

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general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (repealed)

TITLE I

General Provisions

Article 1

1 This Directive lays down the arrangements for products subject to excise duties and other indirect taxes which are levied directly or indirectly on the consumption of such products, except for value added tax and taxes established by the Community.

2 The particular provisions relating to the structures and rates of duty on products subject to excise duty shall be set out in specific Directives.

Article 2

1 This Directive and the Directives listed in Article 1 (2) shall apply in the territory of the Community as defined, for each Member State, by the Treaty establishing the European Economic Community, and in particular Article 227 thereof, except for the following national territories:

- in the case of the Federal Republic of Germany, the Island of Heligoland and the territory of Büsingen,
- in the case of the Italian Republic, Livigno, Campione d'Italia and the Italian waters of Lake Lugano,
- in the case of the Kingdom of Spain, Ceuta and Melilla.

2 Notwithstanding paragraph 1, this Directive and the Directives referred to in Article 1 (2) shall not apply to the Canary Islands. However, the Kingdom of Spain may give notice, by means of a declaration, that these Directives apply to those territories in respect of all or some of the products referred to in Article 3 (1) below, as from the first day of the second month following deposit of that declaration.

3 By way of derogation from paragraph 1, neither this Directive nor those referred to in Article 1 (2) shall apply to the overseas departments of the French Republic.

However, the French Republic may give notice, by means of a declaration, that these Directives apply to those territories - subject to measures to adjust to their extreme remoteness - from the first day of the second month following deposit of the declaration.

4 The Member States shall take the necessary measures to ensure that transactions originating in or intended for:

- the Principality of Monaco are treated as transactions originating in or intended for the French Republic,
- Jungholz and Mittelberg (Kleines Walsertal) are treated as transactions originating in or intended for the Federal Republic of Germany,
- the Isle of Man are treated as transactions originating in or intended for the United Kingdom of Great Britain and Northern Ireland,
- San Marino are treated as transactions originating in or intended for the Italian Republic.

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5 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.

6 If the Commission considers that the exclusions provided for in paragraphs 1, 2, 3 and 4 are no longer justified, particularly in terms of fair competition, it shall submit appropriate proposals to the Council.

Article 3

1 This Directive shall apply at Community level to the following products as defined in the relevant Directives:

- mineral oils,
- alcohol and alcoholic beverages,
- manufactured tobacco.

2 The products listed in paragraph 1 may be subject to other indirect taxes for specific purposes, provided that those taxes comply with the tax rules applicable for excise duty and VAT purposes as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned.

3 Member States shall retain the right to introduce or maintain taxes which are levied on products other than those listed in paragraph 1 provided, however, that those taxes do not give rise to border-crossing formalities in trade between Member States.

Subject to the same proviso, Member States shall also retain the right to levy taxes on the supply of services which cannot be characterized as turnover taxes, including those relating to products subject to excise duty.

Article 4

For the purpose of this Directive, the following definitions shall apply:

- (a) *authorized warehousekeeper*: a natural or legal person authorized by the competent authorities of a Member State to produce, process, hold, receive and dispatch products subject to excise duty in the course of his business, excise duty being suspended under tax-warehousing arrangement;
- (b) *tax warehouse*: a place where goods subject to excise duty are produced, processed, held, received or dispatched under duty-suspension arrangements by an authorized warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located;
- (c) *suspension arrangement*: a tax arrangement applied to the production, processing, holding and movement of products, excise duty being suspended;
- (d) *registered trader*: a natural or legal person without authorized warehousekeeper status, authorized by the competent authorities of a Member State to receive, in the course of his business, products subject to excise duty from another Member State under duty-suspension arrangements. This type of trader may neither hold nor dispatch such products under excise duty-suspension arrangements;
- (e) *non-registered trader*: a natural or legal person without authorized warehousekeeper status, who is entitled, in the course of his business, to receive occasionally products subject to excise duty from another Member State under duty-suspension arrangements. This type of trader may neither hold nor dispatch products under excise duty suspension arrangements. A non-registered trader must guarantee payment of

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excise duty to the tax authorities of the Member States of destination prior to the dispatch of the goods.

Article 5

1 The products referred to in Article 3 (1) shall be subject to excise duty at the time of their production within the territory of the Community as defined in Article 2 or of their importation into that territory.

‘Importation of a product subject to excise duty’ shall mean the entry of that product into the territory of the Community, including the entry of such a product from a territory covered by Article 2 (1), (2) and (3) or from the Channel Islands.

However, where the product is placed under a Community customs procedure on entry into the territory of the Community, importation shall be deemed to take place when it leaves the Community customs procedure.

[^{F12} Without prejudice to national and Community provisions regarding customs matters, when products subject to excise duty:

— [^{F2}are coming from, or going to, third countries or territories referred to in Article 2 (1), (2) and (3) or the Channel Islands and are placed under one of the customs suspensive procedures listed in Article 84 (1) (a) of Regulation (EEC) No 2913/92⁽¹⁾ or in a free zone or a free warehouse,]

or

— [^{F2}are dispatched between Member States via EFTA countries or between a Member State and an EFTA country under the internal Community transit procedure or via one or more non-EFTA third countries under cover of a TIR or ATA carnet,]

the excise duty on them shall be deemed to be suspended.

[^{F2}In cases where the single administrative document is used:]

- box 33 of the single administrative document shall be completed with the appropriate CN code;
- it shall be clearly indicated in box 44 of the single administrative document that a dispatch of products subject to excise duty is involved;
- a copy of ‘copy 1’ of the single administrative document shall be held by the consignor;
- a duly annotated copy of ‘copy 5’ of the single administrative document shall be sent back to the consignor by the consignee.]

[^{F33} Any additional details that have to be shown on the transport or commercial documents serving as transit documents and the changes that have to be made to adapt the discharge procedure where goods subject to excise duty move under a simplified internal Community transit procedure shall be established according to the procedure provided for in Article 24.]

Textual Amendments

- F1** Substituted by [Council Directive 92/108/EEC of 14 December 1992 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and amending Directive 92/81/EEC.](#)
- F2** Substituted by [Council Directive 94/74/EC of 22 December 1994 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Directive 92/81/EEC on the harmonization of the structures of excise duties on mineral oils and Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils.](#)

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F3 Inserted by Council Directive 94/74/EC of 22 December 1994 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Directive 92/81/EEC on the harmonization of the structures of excise duties on mineral oils and Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils.

Article 6

1 Excise duty shall become chargeable at the time of release for consumption or when shortages are recorded which must be subject to excise duty in accordance with Article 14 (3).

Release for consumption of products subject to excise duty shall mean:

- a any departure, including irregular departure, from a suspension arrangement;
- b any manufacture, including irregular manufacture, of those products outside a suspension arrangement;
- c any importation of those products, including irregular importation, where those products have not been placed under a suspension arrangement.

2 The chargeability conditions and rate of excise duty to be adopted shall be those in force on the date on which duty becomes chargeable in the Member State where release for consumption takes place or shortages are recorded. Excise duty shall be levied and collected according to the procedure laid down by each Member State, it being understood that Member States shall apply the same procedures for levying and collection to national products and to those from other Member States.

Article 7

1 In the event of products subject to excise duty and already released for consumption in one Member State being held for commercial purposes in another Member State, the excise duty shall be levied in the Member State in which those products are held.

2 To that end, without prejudice to Article 6, where products already released for consumption as defined in Article 6 in one Member State are delivered [^{F1}or intended for delivery in another Member State]or used in another Member State for the purposes of a trader carrying out an economic activity independently or for the purposes of a body governed by public law, excise duty shall become chargeable in that other Member State.

3 Depending on all the circumstances, the duty shall be due from the person making the delivery or holding the products intended for delivery or from the person receiving the products for use in a Member State other than the one where the products have already been released for consumption, or from the relevant trader or body governed by public law.

4 The products referred to in paragraph 1 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 18 (1). The form and content of this document shall be established in accordance with the procedure laid down in Article 24 of this Directive.

5 The person, trader or body referred to in paragraph 3 must comply with the following requirements:

- a before the goods are dispatched, make a declaration to the tax authorities of the Member State of destination and guarantee the payment of the excise duty;
- b pay the excise duty of the Member State of destination in accordance with the procedure laid down by that Member State;

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- c consent to any check enabling the administration of the Member State of destination to satisfy itself that the goods have actually been received and that the excise duty to which they are liable has been paid.

6 The excise duty paid in the first Member State referred to in paragraph 1 shall be reimbursed in accordance with Article 22 (3).

[^{F37} Where products subject to excise duty and already released for consumption in a Member State are to be moved to a place of destination in that Member State via the territory of another Member State, such movements shall take place under cover of the accompanying document referred to in paragraph 4 and shall use an appropriate itinerary.

8 In the cases referred to in paragraph 7:

- a the consignor shall, before the goods are dispatched, make a declaration to the tax authorities of the place of departure responsible for carrying out excise-duty checks;
- b the consignee shall attest to having received the goods in accordance with the rules laid down by the tax authorities of the place of destination responsible for carrying out excise-duty checks;
- c the consignor and the consignee shall consent to any check enabling their respective tax authorities to satisfy themselves that the goods have actually been received.

9 Where products subject to excise duty are moved frequently and regularly under the conditions specified in paragraph 7, Member States may agree bilaterally to authorize a simplified procedure in derogation from paragraphs 7 and 8.]

Textual Amendments

- F1** Substituted by Council Directive 92/108/EEC of 14 December 1992 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and amending Directive 92/81/EEC.
- F3** Inserted by Council Directive 94/74/EC of 22 December 1994 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Directive 92/81/EEC on the harmonization of the structures of excise duties on mineral oils and Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils.

Article 8

As regards products acquired by private individuals for their own use and transported by them, the principle governing the internal market lays down that excise duty shall be charged in the Member State in which they are acquired.

Article 9

1 Without prejudice to Articles 6, 7 and 8, excise duty shall become chargeable where products for consumption in a Member State are held for commercial purpose in another Member State.

In this case, the duty shall be due in the Member State in whose territory the products are and shall become chargeable to the holder of the products.

2 To establish that the products referred to in Article 8 are intended for commercial purposes, Member States must take account, *inter alia*, of the following:

- the commercial status of the holder of the products and his reasons for holding them,

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- the place where the products are located or, if appropriate, the mode of transport used,
- any document relating to the products,
- the nature of the products,
- the quantity of the products.

For the purposes of applying the content of the fifth indent of the first subparagraph, Member States may lay down guide levels, solely as a form of evidence. These guide levels may not be lower than:

a *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 *Alcoholic beverages*

spirit drinks	10 l
intermediate products	20 l
wines (including a maximum of 60 l of sparkling wines)	90 l
beers	110 l.

[^{X1}Until 30 June 1997 Ireland] shall be authorized to apply guide levels which may not be less than 45 litres for wine (including a maximum of 30 litres of sparkling wine) and 55 litres for beer.

3 Member States may also provide that excise duty shall become chargeable 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 private individuals or on their behalf. Atypical 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 professional traders.

Editorial Information

- X1** Substituted by [Corrigendum to 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 \(Official Journal of the European Communities No L 76 of 23 March 1992\)](#).

Article 10

1 Products subject to excise duty purchased by persons who are not authorized warehousekeepers or registered or non-registered traders and dispatched or transported directly or indirectly by the vendor or on his behalf shall be liable 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 dispatch or transport.

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2 To that end, the delivery of products subject to excise duty already released for consumption in a Member State and giving rise to the dispatch or transport of those products to a person as referred to in paragraph 1, established in another Member State, and which are dispatched or transported directly or indirectly by the vendor or on his behalf shall cause excise duty to be chargeable on those products in the Member State of destination.

3 The duty of the Member State of destination shall be chargeable to the vendor at the time of delivery. However, Member States may adopt provisions stipulating that the excise duty shall be payable by a tax representative, other than the consignee of the products. Such a tax representative must be established in the Member State of destination and approved by the tax authorities of that Member State.

The Member State in which the vendor is established must ensure that he complies with the following requirements:

- guarantee payment of excise duty under the conditions set by the Member State of destination prior to dispatch of the products and ensure that the excise duty is paid following arrival of the products,
- keep accounts of deliveries of products.

4 In the case referred to in paragraph 2, the excise duty paid in the first Member State shall be reimbursed in accordance with Article 22 (4).

5 Subject to Community law, Member States may lay down specific rules for applying this provision to products subject to excise duty which are covered by special national distribution arrangements compatible with the Treaty.

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(1) [^{F1}[^{F2}OJ No L 302, 19. 10. 1992, p. 1.]]

Textual Amendments

- F1** Substituted by Council Directive 92/108/EEC of 14 December 1992 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products and amending Directive 92/81/EEC.
- F2** Substituted by Council Directive 94/74/EC of 22 December 1994 amending Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, Directive 92/81/EEC on the harmonization of the structures of excise duties on mineral oils and Directive 92/82/EEC on the approximation of the rates of excise duties on mineral oils.