Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

COUNCIL DIRECTIVE 2008/118/EC

of 16 December 2008

concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament[(1)],

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

Whereas:

(1) 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[(3)] has been substantially amended several times. Since further amendments are to be made, it should be replaced in the interests of clarity.

(2) Conditions for charging excise duty on the goods covered by Directive 92/12/EEC, hereinafter 'excise goods', need to remain harmonised in order to ensure the proper functioning of the internal market.

(3) It is appropriate to specify the excise goods to which this Directive applies and to refer for that purpose to Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes[(4)], Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes[(5)], Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages[(6)], Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages[(7)], Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco[(8)] and Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity[(9)].

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

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

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

(7) Since suspensive procedures under Council Regulation (EEC) No 2913/92 of 12 October 1992 establishing the Community Customs Code[10] 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.

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

(9) 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 destroyed or irretrievably lost.

(10) 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.

(11) In the event of an irregularity, excise duty should be due in the Member State on whose territory the irregularity 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 it has been detected. Where excise goods do not arrive at their destination and no irregularity has been detected, the irregularity shall be deemed to have occurred in the Member State of dispatch.

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

(13) 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.

(14) The situations in which tax-free sales to travellers leaving the territory of the Community 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

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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.

(15) Since checks need to be carried out in production and storage facilities in order to ensure that the tax debt 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.

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

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

(18) 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, the goods from that place of importation.

(19) 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.

(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.

(21) For that purpose, 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[(11)]. 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.

(22) It is appropriate to lay down the procedure by which traders inform the tax authorities of the Member States 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.

(23) 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.

(24) 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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(25) Member States should be allowed to provide a special arrangement for the movement of excise goods under suspension of duty which takes place entirely on their territory, or conclude bilateral agreements with other Member States to allow simplification.

(26) 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.

(27) Where excise goods are acquired by private individuals for their own use and transported from one Member State to another 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.

(28) In cases where, following their release for consumption in a Member State, excise goods are held for commercial purposes in another Member State, it is necessary to establish that excise duty is due in the second Member State. For these purposes, it is necessary, in particular, to define the concept of ‘commercial purposes’.

(29) Where excise goods are acquired by persons who are not authorised warehousekeepers or registered consignees and do not carry out an independent economic activity, and are dispatched or transported directly or indirectly by the vendor or on his behalf, excise duty should be paid in the Member State of destination and provision should be made for a procedure to be followed by the vendor.

(30) In order to avoid conflicts of interest between Member States and double taxation in cases in which excise goods already released for consumption in one Member State move within the Community, provision should be made for situations in which excise goods, following their release for consumption, are subject to irregularities.

(31) Member States should be able to provide that goods released for consumption carry tax markings or national identification marks. The use of these markings or marks should not place any obstacle in the way of intra-Community trade.
Since the use of these 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 or release conditional on the presentation of evidence that they have been removed or destroyed.

(32) 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.

(33) 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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(34) 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 one Member State to another, in order to reduce the administrative burden.

(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[(12)].

(36) 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.

(37) 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 can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I U.K.

GENERAL PROVISIONS

Article 1 U.K.

1 This Directive lays down general arrangements in relation to 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 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 tax rules applicable for 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.

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Article 2 U.K.

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 Community;

(b) their importation into the territory of the Community.

Article 3 U.K.

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

2 The formalities laid down by the Community customs provisions for the exit of goods from the customs territory of the Community shall apply *mutatis mutandis* to the exit of excise goods from the Community to a territory 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 territory as defined in Article 4(2) 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).

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

Article 4 U.K.

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 business, to produce, process, hold, 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 Member State of the Community to which the Treaty is applicable, in accordance with Article 299 thereof, with the exception of third territories;

3. ‘Community’ and ‘territory of the Community’ means the territories of the Member States as defined in point 2;

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

5. ‘third country’ means any State or territory to which the Treaty is 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;

7. ‘duty suspension arrangement’ means a tax arrangement applied to the production, processing, holding or movement of excise goods not covered by a customs suspensive procedure or arrangement, excise duty being suspended;

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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;

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 business and under the conditions fixed by those authorities, to receive excise goods moving under a duty suspension arrangement from another Member State;

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 business 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 of Regulation (EEC) No 2913/92;

11. ‘tax warehouse’ means a place where excise goods are produced, processed, held, received or dispatched under duty suspension arrangements by an authorised 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.

Article 5 *U.K.*

1 This Directive and the Directives referred to in Article 1 shall apply to the territory of the Community.

2 This Directive and the Directives referred to in Article 1 shall not apply to the following territories forming part of the customs territory of the Community:

a the Canary Islands;

[[F1]b the French territories referred to in Article 349 and Article 355(1) of the Treaty on the Functioning of the European Union;**]**

c the Åland Islands;

d the Channel Islands.

3 This Directive and the Directives referred to in Article 1 shall not apply to the territories within the scope of Article 299(4) of the Treaty, nor to the following other territories not forming part of the customs territory of the Community:

a the Island of Heligoland;

b the territory of Büsingen;

c Ceuta;

d Melilla;

e Livigno**[**[F2]**.]**

[[F3]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 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 **[**[F1]France may give notice, by means of a declaration, that this Directive and the Directives referred to in Article 1 apply to the territories referred to in point (b) of paragraph (2), subject to measures to adapt to the extreme remoteness of those territories, in respect of all or

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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.**]**

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.

Textual Amendments

F1 Substituted by Council Directive 2013/61/EU of 17 December 2013 amending Directives 2006/112/EC and 2008/118/EC as regards the French outermost regions and Mayotte in particular.

F2 Substituted by Council Directive (EU) 2019/475 of 18 February 2019 amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC.

F3 Deleted by Council Directive (EU) 2019/475 of 18 February 2019 amending Directives 2006/112/EC and 2008/118/EC as regards the inclusion of the Italian municipality of Campione d'Italia and the Italian waters of Lake Lugano in the customs territory of the Union and in the territorial application of Directive 2008/118/EC.

Article 6 U.K.

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 U.K.

CHARGEABILITY, REIMBURSEMENT, EXEMPTION

SECTION 1 U.K.

Time and place of chargeability

Article 7 U.K.

1 Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.

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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 of excise goods outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Community 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 shall 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;

b in the situations referred to in Article 17(1)(a)(iv), the time of receipt of the excise goods by the consignee;

c in the situations referred to in Article 17(2), the time of receipt of the excise goods at the place of direct delivery.

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 authorisation by the competent authorities of the Member State, shall not be considered a release for consumption.

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

The total destruction or irretrievable loss of the excise goods 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.

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

Article 8 *U.K.*

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 (2) 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;

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b in relation to the holding of excise goods as referred to in Article 7(2)(b): the person holding the excise goods and any other person involved in the holding 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 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 excise duty debt, they shall be jointly and severally liable for such debt.

Article 9 U.K.

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 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 U.K.

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 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 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 to provide evidence of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

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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), 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 U.K.

Reimbursement and remission

Article 11 *U.K.*

In addition to the cases referred to in Article 33(6), Article 36(5), and Article 38(3), as well as those provided for by the Directives 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 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.

SECTION 3 U.K.

Exemptions

Article 12 *U.K.*

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;

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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 U.K.

1 Without prejudice to Article 21(1), excise goods moving under a duty suspension arrangement to a consignee referred to in Article 12(1) shall be accompanied by an exemption certificate.

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.

3 The procedure laid down in Articles 21 to 27 shall not apply to the movements of excise goods under a duty suspension arrangement to the armed forced 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 27 shall be used for such movements taking place entirely on their territory or, by agreement between the Member States concerned, between their territories.

Article 14 U.K.

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.

5 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.

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CHAPTER III U.K.

PRODUCTION, PROCESSING AND HOLDING

Article 15 U.K.

1 Each Member State shall determine its rules concerning the production, processing and holding of excise goods, subject to this Directive.

2 The production, processing and holding of excise goods, where the excise duty has not been paid, shall take place in a tax warehouse.

Article 16 U.K.

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 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 tax warehouse and enter in his accounts at the end of their movement all excise goods moving under a duty suspension arrangement, except where Article 17(2) 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 U.K.

MOVEMENT OF EXCISE GOODS UNDER SUSPENSION OF EXCISE DUTY

SECTION 1 U.K.

General provisions

Article 17 U.K.

1 Excise goods may be moved under a duty suspension arrangement within the territory of the 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;

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(iii) a place where the excise goods leave the territory of the Community, as referred to in Article 25(1);

(iv) a consignee referred to in Article 12(1), where the goods are dispatched from another Member State;

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 79 of Regulation (EEC) No 2913/92.

2 By way of derogation from paragraph 1(a)(i) and (ii) and (b) 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 its territory, where that place has been designated by the authorised warehousekeeper in the Member State of destination or by the registered consignee.

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

3 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 U.K.

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.

2 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 persons and the persons mentioned in paragraph 1.

3 The guarantee shall be valid throughout the Community. Its detailed rules shall be laid down by the Member States.

4 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 its territory;

b where the other Member States concerned so agree, movements of energy products within the Community by sea or by fixed pipeline.

Article 19 U.K.

1 A registered consignee may neither hold nor 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 accounts excise goods received under a duty suspension arrangement;

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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 U.K.

1 The movement of excise goods under a duty suspension arrangement shall begin, in the cases referred to in Article 17(1)(a) of this Directive, when the excise goods leave the tax warehouse of dispatch, and in the cases referred to in its Article 17(1)(b) upon their release for free circulation in accordance with Article 79 of Regulation (EEC) No 2913/92.

2 The movement of excise goods under a duty suspension arrangement shall end, 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, in the cases referred to in Article 17(1)(a)(iii), when the goods have left the territory of the Community.

SECTION 2 U.K.

Procedure to be followed on a movement of excise goods under suspension of excise duty

Article 21 U.K.

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 in the draft electronic administrative document.

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

Where these 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(2), 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 him.

5 In the case referred to in Article 17(1)(a)(iii) of this Directive, the competent authorities of the Member State of dispatch shall forward the electronic administrative document

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to the competent authorities of the Member State where the export declaration is lodged in application of Article 161(5) of Regulation (EEC) No 2913/92 (hereinafter the 'Member State of export'), if that Member State is different from the Member State of dispatch.

6 The consignor shall provide the person accompanying the excise goods 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 to the competent authorities upon request throughout the movement under an excise duty suspension arrangement.

7 The consignor may cancel the electronic administrative document as long as the movement has not begun under Article 20(1).

8 During the movement under a duty suspension arrangement, the consignor may, using the computerised system, amend the destination to show a new destination which must be one of the destinations referred to in Article 17(1)(a)(i), (ii) or (iii) or, where applicable, in Article 17(2).

Article 22 U.K.

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(8), transmit them to the competent authorities of the Member State of dispatch.

Article 23 U.K.

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:

1. the total quantity of excise goods does not change;
2. the splitting is carried out in the territory of a Member State which permits such a procedure;
3. the competent authorities of that Member State are informed of the place where the splitting is carried out.

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

Article 24 U.K.

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(2), 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'), 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 in the report of receipt.

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

Where these data are valid, the competent authorities of the Member State of destination shall confirm to the consignee the registration of the report of receipt and send it 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 25 U.K.

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 the customs office of exit as referred to in Article 793(2) of Commission Regulation (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[13] or by the office where the formalities referred to in Article 3(2) of this Directive are accomplished, certifying that the excise goods have left the territory of the Community.

2 The competent authorities of the Member State of export shall carry out an electronic verification of the data resulting from the endorsement referred to in paragraph 1. Once these 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 26 U.K.

1 In 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 document containing the same data as the draft electronic administrative document referred to in Article 21(2);

b he informs the competent authorities of the Member State of dispatch before the beginning of the movement.

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

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

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As soon as the data in the electronic administrative document have been validated, in accordance with Article 21(3), that document shall replace the paper document referred to in paragraph 1(a) of this Article. Article 21(4) and (5) and Articles 24 and 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).

4 A copy of the paper document referred to in paragraph 1(a) shall be kept by the consignor to back up his records.

5 Where the computerised system is unavailable in the Member State of dispatch, the consignor shall communicate the information referred to in Article 21(8) or Article 23 using alternative means of communication. To that end, he shall inform the competent authorities of the Member State of dispatch before the change of destination or splitting of the movement is initiated. Paragraphs 2 to 4 of this Article shall apply *mutatis mutandis*.

Article 27 *U.K.*

1 When, in the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(2), the report of receipt provided for in Article 24(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 26(1), the procedures referred to in Article 26(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 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, or in duly justified cases, the competent authorities of the Member State of destination shall send a copy of the paper document mentioned 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 him.

As soon as availability of the computerised system is restored in the Member State of destination or the procedures referred to in Article 26(2) have been carried out, the consignee shall submit a report of receipt, in accordance with Article 24(1). Article 24(3) and (4) shall apply *mutatis mutandis*.

2 When, in the case referred to in Article 17(1)(a)(iii), the report of export provided for in Article 25(1) 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 26(1), the procedures referred to in Article 26(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 and certifying that the movement has ended, except where the report of export provided for in Article 25(1) 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.

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As soon as availability of the computerised system is restored in the Member State of export or the procedures referred to in Article 26(2) have been carried out, the competent authorities of the Member State of export shall send a report of export in accordance with Article 25(1). Article 25(2) and (3) shall apply *mutatis mutandis*.

Article 28 U.K.

1 Notwithstanding Article 27, the report of receipt provided for in Article 24(1) or the report of export provided for in Article 25(1) shall constitute proof that a movement of excise goods has ended, 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 27, alternative proof of the end of a movement of excise goods under a duty suspension arrangement may be provided, in the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(2), 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 document 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.

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 29 U.K.

1 The Commission shall, in accordance with the procedure referred to in Article 43(2), adopt measures to determine:

a the structure and content of the messages to be exchanged for the purposes of Articles 21 to 25 between the persons and competent authorities concerned with a movement of excise goods under a duty suspension arrangement;

b the rules and procedures relating to the exchanges of the messages referred to in point (a);

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

2 Each Member State shall determine the situations where the computerised system may be considered unavailable and the rules and procedures to be followed in these situations, for the purposes of and in accordance with Articles 26 and 27.

SECTION 3 U.K.

Simplified procedures

Article 30 U.K.

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.

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Article 31 U.K.

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 U.K.

MOVEMENT AND TAXATION OF EXCISE GOODS AFTER RELEASE FOR CONSUMPTION

SECTION 1 U.K.

Acquisition by private individuals

Article 32 U.K.

1 Excise duty on excise goods acquired by a private individual for his own use, and transported from one Member State to another by 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 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.

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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 professional traders.

SECTION 2 U.K.

Holding in another Member State

Article 33 *U.K.*

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

For the purposes of this Article, 'holding for commercial purposes' shall mean the holding of excise goods by a person other than a private individual or by a private individual for reasons other than his own use and transported by him, in accordance with Article 32.

2 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 Member State.

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.

5 Excise goods which are held on board a boat or aircraft making sea-crossings or flights between 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 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 34 *U.K.*

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.

2 The persons referred to in Article 33(3) shall comply with 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;

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b pay the excise duty of the Member State of destination in accordance with the procedure laid down by that Member State;

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.

The Member State of destination may, in situations and under conditions which it lays down, 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.

Article 35 U.K.

1 Where excise goods already released for consumption in a Member State are moved to a place of destination in 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 document referred to in Article 34(1) and use 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;

c the consignee shall attest to having received the goods in accordance with the rules laid down by the competent authorities of the place of destination;

d the consignor and the 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.

SECTION 3 U.K.

Distance selling

Article 36 U.K.

1 Excise goods already released for consumption in one Member State, which are purchased by a person, other than an authorised warehousekeeper or a registered consignee, established in another Member State who does not carry out an independent economic activity, and which are dispatched or transported to another Member State directly or indirectly by the vendor or on his 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.

However, the Member State of destination may provide that the liable person shall be a tax representative, established in the Member State of destination and approved by the competent authorities of that Member State, or, in cases where the vendor has not respected the provision of paragraph 4(a), the consignee of the excise goods.

4 The vendor or tax representative shall comply with the following requirements:

a before dispatching the excise goods, register his 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 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 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, where the vendor 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 U.K.

Destruction and losses

Article 37 *U.K.*

1 In the situations referred to in Article 33(1) and Article 36(1), in the event of the total destruction or irretrievable loss of the excise goods during their transport in 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 authorisation by the competent authorities of that Member State, the excise duty shall not be chargeable in that Member State.

The total destruction or irretrievable loss of the excise goods 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 Article 34(2)(a) or Article 36(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 U.K.

Irregularities during the movement of excise goods

Article 38 *U.K.*

1 Where an irregularity has occurred during a movement of excise goods under Article 33(1) or Article 36(1), in a Member State other than the Member State in which they were

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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 33(1) or Article 36(1), in a Member State other than 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 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 34(2)(a) or Article 36(4)(a) and from any person who participated in the irregularity.

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 34(2)(a) or Article 36(4)(a).

4 For the purposes of this Article, ‘irregularity’ shall mean a situation occurring during a movement of excise goods under Article 33(1) or Article 36(1), not covered by Article 37 due to which a movement, or a part of a movement, of excise goods has not duly ended.

CHAPTER VI U.K.

MISCELLANEOUS

SECTION 1 U.K.

Marking

Article 39 U.K.

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 33(1), first subparagraph, and Article 36(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.

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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 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 U.K.

Small wine producers

Article 40 *U.K.*

1 Member States may exempt small wine producers from the requirements of Chapters III and IV and from the other requirements relating to movement and monitoring. Where these small producers themselves carry out intra-Community transactions, they shall inform their relevant authorities and comply with the requirements laid down by Commission Regulation (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[(14)].

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 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 1 000 hl of wine per year.

SECTION 3 U.K.

Stores for boats and aircraft

Article 41 *U.K.*

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

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SECTION 4 U.K.

Special arrangements

Article 42 U.K.

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.

CHAPTER VII U.K.

COMMITTEE ON EXCISE DUTY

Article 43 U.K.

1 The Commission shall be assisted by a committee referred to as the 'Committee on Excise Duty'.

2 Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

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

Article 44 U.K.

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 U.K.

TRANSITIONAL AND FINAL PROVISIONS

Article 45 U.K.

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.

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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 U.K.

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.

[[F4]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 1 000 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.**]**

Textual Amendments

F4 Substituted by Act concerning the conditions of accession of the Republic of Croatia and the adjustments to the Treaty on European Union, the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community.

Article 47 U.K.

1 Directive 92/12/EEC is repealed with effect from 1 April 2010.

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.

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Article 48 U.K.

1 Member States shall adopt and publish, not later than 1 January 2010, the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 April 2010. They shall forthwith communicate to the Commission the text of such laws, regulations and administrative provisions together with a table showing the correlation between them and this Directive.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

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 49 U.K.

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

Article 50 U.K.

This Directive is addressed to the Member States.

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(**1**) Opinion of 18.11.2008 (not yet published in the Official Journal).

(**2**) Opinion of 22.10.2008 (not yet published in the Official Journal).

(**3**) OJ L 76, 23.3.1992, p. 1.

(**4**) OJ L 316, 31.10.1992, p. 8.

(**5**) OJ L 316, 31.10.1992, p. 10.

(**6**) OJ L 316, 31.10.1992, p. 21.

(**7**) OJ L 316, 31.10.1992, p. 29.

(**8**) OJ L 291, 6.12.1995, p. 40.

(**9**) OJ L 283, 31.10.2003, p. 51.

(**10**) OJ L 302, 19.10.1992, p. 1.

(**11**) OJ L 162, 1.7.2003, p. 5.

(**12**) OJ L 184, 17.7.1999, p. 23.

(**13**) OJ L 253, 11.10.1993, p. 1.

(**14**) OJ L 128, 10.5.2001, p. 32.