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

CHAPTER IV

MOVEMENT OF EXCISE GOODS UNDER SUSPENSION OF EXCISE DUTY

SECTION 1

General provisions

Article 17

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;

(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

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

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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

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;

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

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

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

Article 21

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.

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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 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

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.

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Article 23

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

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

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[(1)] 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

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).

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

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

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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.

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

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

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

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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

Simplified procedures

Article 30

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

Article 31

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.

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