, processing and ☒ storage ☒ ~~holding~~ of excise goods, where the excise duty has not been paid, shall take place in a tax warehouse.

#### Article 16

##### ☒ Conditions for authorisation as an authorised warehousekeeper ☒

1. The opening and operation of a tax warehouse by an authorised warehousekeeper shall be subject to authorisation by the competent authorities of the Member State where the tax warehouse is situated.

Such authorisation shall be subject to the conditions that the authorities are entitled to lay down for the purposes of preventing any possible evasion or abuse.

2. An authorised warehousekeeper shall be required to:
  - (a) provide, if necessary, a guarantee to cover the risk inherent in the production, processing and ~~holding~~ ☒ storage ☒ of excise goods;
  - (b) comply with the requirements laid down by the Member State within whose territory the tax warehouse is situated;
  - (c) keep, for each tax warehouse, accounts of stock and movements of excise goods;
  - (d) enter into his ☒ or her ☒ tax warehouse ☒ accounts ☒ and enter in his ☒ or her ☒ accounts at the end of their movement all excise goods moving under a duty suspension arrangement, except where Article 17(~~42~~) applies;
  - (e) consent to all monitoring and stock checks.

The conditions for the guarantee referred to in point (a) shall be set by the competent authorities of the Member State in which the tax warehouse is authorised.

## CHAPTER IV

### MOVEMENT OF EXCISE GOODS UNDER SUSPENSION OF EXCISE DUTY

#### SECTION 1

##### GENERAL PROVISIONS

###### *Article 17*

*⊗ General provisions for the place of dispatch and of destination of the movement ⊗*

1. Excise goods may be moved under a duty suspension arrangement ⊗ between the following places ⊗ within the territory of the ⊗ Union ⊗ ~~Community~~, including ~~where the goods are moved~~ via a third country or a third territory:

- (a) from a tax warehouse to:
  - (i) another tax warehouse;
  - (ii) a registered consignee;
  - (iii) a place where the excise goods leave the territory of the ⊗ Union ⊗ ~~Community~~, as referred to in Article ~~2625~~(1);
  - (iv) ~~a~~ ⊗ the ⊗ consignee referred to in Article 12(1), where the goods are dispatched from ⊗ the territory of ⊗ another Member State;

↓ new

(v) the customs office of exit which is at the same time the customs office of departure for the external transit procedure where provided under Article 189 of Regulation (EU) n° 2446/2015<sup>29</sup>;

↓ 2008/118/EC (adapted)

- (b) from the place of importation to any of the destinations referred to in point (a), where the goods are dispatched by a registered consignor.

For the purposes of this Article, 'place of importation' means the place where the goods are ~~when they are~~ released for free circulation in accordance with Article ~~20179~~ of Regulation ~~(EEC) No 2913/92~~ (EU) No 952/2013.

<sup>29</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015, supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (L 343, 29.12.2015, p. 1)

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↓ new

2. Save where importation takes place inside a tax warehouse, excise goods may be moved from the place of importation under a duty suspension arrangement only if the following is provided by the declarant to the competent authorities of the Member State of importation:

- (a) the unique excise number under Article 19(2)(a) of Council Regulation (EU) No 389/2012<sup>30</sup> identifying the registered consignor for the movement,
- (b) the unique excise number under Article 19(2)(a) of Regulation (EU) No 389/2012 identifying the consignee to whom the goods are dispatched,
- (c) the evidence that the imported goods are intended to be dispatched from the territory of the Member State of importation to the territory of another Member State.

3. Member States may provide that the evidence referred to in paragraph 2 (c) be indicated to the competent authorities only upon request.

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↓ 2008/118/EC (adapted)

~~42.~~ By way of derogation from ~~paragraph point 1(a)(i) and (ii) and point (b) of paragraph 1~~ of this Article, ~~and except in the situations referred to in Article 19(3),~~ the Member State of destination may, under the conditions which it lays down, allow excise goods to be moved under a duty suspension arrangement to a place of direct delivery situated ~~on~~ ☒ in ☒ its territory, where that place has been designated by the authorised warehousekeeper in the Member State of destination or by the registered consignee ☒ other than a registered consignee with an authorisation limited in accordance with Article 19(3) ☒.

That authorised warehousekeeper or that registered consignee shall remain responsible for submitting the report of receipt referred to in Article ~~25~~<sup>24</sup>(1).

~~53.~~ Paragraphs 1 and 2 shall also apply to movements of excise goods at a zero rate which have not been released for consumption.

## Article 18

### ☒ Guarantee ☒

1. The competent authorities of the Member State of dispatch, under the conditions fixed by them, shall require that the risks inherent in the movement under suspension of excise duty be covered by a guarantee provided by the authorised warehousekeeper of dispatch or the registered consignor.

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↓ new

2. No guarantee shall be required for movements of energy products by fixed pipeline.

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<sup>30</sup> Council Regulation (EU) 389/2012 of 2 May 2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004 (OJ L 121, 8.5.2012, p. 1).

~~32.~~ By way of derogation from paragraph 1, the competent authorities of the Member State of dispatch, under the conditions fixed by them, may allow the guarantee referred to in paragraph 1 to be provided by the transporter or carrier, the owner of the excise goods, the consignee, or jointly by two or more of ~~these~~ ☒ those ☒ persons and the persons mentioned in paragraph 1.

~~43.~~ The guarantee shall be valid throughout the ☒ Union ☒ Community. ~~Its detailed rules shall be laid down by the Member States.~~

~~54.~~ The Member State of dispatch may waive the obligation to provide the guarantee in respect of the following movements of excise goods under a duty suspension arrangement:

- (a) movements which take place entirely ~~on~~ ☒ in ☒ its territory;
- (b) where the other Member States concerned so agree, movements of energy products within the ~~Community~~ ☒ Union ☒ by sea ~~or by fixed pipeline~~.

☒ 6. Member States shall lay down detailed rules governing the provision and the validity of a guarantee. ☒

## Article 19

### ☒ Registered consignee ☒

1. A registered consignee may ☒ not ☒ ~~neither hold~~ ⇒ produce, process, store ☒ ~~or~~ ☒ or ☒ dispatch excise goods under a duty suspension arrangement.

2. A registered consignee shall comply with the following requirements:

- (a) before dispatch of the excise goods, guarantee payment of excise duty under the conditions fixed by the competent authorities of the Member State of destination;
- (b) at the end of the movement, enter in his ☒ or her ☒ accounts excise goods received under a duty suspension arrangement;
- (c) consent to any check enabling the competent authorities of the Member State of destination to satisfy themselves that the goods have actually been received.

3. For a registered consignee receiving excise goods only occasionally, the authorisation referred to in Article 4(9) shall be limited to a specified quantity of excise goods, a single consignor and a specified period of time. Member States may limit the authorisation to a single movement.

## Article 20

### ☒ Beginning and end of movements of excise goods under duty suspension ☒

1. The movement of excise goods under a duty suspension arrangement shall begin:

(i) in the cases referred to in Article 17(1)(a) ~~of this Directive~~, when the excise goods leave the tax warehouse of dispatch;

(ii) ~~and~~ in the cases referred to in its Article 17(1)(b), upon their release for free circulation in accordance with Article ~~79~~ 201 of Regulation ~~(EEC) No 2913/92~~ (EU) No 952/2013.

2. The movement of excise goods under a duty suspension arrangement shall end:

(i) in the cases referred to in Article 17(1)(a)(i), (ii) and (iv) and Article 17(1)(b), when the consignee has taken delivery of the excise goods ~~and~~;

(ii) in the cases referred to in Article 17(1)(a)(iii), when the goods have left the territory of the ☒ Union; ☒ ~~Community~~.

↓ new

(iii) in the cases referred to in Article 17(1)(a)(v), when the goods are placed under the external transit procedure.

↓ 2008/118/EC (adapted)

⇒ new

## SECTION 2

### PROCEDURE TO BE FOLLOWED ~~ON A MOVEMENT~~ ☒ FOR MOVEMENTS ☒ OF EXCISE GOODS UNDER SUSPENSION OF EXCISE DUTY

#### Article 21

##### ☒ Electronic administrative document ☒

1. A movement of excise goods shall be considered to take place under a duty suspension arrangement only if it takes place under cover of an electronic administrative document processed in accordance with paragraphs 2 and 3.

2. For the purposes of paragraph 1 of this Article, the consignor shall submit a draft electronic administrative document to the competent authorities of the Member State of dispatch using the computerised system referred to in Article 1 of Decision No 1152/2003/EC (~~hereinafter~~ 'the computerised system').

3. The competent authorities of the Member State of dispatch shall carry out an electronic verification of the data ☒ provided ☒ in the draft electronic administrative document.

Where ~~these~~ ☒ those ☒ data are not valid, the consignor shall be informed thereof without delay.

Where ~~these~~ ☒ those ☒ data are valid, the competent authorities of the Member State of dispatch shall assign to the document a unique administrative reference code and shall communicate it to the consignor.

4. In the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(~~42~~), the competent authorities of the Member State of dispatch shall forward the electronic administrative document without delay to the competent authorities of the Member State of

destination, which shall forward it to the consignee where the consignee is an authorised warehousekeeper or a registered consignee.

Where the excise goods are intended for an authorised warehousekeeper in the Member State of dispatch, the competent authorities of that Member State shall forward the electronic administrative document directly to ~~the~~ the authorised warehousekeeper ~~him~~.

~~56.~~ The consignor shall provide the person accompanying the excise goods ~~⇒~~, or where there is no person accompanying the goods, the transporter or carrier, ~~⇐~~ with ~~a printed version of the electronic administrative document or any other commercial document mentioning, in a clearly identifiable manner, the unique administrative reference code. It must be possible for that document to be presented~~ ~~⇒~~ The person accompanying the excise goods, the transporter or the carrier shall provide that code ~~⇐~~ to the competent authorities upon request throughout the movement under an excise duty suspension arrangement.

~~67.~~ The consignor may cancel the electronic administrative document ~~⇒~~, using the computerised system, ~~⇐~~ ~~as~~ ~~so~~ ~~so~~ long as the movement has not begun under Article 20(1).

~~78.~~ During ~~the~~ ~~so~~ a ~~so~~ movement under a duty suspension arrangement, the consignor may, using the computerised system, ~~amend~~ ~~so~~ change ~~so~~ the destination ~~so~~ of the excise goods ~~so~~ to ~~show a new destination which must be one of the destinations referred to in Article 17(1)(a)(i), (ii), or (iii) ⇒ or (v) ⇐ or, where applicable, in Article 17(42).~~ ~~⇒~~ For that purpose the consignor shall submit a draft electronic change of destination document to the competent authorities of the Member State of dispatch using the computerised system. If the consignee has changed, the consignor shall also submit a new electronic administrative document. ~~⇐~~

## ~~so~~ Article 22 ~~so~~

### ~~so~~ Handling of the electronic administrative document for goods being exported ~~so~~

~~15.~~ In the ~~case~~ ~~so~~ cases ~~so~~ referred to in Article 17(1)(a)(iii) ~~⇒~~ and (v) ~~⇐~~ ~~of this Directive~~, the competent authorities of the Member State of dispatch shall forward the electronic administrative document to the competent authorities of the Member State where the export declaration is lodged ~~in application of~~ ~~so~~ under ~~so~~ Article ~~161(5)~~ ~~221(2)~~ of Implementing Regulation (EEC) No 2913/92 (EU) 2015/2447 ~~(hereinafter the 'Member State of export')~~, if that Member State is different from the Member State of dispatch.

↓ new

2. The declarant shall provide the competent authorities of the Member State of export with the unique administrative reference code indicating the excise goods referred to in the export declaration.

3. The competent authorities in the Member State of export shall verify, before the release for export of the goods, whether the data of the electronic administrative document corresponds to those contained in the export declaration.

4. Where there are any inconsistencies between the electronic administrative document and the export declaration, the competent authorities in the Member State of export shall notify the competent authorities in the Member State of dispatch.

5. Where the goods are no longer to be taken out of the territory of the Union the competent authorities in the Member State of export shall notify the competent authorities in the Member State of dispatch thereof by means of the computerised system as soon as they become aware. The competent authorities in the Member State of dispatch shall forward the notification to the consignor without delay.

↓ 2008/118/EC (adapted)

#### Article ~~23~~~~22~~

##### *⊠ Special arrangements for movements of energy products ⊠*

1. In the case of movements of energy products under a duty suspension arrangement by sea or inland waterways to a consignee who is not definitely known at the time when the consignor submits the draft electronic administrative document referred to in Article 21(2), the competent authorities of the Member State of dispatch may authorise the consignor to omit the data concerning the consignee in that document.

2. As soon as the data concerning the consignee are known, and at the latest at the end of the movement, the consignor shall, using the procedure referred to in Article 21(~~7~~~~8~~), transmit them to the competent authorities of the Member State of dispatch.

↓ new

3. This Article shall not apply to the movements referred to in Article 17(1)(a)(iii) and (v).

↓ 2008/118/EC (adapted)

⇒ new

#### Article ~~24~~~~23~~

##### *⊠ Splitting of consignments ⊠*

1. The competent authorities of the Member State of dispatch may allow, under the conditions fixed by that Member State, that the consignor splits a movement of energy products under suspension of excise duty into two or more movements provided that ⊠ the following conditions are fulfilled ⊠ :

(a)~~1~~ the total quantity of excise goods does not change;

(b)~~2~~ the splitting is carried out in the territory of a Member State which permits such a procedure;

(c)~~3~~ the competent authorities of that Member State are informed of the place where the splitting is carried out.

2. Member States shall inform the Commission if they allow movements to be split ~~on~~ ⊠ in ⊠ their territory and under what conditions. The Commission shall transmit this information to the other Member States.

## Article ~~25~~<sup>24</sup>

### ~~Formalities at destination~~

1. On receipt of excise goods at any of the destinations referred to in Article 17(1)(a)(i), (ii) or (iv) or in Article 17(~~42~~), the consignee shall, without delay and no later than five working days after the end of the movement, except in cases duly justified to the satisfaction of the competent authorities, submit a report of their receipt (~~hereinafter the 'report of receipt'~~), ~~to~~ to the competent authorities of the Member State of destination ~~using the computerised system.~~

2. The competent authorities of the Member State of destination shall determine the procedures for presentation of the report of receipt of the goods by the consignees referred to in Article 12(1).

3. The competent authorities of the Member State of destination shall carry out an electronic verification of the data ~~provided~~ in the report of receipt.

Where these data are not valid, the consignee shall be ~~informed thereof~~ notified without delay.

Where these data are valid, the competent authorities of the Member State of destination shall ~~confirm to~~ provide the consignee with a confirmation of the registration of the report of receipt and send ~~the~~ the confirmation to the competent authorities of the Member State of dispatch.

4. The competent authorities of the Member State of dispatch shall forward the report of receipt to the consignor. Where the places of dispatch and of destination are situated in the same Member State, the competent authorities of that Member State shall forward the report of receipt directly to the consignor.

## Article ~~26~~<sup>25</sup>

### ~~Formalities at the end of a movement of goods being exported~~

1. In the cases referred to in Article 17(1)(a)(iii) and, where applicable, Article 17(1)(b) of this Directive, a report of export shall be completed by the competent authorities of the Member State of export on the basis of the ~~endorsement drawn up by~~ information on the exit of the goods which it has received from the customs office of exit ~~as referred to in~~ under Article ~~793(2)~~ 329(1) of ~~Commission Implementing Regulation (EU) 2015/2447 (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>31</sup>~~ or by the office where the formalities for the exit of goods from the customs territory, as referred to in Article 3(2) of this Directive, are accomplished, certifying that the excise goods have left the territory of the Union ~~Community~~, using the computerised system.

↓ new

2. In the cases referred to in Article 17(1)(a)(v), a report of export shall be completed by the competent authorities of the Member State of export on the basis of the information which they have received from the customs office of exit under Article 329(5) of Implementing Regulation (EU) 2015/2447.

<sup>31</sup> OJL 253, 11.10.1993, p. 1

~~32.~~ The competent authorities of the Member State of export shall carry out an electronic verification of the data ~~resulting from the endorsement referred to~~ ~~on~~ the basis of which the report of export is to be completed in accordance with ~~in~~ paragraph 1 ~~⇒~~ and 2 ~~⇐~~. Once ~~these~~ ~~those~~ ~~those~~ data have been verified, and where the Member State of dispatch is different from the Member State of export, the competent authorities of the Member State of export shall send the report of export to the competent authorities of the Member State of dispatch.

~~3.~~ The competent authorities of the Member State of dispatch shall forward the report of export to the consignor.

#### Article ~~27~~~~26~~

##### ~~Unavailability of the computerised system~~

1. ~~In~~ ~~By way of~~ derogation from Article 21(1), where the computerised system is unavailable in the Member State of dispatch, the consignor may start a movement of excise goods under a duty suspension arrangement provided that:

- (a) the goods are accompanied by a ~~paper~~ ~~⇒ fallback~~ ~~⇐~~ document containing the same data as the draft electronic administrative document referred to in Article 21(2);
- (b) ~~he~~ ~~the~~ the consignor ~~informs~~ the competent authorities of the Member State of dispatch before the beginning of the movement.

The Member State of dispatch may also require ~~from~~ the consignor ~~a~~ a copy of the document referred to in point (a) ~~of the first subparagraph~~, the verification ~~by~~ by the Member State of dispatch ~~of~~ of the data contained in that copy and, ~~if~~ ~~where~~ where the consignor is responsible for the unavailability ~~of~~ of the computerised system ~~,~~, appropriate information on the reasons for that unavailability before the beginning of the movement.

2. ~~When~~ ~~As soon as~~ the availability of the computerised system is restored, the consignor shall submit a draft electronic administrative document ~~in~~ in accordance with Article 21(2).

As soon as the data in the ~~draft~~ ~~electronic administrative document~~ have been ~~validated~~ ~~verified~~ ~~in~~ in accordance with Article 21(3) ~~if those data are valid~~, that document shall replace the ~~paper~~ ~~⇒ fallback~~ ~~⇐~~ document referred to in paragraph 1(a) of this Article. Article 21(4), ~~and (5)~~ Article 22(1) and Articles ~~25~~~~24~~ and ~~26~~~~25~~ shall apply *mutatis mutandis*.

~~3. Until such time as the data in the electronic administrative document have been validated, the movement shall be regarded as taking place under a duty suspension arrangement under cover of the paper document referred to in paragraph 1(a).~~

34. A copy of the ~~paper~~ ~~⇒ fallback~~ ~~⇐~~ document referred to in paragraph 1(a) shall be kept by the consignor ~~to back up~~ ~~in~~ in his ~~or her~~ records.

~~45.~~ Where the computerised system is unavailable in the Member State of dispatch, the consignor  $\Rightarrow$  may amend the destination of the goods as referred to in Article 21(7) or split the movement of energy products as referred to in Article 24 and  $\Leftarrow$  shall communicate ~~the~~  $\boxtimes$  that  $\boxtimes$  information referred to in Article 21(78) or Article 23  $\boxtimes$  to the competent authorities of the Member State of dispatch  $\boxtimes$  using alternative means of communication. To that end, ~~he~~  $\boxtimes$  the consignor  $\boxtimes$  shall inform the competent authorities of the Member State of dispatch before the change of destination or  $\boxtimes$  the  $\boxtimes$  splitting of the movement is initiated. Paragraphs 2 ~~to 4~~ and 3 of this Article shall apply *mutatis mutandis*.

$\Downarrow$  new

5. Where the computerised system is unavailable in the Member State of dispatch in the cases referred to in Article 17(1)(a)(iii) and (v) the consignor shall provide a copy of the fallback document, referred to in paragraph (1)(a), to the declarant.

The declarant shall provide the competent authorities of the Member State of export with a copy of that fallback document, the contents of which corresponds to the excise goods declared in the export declaration, or the unique identifier of the fallback document.

$\Downarrow$  2008/118/EC (adapted)  
 $\Rightarrow$  new

#### Article ~~2827~~

##### $\boxtimes$ Fallback documents at destination or in cases of export $\boxtimes$

1. When, in the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(~~42~~), the report of receipt provided for in Article ~~2524~~(1) cannot be submitted at the end of a movement of excise goods within the deadline provided for in that Article, either because the computerised system is unavailable in the Member State of destination or because, in the situation referred to in Article ~~2726~~(1), the procedures referred to in Article ~~2726~~(2) have not yet been carried out, the consignee shall submit to the competent authorities of the Member State of destination, except in duly justified cases, a ~~paper~~  $\Rightarrow$  fallback  $\Leftarrow$  document containing the same data as the report of receipt and stating that the movement has ended.

Except where the report of receipt ~~provided for in Article 24(1)~~ can be submitted promptly by the consignee via the computerised system  $\boxtimes$  as provided for in Article ~~25~~(1)  $\boxtimes$ , or  $\boxtimes$  except  $\boxtimes$  in duly justified cases, the competent authorities of the Member State of destination shall send a copy of the  $\Rightarrow$  fallback  $\Leftarrow$  ~~paper~~ document ~~mentioned~~  $\boxtimes$  referred to  $\boxtimes$  in the first subparagraph to the competent authorities of the Member State of dispatch, which shall forward it to the consignor or keep it available for  $\boxtimes$  the consignor  $\boxtimes$  ~~him~~. As soon as availability of the computerised system is restored in the Member State of destination or the procedures referred to in Article ~~2726~~(2) have been carried out, the consignee shall submit a report of receipt, in accordance with Article ~~2524~~(1). Paragraph 3 and 4 of Article ~~2524~~(3) and (4) shall apply *mutatis mutandis*.

2. When, in the case referred to in Article 17(1)(a)(iii)  $\Rightarrow$  or (v)  $\Leftarrow$ , the report of export provided for in Article ~~2625~~(1)  $\Rightarrow$  and (2) or the notification that the goods will no longer be taken out of the Union provided for in Article 22(5)  $\Leftarrow$  cannot be completed at the end of a movement of excise goods either because the computerised system is unavailable in the

Member State of export or because, in the situation referred to in Article ~~2726~~(1), the procedures referred to in Article ~~2726~~(2) have not yet been carried out, the competent authorities of the Member State of export shall send to the competent authorities of the Member State of dispatch a ~~paper~~ document containing the same data as the report of export ~~⇒ or as the notification ⇐~~ and certifying that the movement has ended ~~⇒ or that the goods will not be taken out of the Union, ⇐~~ except where the report of export ~~provided for in Article 25(1) ⇒ or the notification ⇐~~ can be completed promptly via the computerised system, or in duly justified cases.

The competent authorities of the Member State of dispatch shall forward a copy of the ~~paper~~ document referred to in the first subparagraph to the consignor or keep it available for ~~him~~ ~~✗~~ the consignor ~~✗~~.

As soon as availability of the computerised system is restored in the Member State of export or the procedures referred to in Article ~~2726~~(2) have been carried out, the competent authorities of the Member State of export shall send a report of export in accordance with Article ~~2625~~(1) ~~⇒ and (2) or the notification provided for in Article 22(5) ⇐~~. Article ~~2625(2) and (3)~~ shall apply *mutatis mutandis*.

#### Article ~~2928~~

##### ~~✗~~ Alternative proofs of receipt and evidence of exit ~~✗~~

1. Notwithstanding Article ~~2827~~, the report of receipt provided for in Article ~~2524~~(1) or the report of export provided for in Article ~~2625~~(1) ~~⇒ and (2) ⇐~~ shall constitute proof that a movement of excise goods has ended<sub>2</sub> in accordance with Article 20(2).

2. By way of derogation from paragraph 1, in the absence of the report of receipt or the report of export for reasons other than those mentioned in Article ~~2827~~, alternative proof of the end of a movement of excise goods under a duty suspension arrangement may be provided, ~~✗~~ in accordance with paragraphs 3 and 4. ~~✗~~

~~3.~~ ~~In the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(42), ✗ alternative proof of the end of the movement may be provided by means of ✗ through an endorsement by the competent authorities of the Member State of destination, based on appropriate evidence, that the excise goods dispatched have reached their stated destination or, in the case referred to in Article 17(1)(a)(iii), through an endorsement by the competent authorities of the Member State in which the customs office of exit is located, certifying that the excise goods have left the territory of the Community.~~

A ~~⇒ fallback document as referred to in Article 28(1)(a) ⇐ submitted by the consignee containing the same data as the report of receipt or the report of export~~ shall constitute appropriate evidence ~~for the purposes of the first subparagraph.~~

↓ new

4. In the case referred to in Article 17(1)(a)(iii) or (v), in order to determine whether the excise goods in the circumstances set out in paragraph 2 have been taken out of the territory of the Union, the competent authorities of the Member State of dispatch shall take into account any of the following as evidence that the goods have been taken out of the territory of the Union:

- (a) an endorsement by the competent authorities of the Member State in which the customs office of exit is located, certifying that the excise

goods have left the territory of the Union, or certifying that the excise goods have been placed under the external transit procedure in accordance with Article 17(1)(a)(v);

- (b) a delivery note;
- (c) a document signed or authenticated by the economic operator who has taken the excise goods out of the customs territory of the Union certifying the exit of the goods;
- (d) a document in which the customs authority of a Member State or a third country certify the delivery in accordance with the rules and procedures applicable to that certification in that State or country;
- (e) records of goods supplied to ships, aircraft or offshore installations kept by economic operators.

- (b) The competent authorities of the Member State of dispatch may take other alternative pieces of evidence into account.

↓ 2008/118/EC (adapted)  
⇒ new

5. Where appropriate evidence has been accepted by the competent authorities of the Member State of dispatch, it shall end the movement in the computerised system.

#### Article ~~3029~~

⊗ *Delegation of power and conferral of implementing powers with respect to the documents to be exchanged under the duty suspension arrangement* ⊗

1. The Commission shall ~~adopt delegated acts~~ ⇒ adopt delegated acts ⇐ in accordance with ~~the procedure referred to in Article 5543(2), adopt measures to determine:~~ ⊗ establishing ⊗

~~(a)~~ the structure and content of the ⊗ electronic administrative documents ⊗ ~~messages to be exchanged~~ ⇒ through the computerised system referred to in Article 21(2) ⇐ for the purposes of Articles 21 to ~~2625~~ ⊗ and of fallback documents referred to in Articles 27 and 28 in the context of ⊗ ~~between the persons and competent authorities concerned with a~~ movement of excise goods under a duty suspension arrangement.

~~2.(b)~~ ⇒ The Commission shall adopt implementing acts establishing ⇐ the rules and procedures ~~relating to~~ ⊗ for ⊗ the exchanges of the ~~messages~~ ⊗ electronic administrative documents through the computerised system ⊗ referred to in ~~point (a), Article 21(2)~~ ⊗ in the context of movement of excise goods under suspension of excise duty ⊗ ⇒ and the rules and procedures for the use of the fallback documents referred to in Articles 27 and 28. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2). ⇐

~~(c) the structure of the paper documents referred to in Articles 26 and 27.~~

~~32.~~ Each Member State shall determine the situations where the computerised system may be considered unavailable and ⊗ shall lay down ⊗ the rules and procedures to be followed in ~~these~~ ⊗ those ⊗ situations, for the purposes of and in accordance with Articles ~~2726~~ and ~~2827~~.

## SECTION 3

### SIMPLIFIED PROCEDURES

#### *Article ~~31~~<sup>30</sup>*

##### *☒ Simplified procedures in a single Member State ☒*

Member States may establish simplified procedures in respect of movements of excise goods under a duty suspension arrangement which take place entirely on their territory, including the possibility to waive the requirement of electronic supervision of such movements.

#### *Article ~~32~~<sup>31</sup>*

##### *☒ Simplified procedures in two or more Member States ☒*

By agreement and under conditions fixed by all the Member States concerned, simplified procedures may be established for the purposes of frequent and regular movements of excise goods under a duty suspension arrangement which occur between the territories of two or more Member States.

This provision includes movements via fixed pipelines.

## CHAPTER V

### MOVEMENT AND TAXATION OF EXCISE GOODS AFTER RELEASE FOR CONSUMPTION

## SECTION 1

### ACQUISITION BY PRIVATE INDIVIDUALS

#### *Article ~~33~~<sup>32</sup>*

##### *☒ Acquisition by a private individual ☒*

1. Excise duty on excise goods acquired by a private individual for ~~his~~ own use, and transported from ☒ the territory of ☒ one Member State to ☒ the territory of ☒ another ☒ Member State ☒ by ☒ the private individual ☒ ~~him~~, shall be charged only in the Member State in which the excise goods are acquired.

2. To determine whether the excise goods referred to in paragraph 1 are intended for the own use of a private individual, Member States shall take account at least of the following:

- (a) the commercial status of the holder of the excise goods and ☒ the ☒ ~~his~~ reasons for holding them;
- (b) the place where the excise goods are located or, if appropriate, the mode of transport used;
- (c) any document relating to the excise goods;

- (d) the nature of the excise goods;
- (e) the quantity of the excise goods.

3. For the purposes of applying paragraph 2(e), Member States may lay down guide levels, solely as a form of evidence. These guide levels may not be lower than:

- (a) for tobacco products:
  - cigarettes: 800 items,
  - cigarillos (cigars weighing not more than 3 g each): 400 items,
  - cigars: 200 items,
  - smoking tobacco: 1,0 kg;
- (b) for alcoholic beverages:
  - spirit drinks: 10 l,
  - intermediate products: 20 l,
  - wines: 90 l (including a maximum of 60 l of sparkling wines),
  - beers: 110 l.

4. Member States may also provide that excise duty shall become due in the Member State of consumption on the acquisition of mineral oils already released for consumption in another Member State if such products are transported using atypical modes of transport by a private individual or on his behalf ☒ of a private individual ☒.

For the purposes of this paragraph, 'atypical mode of transport' shall mean the transport of fuels other than in the tanks of vehicles or in appropriate reserve fuel canisters and the transport of liquid heating products other than by means of tankers used on behalf of ☒ economic operators ☒ professional traders.

## SECTION 2

### ~~HOLDING IN~~ ☒ **PROCEDURE TO BE FOLLOWED FOR MOVEMENTS OF EXCISE GOODS WHICH HAVE BEEN RELEASED FOR CONSUMPTION IN THE TERRITORY OF ONE MEMBER STATE AND ARE MOVED TO THE TERRITORY OF ☒ ANOTHER MEMBER STATE ☒ IN ORDER TO BE DELIVERED THERE FOR COMMERCIAL PURPOSES ☒**

#### *Article ~~34~~<sup>33</sup>*

#### ☒ *General* ☒

1. ~~Without prejudice to Article 36(1), Where excise goods which have already been released for consumption in ☒ the territory of ☒ one Member State are held for commercial purposes in ☒ moved to the territory of ☒ another Member State in order to be delivered ☒ there ☒ for commercial purposes ☒ or used there, they shall be subject to excise duty and excise duty shall become chargeable in that other ☒ the ☒ Member State ☒ of destination ☒.~~

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↓ new

Within the scope of the arrangements in this Section excise goods shall only be moved from a certified consignor to a certified consignee.

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↓ 2008/118/EC (adapted)

⇒ new

2. For the purposes of this Article, ~~‘holding’~~ ⇒ excise goods shall be regarded as ‘delivered’ ⇐ for commercial purposes’ ~~shall mean the holding~~ ⇒ where they have been released for consumption in the territory of one Member State, have been moved from that Member State to the territory of another Member State and are delivered either ⇐ ~~of excise goods~~ ⇒ to ⇐ ~~by~~ a person other than a private individual or ~~by~~ ☒ to ☒ a private individual for reasons other than his own use. ⇒ However, excise goods shall not be regarded as delivered for commercial purposes where they are ⇐ ~~and~~ transported by ☒ that private individual for his or her own use ☒ ~~him, in accordance with Article 32~~ ⇒ when moved from the territory of the other Member State ⇐.

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↓ new

3. The movement of excise goods under this Article shall begin when the excise goods leave the certified consignor's premises.

4. The movement of excise goods under this Article shall end when the certified consignee has taken delivery of the excise goods.

---

↓ 2008/118/EC (adapted)

~~52.~~ The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which duty becomes chargeable in ~~that other~~ ☒ the ☒ Member State ☒ of destination ☒.

~~3. The person liable to pay the excise duty which has become chargeable shall be, depending on the cases referred to in paragraph 1, the person making the delivery or holding the goods intended for delivery, or to whom the goods are delivered in the other Member State.~~

~~4. Without prejudice to Article 38, where excise goods which have already been released for consumption in one Member State move within the Community for commercial purposes, they shall not be regarded as held for those purposes until they reach the Member State of destination, provided that they are moving under cover of the formalities set out in Article 34.~~

## Article 35

### ☒ Chargeable event ☒

↓ new

1. The certified consignee shall be liable to pay the excise duty, which shall be chargeable when the goods have been delivered to the Member State of destination, except where an irregularity under Article 47 occurs during the movement.

↓ 2008/118/EC (adapted)

⇒ new

~~25.~~ Excise goods which are held on board a boat or aircraft making sea-crossings or flights between ☒ the territories of ☒ two Member States but which are not available for sale when the boat or aircraft is in the territory of one of the Member States shall not be regarded as held for commercial purposes ⇒ subject to excise duty ⇐ in that Member State.

~~6. The excise duty shall, upon request, be reimbursed or remitted in the Member State where the release for consumption took place where the competent authorities of the other Member State find that excise duty has become chargeable and has been collected in that Member State.~~

## Article 36~~34~~

### ☒ Conditions for movement of excise goods under this Section ☒

~~1. In the situations referred to in Article 33(1), excise goods shall move between the territories of the various Member States under cover of an accompanying document listing the main data from the document referred to in Article 21(1).~~

~~The Commission shall, in accordance with the procedure referred to in Article 43(2), adopt measures establishing the form and content of the accompanying document.~~

↓ new

1. A movement of excise goods shall be considered to take place under this Section only if it takes place under cover of an electronic simplified administrative document processed in accordance with Article 37.

↓ 2008/118/EC (adapted)

⇒ new

2. The ~~persons referred to in Article 33(3)~~ ⇒ certified consignee under Article 35(1) ⇐ shall comply with ☒ all of ☒ the following requirements:

~~(a) before the goods are dispatched, submit a declaration to the competent authorities of the Member State of destination and guarantee payment of the excise duty;~~

↓ new

(a) provide a guarantee covering the risks inherent in the movement;

↓ 2008/118/EC (adapted)

⇒ new

(b) pay the excise duty ~~☒~~ due in ~~☒~~ of the Member State of destination in accordance with the procedure laid down by that Member State ⇒ on delivery of the goods ⇐;

(c) consent to any checks enabling the competent authorities of the Member State of destination to satisfy themselves that the excise goods have actually been received and that the excise duty chargeable on them has been paid.

~~☒~~ 3. By way of derogation from paragraph 2(a), the competent authorities of ~~☒~~ the Member State of destination may, ~~in situations and under ☒ the ☒ conditions ☒ fixed by them ☒ which it lays down~~, ⇒ allow the guarantee to be provided by the transporter or carrier, the owner of the excise goods, the certified consignor, or jointly by two or more of those persons or the person mentioned in Article 35(1) ⇐ ~~simplify or grant a derogation from the requirements specified in point (a). In such cases, it shall notify the Commission, which shall inform the other Member States.~~

↓ new

4. The guarantee shall be valid throughout the Union.

5. Member States shall lay down detailed rules governing the provision and the validity of a guarantee.

6. An authorised warehousekeeper or a registered consignor may act as a certified consignor for the purposes of his Section after informing the competent authorities of the Member State of dispatch.

7. An authorised warehousekeeper or a registered consignee may act as a certified consignee for the purposes of his Section after informing the competent authorities of the Member State of destination.

### Article 37

#### *Electronic simplified administrative document*

1. Where excise goods are to be moved under this Section, the certified consignor shall submit a draft electronic simplified administrative document to the competent authorities of the Member State of dispatch using the computerised system.

2. The competent authorities of the Member State of dispatch shall carry out an electronic verification of the data provided in the draft electronic simplified administrative document.

Where those data are not valid, the certified consignor shall be informed thereof without delay.

Where those data are valid, the competent authorities of the Member State of dispatch shall assign to the document a unique simplified administrative reference code and shall communicate it to the certified consignor.

3. The competent authorities of the Member State of dispatch shall forward the electronic simplified administrative document without delay to the competent authorities of the Member State of destination, which shall forward it to the certified consignee.

4. The certified consignor shall provide the person accompanying the excise goods, or where there is no person accompanying the goods, the transporter or carrier, with the unique simplified administrative reference code. The person accompanying the excise goods, the transporter or the carrier shall provide that code to the competent authorities upon request through the movement.

5. During a movement of excise goods under this Section, the certified consignor may, using the computerised system, change the destination to another place of delivery in the same Member State operated by the same certified consignee, or to the place of dispatch. For that purpose the certified consignee shall submit a draft electronic change of destination document to the competent authorities of the Member State of dispatch using the computerised system.

## *Article 38*

### *Report of receipt*

1. On receipt of the excise goods, the certified consignee shall, without delay and no later than five working days after the end of the movement, except in cases duly justified to the satisfaction of the competent authorities, submit a report of their receipt to the competent authorities of the Member State of destination, using the computerised system.

2. The competent authorities of the Member State of destination shall carry out an electronic verification of the data provided in the report of receipt.

Where those data are not valid the certified consignee shall be informed thereof without delay.

Where those data are valid, the competent authorities of the Member State of destination shall provide the certified consignee with a confirmation of the registration of the report of receipt and send it to the competent authorities of the Member State of dispatch.

The report of receipt shall be deemed to be sufficient proof that the certified consignee has fulfilled all of the necessary formalities and has made any payments of excise duty due to the Member State of destination.

3. The competent authorities of the Member State of dispatch shall forward the report of receipt to the certified consignor.

4. The excise duty paid in the Member State of dispatch shall be reimbursed, upon request and on the basis of the report of receipt referred to in paragraph 1.

## *Article 39*

### *Fallback and recovery at dispatch*

1. By way of derogation from Article 37, where the computerised system is unavailable in the Member State of dispatch, the certified consignor may start a movement of excise goods provided that:

- (a) the goods are accompanied by a fallback document containing the same data as the draft electronic simplified administrative document referred to in Article 36(1);
- (b) the certified consignor informs the competent authorities of the Member State of dispatch before the beginning of the movement.

The Member State of dispatch may require for the certified consignor a copy of the document referred to in point (a) of the first subparagraph, the verification by the Member State of dispatch of the data contained in that copy and, where the certified consignor is responsible for the unavailability of the computerised system, appropriate information on the reasons for that unavailability before the beginning of the movement.

2. As soon as the availability of the computerised system is restored, the certified consignor shall submit a draft electronic simplified administrative document in accordance with Article 37 (1).

As soon as the data in the draft electronic simplified administrative document have been verified in accordance with Article 37(2), if those data are valid, that document shall replace the fallback document referred to in paragraph 1(a) of this Article with that document. Article 37(3) and Article 38 shall apply *mutatis mutandis*.

3. A copy of the fallback document referred to in paragraph 1(a) shall be kept by the certified consignor in his or her records.

4. Where the computerised system is unavailable in the Member State of dispatch, the certified consignor may amend the destination of the goods as referred to in Article 37(5) and shall communicate that information to the competent authorities of the Member State of dispatch using alternative means of communication. The certified consignor shall inform the competent authorities of the Member State of dispatch before the change of destination is initiated. Paragraphs 2 to 3 of this Article shall apply *mutatis mutandis*.

#### Article 40

##### *Fallback documents and recovery of data – report of receipt*

Where excise goods are to be moved under this Section and the report of receipt cannot be submitted at the end of the movement of the excise goods in accordance with Article 38(1), either because the computerised system is unavailable in the Member State of destination or because the procedures referred to in Article 39(2) have not yet been carried out the certified consignee shall, except in duly justified cases, submit a fallback document containing the same data as the report of receipt and stating that the movement has ended to the competent authorities of the Member State of destination.

Except where the report of receipt can be submitted promptly by the certified consignee via the computerised system as provided for in Article 38(1), or except in duly justified cases, the competent authorities of the Member State of destination shall send a copy of the fallback document referred to in the first subparagraph to the competent authorities of the Member State of dispatch. The competent authorities of the Member State of dispatch shall forward the copy to the certified consignor or keep it available for the certified consignor.

As soon as availability of the computerised system is restored in the Member State of destination or the procedures referred to in Article 39(2) have been carried out, the certified consignee shall submit a report of receipt in accordance with Article 38(1). Paragraphs 2 and 3 of Article 38 shall apply *mutatis mutandis*.

## Article 41

### Alternative proofs of receipt

1. Notwithstanding Article 40, the report of receipt required by Article 38(1) shall constitute proof that the excise goods have been delivered to the certified consignee.

2. By way of derogation from paragraph 1, in the absence of the report of receipt for reasons other than those mentioned in Article 40, alternative proof of delivery of excise goods may be provided by means of an endorsement by the competent authorities of the Member State of destination, based on appropriate evidence, that the excise goods dispatched have reached their destination.

The fallback document referred to in the first paragraph of Article 40 shall constitute appropriate evidence for the purposes of the first subparagraph.

3. Where the endorsement by the competent authorities of the Member State of destination has been accepted by the competent authorities of the Member State of dispatch, it shall be deemed to be sufficient proof that the certified consignee has fulfilled all of the necessary formalities and has made any payments of excise duty due to the Member State of destination.

## Article 42

### *Derogation for certified consignors and certified consignees from the obligation to use the computerised system*

Member States may permit a movement of excise goods to take place under cover of a fallback document as referred to in Article 39(1)(a) if the certified consignor and certified consignee only occasionally move excise goods under this Section.

Member State may limit such permission to a specific quantity of excise goods, a single certified consignor and certified consignee, a specific period of time or to a single movement of excise goods.

↓ 2008/118/EC (adapted)  
⇒ new

## Article ~~43~~<sup>35</sup>

### *⊗ Movement of goods released for consumption between two places in the territory of the same Member State via the territory of another Member State ⊗*

1. Where excise goods already released for consumption in ⊗ the territory of ⊗ a Member State are moved to a place of destination in ⊗ the territory of ⊗ that Member State via the territory of another Member State, the following requirements shall apply:

(a) such a movement shall take place under cover of the ~~accompanying~~ ⇒ electronic simplified administrative ⇐ document referred to in Article ~~36~~<sup>34</sup>(1) ~~and use~~ ⊗ following ⊗ an appropriate itinerary;

~~(b) — the consignor shall, before the excise goods are dispatched, make a declaration to the competent authorities of the place of departure;~~

(be) the ⇒ certified ⇐ consignee shall attest to having received the goods in accordance with the rules laid down by the competent authorities of the place of destination

(cd) the ⇒ certified ⇐ consignor and the ⇒ certified ⇐ consignee shall consent to any checks enabling their respective competent authorities to satisfy themselves that the goods have actually been received.

2. Where excise goods are moved frequently and regularly under the conditions specified in paragraph 1, the Member States concerned may, by agreement, under conditions determined by them, simplify the requirements specified in paragraph 1.

↓ new

#### Article 44

#### *Delegation of power and conferral of implementing power for the movement of goods to be delivered for commercial purposes*

1. The Commission shall adopt delegated acts in accordance with Article 55 establishing the structure and content of the electronic administrative documents exchanged through the computerised system for the purposes of Articles 37 and 38 and of fallback documents referred to in Articles 39, 40 and 42 in the context of movement of excise goods under this Section.

2. The Commission shall adopt implementing acts establishing the rules and procedures to be followed for the exchange of the electronic administrative documents through the computerised system for the purposes of Articles 37 and 38 and the rules and procedures for the use of the fallback documents referred to in Articles 39, 40 and 42 in the context of movement of excise goods under this Section. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 56(2).

↓ 2008/118/EC (adapted)  
⇒ new

### SECTION 3

#### DISTANCE SELLING

#### Article ~~4536~~

#### *Distance Selling*

1. Excise goods already released for consumption in ☒ the territory of ☒ one Member State, which are purchased by a person, other than an authorised warehousekeeper, ~~or~~ a registered consignee ⇒ or a certified consignee ⇐, established in another Member State who does not carry out an independent economic activity, and which are dispatched or transported to ☒ the territory of ☒ another Member State directly ~~or indirectly~~ by ~~the vendor~~ ⇒ a consignor who carries out an independent economic activity ⇐ or on his ☒ or her ☒ behalf shall be subject to excise duty in the Member State of destination.

~~For the purposes of this Article, 'Member State of destination' shall mean the Member State of arrival of the consignment or of transport.~~

2. In the case referred to in paragraph 1, the excise duty shall become chargeable in the Member State of destination at the time of delivery of the excise goods. The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which duty becomes chargeable.

The excise duty shall be paid in accordance with the procedure laid down by the Member State of destination.

3. The person liable to pay the excise duty in the Member State of destination shall be the ~~vendor~~ ⇨ consignor ⇨ .

However, the Member State of destination may ~~provide that the liable person shall be~~ ⇨ allow the consignor to appoint ⇨ a tax representative, established in the Member State of destination ⇨ , as the person liable to pay excise duty. ⇨ ~~and~~ ☒ The tax representative shall be ☒ approved by the competent authorities of that Member State. ☒ Member States may provide that ☒ ~~or~~, in cases where the ~~vendor~~ ⇨ consignor ⇨ ⇨ or the tax representative ⇨ has not respected the provision of paragraph 4(a), ☒ the person liable to pay the excise duty shall be ☒ the consignee of the excise goods.

4. The ~~vendor~~ ⇨ consignor ⇨ or tax representative shall comply with the following requirements:

- (a) before dispatching the excise goods, register his ☒ or her ☒ identity and guarantee payment of the excise duty with the competent office specifically designated and under the conditions laid down by the Member State of destination;
- (b) pay the excise duty at the office referred to in point (a) after the excise goods ☒ have been delivered ☒ ~~arrive~~;
- (c) keep accounts of deliveries of excise goods.

The Member States concerned may, under conditions determined by them, simplify these requirements on the basis of bilateral ⇨ or multilateral ⇨ agreements.

5. In the case referred to in paragraph 1, the excise duty levied in the first Member State shall be reimbursed ~~or remitted~~, at the ~~vendor's~~ request ⇨ of the consignor ⇨, where the ~~vendor~~ ⇨ consignor ⇨ ~~or his tax representative~~ has followed the procedures laid down in paragraph 4.

6. Member States may lay down specific rules for applying paragraphs 1 to 5 to excise goods that are covered by special national distribution arrangements.

## SECTION 4

### *Destruction and losses*

#### *Article ~~463~~7*

#### *☒ Destruction and loss ☒*

1. In the situations referred to in Article ~~3433~~(1) and Article ~~4536~~(1), in the event of the total destruction or irretrievable loss of the excise goods during their transport in ☒ the

territory of ~~☒~~ a Member State other than the Member State in which they were released for consumption, as a result of ~~the actual nature of the goods, or~~ unforeseeable circumstances, or force majeure, or as a consequence of ~~☒~~ an ~~☒~~ authorisation ~~☒~~ to destroy the goods ~~☒~~ by the competent authorities of that Member State, the excise duty shall not be chargeable in that Member State.

↓ new

For the purposes of this Directive goods shall be considered totally destroyed or irretrievably lost when they are rendered unusable as excise goods.

2. In the event of partial loss due to the nature of the goods that occurs during their transport in the territory of a Member State other than the Member State in which they were released for consumption, excise duty shall not be chargeable in that Member State where the amount of loss falls within the common partial loss threshold for those excise goods set out in accordance with Article 7(7).

↓ 2008/118/EC (adapted)

⇒ new

3. The ~~total destruction or irretrievable~~ loss of the excise goods ~~☒~~ as referred to in paragraph 1 and 2 ~~☒ in question~~ shall be proven to the satisfaction of the competent authorities of the Member State where the ~~total destruction or irretrievable~~ loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

The guarantee lodged pursuant to ~~☒~~ in accordance with ~~☒~~ Article ~~34~~ 36(2)(a) or Article ~~36~~ 45(4)(a) shall be released.

~~2. Each Member State shall lay down its own rules and conditions under which the losses referred to in paragraph 1 are determined.~~

## SECTION 5

### IRREGULARITIES DURING THE MOVEMENT OF EXCISE GOODS

#### Article ~~47~~38

##### *☒ Irregularities during the movement of excise goods ☒*

1. Where an irregularity has occurred during a movement of excise goods under Article ~~34~~36(1) or Article ~~45~~36(1), in ~~☒~~ the territory of ~~☒~~ a Member State other than ~~☒~~ the territory of ~~☒~~ the Member State in which they were released for consumption, they shall be subject to excise duty and excise duty shall be chargeable in the Member State where the irregularity occurred.

2. Where an irregularity has been detected during a movement of excise goods under Article ~~34~~36(1) or Article ~~45~~36(1), in ~~☒~~ the territory of ~~☒~~ a Member State other than ~~☒~~ the territory of ~~☒~~ the Member State in which they were released for consumption, and it is not possible to determine where the irregularity occurred, the irregularity shall be deemed to have occurred and the excise duty shall be chargeable in the Member State where the irregularity was detected.

However, if, before the expiry of a period of three years from the date on which the excise goods were acquired, it is ascertained in ~~the~~ the territory of ~~which~~ which Member State the irregularity actually occurred, the provisions of paragraph 1 shall apply.

3. The excise duty shall be due from the person who guaranteed payment thereof in accordance with Article ~~3634~~(2)(a) or Article ~~4536~~(4)(a) and from any person who participated in the irregularity.  $\Rightarrow$  Where several persons are liable for payment of the same excise duty, they shall be jointly and severally liable for such debt.  $\Leftarrow$

The competent authorities of the Member State in which the excise goods were released for consumption shall, upon request, reimburse or remit the excise duty where it was levied in the Member State where the irregularity occurred or was detected. The competent authorities of the Member State of destination shall release the guarantee lodged pursuant to Article ~~3634~~(2)(a) or Article ~~4536~~(4)(a).

4. For the purposes of this Article, ‘irregularity’ shall mean a situation occurring during a movement of excise goods under Article ~~3433~~(1) or Article ~~4536~~(1), not covered by Article ~~4637~~ due to which a movement, or a part of a movement, of excise goods has not duly ended.

## CHAPTER VI

### MISCELLANEOUS

#### SECTION 1

##### MARKING

###### *Article ~~4839~~*

###### *~~the~~ Marking ~~of~~*

1. Without prejudice to Article 7(1), Member States may require that excise goods carry tax markings or national identification marks used for fiscal purposes at the time when they are released for consumption in their territory, or, in the cases provided for in Article ~~3433~~(1), ~~first subparagraph,~~ and Article ~~4536~~(1), when they enter their territory.

2. Any Member State which requires the use of tax markings or national identification marks as set out in paragraph 1 shall be required to make them available to authorised warehousekeepers of the other Member States. However, each Member State may require that these markings or marks be made available to a tax representative authorised by the competent authorities of that Member State.

3. Without prejudice to any provisions they may lay down in order to ensure that this Article is implemented properly and to prevent any evasion, avoidance or abuse, Member States shall ensure that tax markings or national identification marks as set out in paragraph 1 do not create obstacles to the free movement of excise goods.

Where such markings or marks are affixed to excise goods, any amount paid or guaranteed to obtain such markings or marks, apart from the fees for issuing them, shall be reimbursed, remitted or released by the Member State which issued them if excise duty has become chargeable and has been collected in another Member State.

The Member State which issued these markings or marks may nevertheless subject the reimbursement, ~~remittance~~ ☒ remission ☒ or release of the amount paid or guaranteed to the presentation of evidence, to the satisfaction of its competent authorities, that they have been removed or destroyed.

4. Tax markings or national identification marks as set out in paragraph 1 shall be valid in the Member State which issued them. However, there may be mutual recognition of these markings or marks between Member States.

## SECTION 2

### SMALL WINE PRODUCERS

#### *Article ~~4940~~*

#### *☒ Small wine producers ☒*

1. Member States may exempt small wine producers from the requirements of ~~Chapters III and IV~~ Articles 15 to 32 and from the other requirements relating to movement and monitoring. Where these small producers themselves carry out ~~intra-Community~~ ☒ intra-Union ☒ transactions, they shall inform their relevant authorities and comply with the requirements laid down by Commission Delegated Regulation (EU) 2018/273<sup>32</sup> ~~(EC) No 884/2001 of 24 April 2001 laying down detailed rules of application concerning the documents accompanying the carriage of wine products and the records to be kept in the wine sector<sup>33</sup>~~.

2. Where small wine producers are exempt from requirements in accordance with paragraph 1, the consignee shall, by means of the document required by Regulation ~~(EC) No 884/2001~~ (EU) 2018/273 or by a reference to it, inform the competent authorities of the Member State of destination of the wine deliveries received.

3. For the purposes of this Article, ‘small wine producers’ shall mean persons producing on average less than 1000 hl of wine per year.

<sup>32</sup> Commission Delegated Regulation (EU) 2018/273 of 11 December 2017 supplementing Regulation (EU) No 1308/2013 of the European Parliament and of the Council as regards the scheme of authorisations for vine plantings, the vineyard register, accompanying documents and certification, the inward and outward register, compulsory declarations, notifications and publication of notified information, and supplementing Regulation (EU) No 1306/2013 of the European Parliament and of the Council as regards the relevant checks and penalties, amending Commission Regulations (EC) No 555/2008, (EC) No 606/2009 and (EC) No 607/2009 and repealing Commission Regulation (EC) No 436/2009 and Commission Delegated Regulation (EU) 2015/560 (OJ L 58, 28.2.2018, p. 1).

<sup>33</sup> OJ L 128, 10.5.2001, p. 32.

## SECTION 3

### STORES FOR BOATS AND AIRCRAFT

*Article ~~504~~<sup>1</sup>*

~~☒~~ Stores for boats and aircraft ~~☒~~

Until the Council has adopted ~~Community~~ ~~☒~~ Union ~~☒~~ provisions on stores for boats and aircraft, Member States may maintain their national provisions concerning exemptions for such stores.

## SECTION 4

### SPECIAL ARRANGEMENTS

*Article ~~514~~<sup>2</sup>*

~~☒~~ Special arrangements ~~☒~~

Member States which have concluded an Agreement on the responsibility for the construction or maintenance of a trans-border bridge may adopt measures derogating from the provisions of this Directive in order to simplify the procedure for collecting excise duty on the excise goods used for the construction and the maintenance of that bridge.

For the purposes of those measures, the bridge and the construction sites referred to in the Agreement shall be deemed to be part of the territory of the Member State which is responsible for the construction or maintenance of the bridge in accordance with the Agreement.

The Member States concerned shall notify those measures to the Commission, which shall inform the other Member States.

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↓ 2008/118/EC (adapted)

## CHAPTER VII

### ~~☒~~ EXERCISE OF THE DELEGATION AND ~~☒~~ COMMITTEE ~~☒~~ PROCEDURE ~~☒~~ ~~ON EXCISE DUTY~~

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↓ new

*Article 52*

*Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt the delegated acts referred to in Article 7(7), Article 30(1) and Article 44(1) shall be conferred on the Commission for an indeterminate period of time from the twentieth day following that of the publication of this Directive in the Official Journal.
3. The delegation of power referred to in Article 7(7), Article 30(1) and Article 44(1) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016.
5. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
6. A delegated act adopted pursuant to Article 7(7), Article 30(1) and Article 44(1) shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council have informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

↓ 2008/118/EC (adapted)  
⇒ new

#### *Article ~~53~~<sup>43</sup>*

#### *⊠ Committee procedure ⊠*

1. The Commission shall be assisted by ~~a committee referred to as the~~ <sup>the</sup> ~~Committee on Excise Duty~~. ⇒ That committee shall be a committee within the meaning of Regulation (EU) No 182/2011. ⇐

2. Where reference is made to this paragraph, ~~Articles 5 and 7 of Decision 1999/468/EC~~ ⇒ Article 5 of Regulation (EU) No 182/2011 ⇐ shall apply.

~~The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.~~

#### *~~Article 44~~*

~~The Committee on Excise Duty shall, in addition to its tasks under Article 43, examine the matters raised by its chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of Community provisions on excise duty.~~

## CHAPTER VIII

### ⊠ REPORTING AND ⊠ TRANSITIONAL AND FINAL PROVISIONS

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↓ new

#### Article 54

##### *Reporting on the implementation of this Directive*

Every five years the Commission shall submit a report on the implementation of this Directive to the European Parliament and the Council. The first report shall be submitted five years after the adoption of this Directive at the latest.

#### Article 55

##### *Transitional provisions*

Member States shall allow the dispatch of excise goods under the formalities set out in Articles 33, 34 and 35 of Directive 2008/118/EC until 13 February 2022 and the receipt of excise goods under those formalities until 31 December 2022.

The notifications referred to in Articles 22(5) of this Directive may be made by means other than the computerised system until 13 February 2024.

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↓ 2008/118/EC (adapted)

#### ~~Article 45~~

~~1. By 1 April 2013, the Commission shall submit to the European Parliament and the Council a report on the implementation of the computerised system and, in particular, on the obligations referred to in Article 21(6) and on the procedures applicable should the system be unavailable.~~

~~2. By 1 April 2015, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Directive.~~

~~3. The reports set out in paragraphs 1 and 2 shall be based in particular on the information provided by the Member States.~~

#### ~~Article 46~~

~~1. Until 31 December 2010, Member States of dispatch may continue to allow movements of excise goods under a duty suspension arrangement which were initiated under cover of the formalities set out in Article 15(6) and Article 18 of Directive 92/12/EEC.~~

~~Those movements, as well as their discharge, shall be subject to the provisions referred to in the first subparagraph as well as to Article 15(4) and (5) and Article 19 of Directive 92/12/EEC. Article 15(4) of that Directive shall apply with regard to all the guarantors designated in accordance with Article 18(1) and (2) of this Directive.~~

~~Articles 21 to 27 of this Directive shall not apply to those movements.~~

~~2. Movements of excise goods which were initiated before 1 April 2010 shall be carried out and discharged in accordance with the provisions of Directive 92/12/EEC.~~

~~This Directive shall not apply to those movements.~~

↓ Annex III.6(2)

~~3. Without prejudice to Article 32, Member States not referred to in the third and fourth subparagraphs of Article 2(2) of Directive 92/79/EEC may, as regards cigarettes which may be brought into their territory without further payment of excise duties, apply from 1 January 2014 a quantitative limit of not less than 300 items with respect to cigarettes brought in from a Member State which applies, in accordance with the third and fourth subparagraphs of Article 2(2) of that Directive, lower excise duties than those resulting from the first subparagraph of Article 2(2) thereof.~~

~~Member States referred to in the third and fourth subparagraphs of Article 2(2) of Directive 92/79/EEC which levy an excise duty of at least EUR 77 per 1000 cigarettes irrespective of the weighted average retail selling price, may, from 1 January 2014, apply a quantitative limit of not less than 300 items as regards cigarettes brought into their territory without further payment of excise duties from a Member State which applies a lower excise duty in accordance with the third subparagraph of Article 2(2) of that Directive.~~

~~Member States which apply a quantitative limit in accordance with the first and the second subparagraphs of this paragraph shall inform the Commission thereof. They may carry out the necessary checks provided that these checks do not affect the proper functioning of the internal market.~~

↓ 2008/118/EC (adapted)

#### Article ~~56~~<sup>48</sup>

##### ~~☒~~ Transposition ~~☒~~

1. Member States shall adopt and publish, ~~☒~~ by 31 December 2020 ~~☒~~ not later than 1 January 2010, the laws, regulations and administrative provisions necessary to comply with ~~☒~~ Articles 3, 4, 7, 13, 17, 18, Articles 20 to 23, Articles 26 to 30, Articles 34 to 47, and Articles 55 and 56 and Article 58 ~~☒~~ this Directive with effect from 1 April 2010. They shall ~~☒~~ immediately ~~☒~~ forthwith communicate ~~☒~~ the text of those measures ~~☒~~ to the Commission ~~the text of such laws, regulations and administrative provisions together with a table showing the correlation between them and this Directive.~~

~~☒~~ Subject to Article 55, they shall apply those measures from 1 April 2021. ~~☒~~

When ~~they are adopted by~~ Member States, ~~☒~~ adopt those ~~☒~~ these measures ~~☒~~, they ~~☒~~ shall contain a reference to this Directive or shall be accompanied by such ~~☒~~ a ~~☒~~ reference on the occasion of their official publication. ~~☒~~ They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directives repealed by this Directive shall be construed as references to this Directive ~~☒~~. ~~The methods of making such reference shall be laid down by~~ Member States ~~☒~~ shall determine how such reference is to be made and how that statement is to be formulated ~~☒~~.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

*Article 57~~47~~*

 *Repeal* 

1. Directive ~~92/42/EEC~~ ☒ 2008/118/EC, as amended by the acts listed in Annex I, Part A, ☒ is repealed with effect from ~~1 April 2010~~ ☒ 1 April 2021, without prejudice to the obligations of the Member States relating to the time limits for the transposition into national law and the dates of application of the Directives set out in Annex I, Part B ☒.

~~However, it shall continue to apply within the limits and for the purposes defined in Article 46.~~

2 References to the repealed Directive shall be construed as references to this Directive  
 ☒ and shall be read in accordance with the correlation table in Annex II ☒.

## Article 5849

**ⓧ Entry into force and application ⓧ**

This Directive shall enter into force on the  twentieth  day following  that of  its publication in the *Official Journal of the European Union*.

☒ Articles 1, 2, 5, 6, Articles 8 to 12, Articles 14 to 16, Articles 19, 20, 24, 25, Articles 31 to 33, Articles 48 to 51, Articles 52 to 54, Article 57 and Article 59 shall apply from 1 April 2021. ☒

~~Article 5950~~

 Addressees 

This Directive is addressed to the Member States.

Done at Brussels.

*For the European Parliament  
The President*

*For the Council*  
*The President*