

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 1

Acquisition by private individuals

Article 32

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.

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.

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SECTION 2

Holding in another Member State

Article 33

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

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;
- 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

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

Distance selling

Article 36

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:

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- 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

Destruction and losses

Article 37

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

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.