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

CHAPTER V

MOVEMENT AND TAXATION OF EXCISE GOODS AFTER RELEASE FOR CONSUMPTION

SECTION 5

Irregularities during the movement of excise goods

Article 38

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 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.