

Council Directive (EU) 2020/262 of 19 December 2019  
laying down the general arrangements for excise duty (recast)

*CHAPTER II*

***General procedural provisions***

*Section 1*

***Taxable event, chargeability, irregularities during a movement under duty suspension***

*Article 6*

**Taxable event, time and place of chargeability, destruction and irretrievable losses**

- 1 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 Union;
  - b their importation or their irregular entry into the territory of the Union.
- 2 Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.
- 3 For the purposes of this Directive, ‘release for consumption’ means any of the following:
  - a the departure of excise goods, including irregular departure, from a duty suspension arrangement;
  - b the holding or storage of excise goods, including cases of irregularity, outside a duty suspension arrangement where excise duty has not been levied pursuant to the applicable provisions of Union law and national legislation;
  - c the production, including processing, of excise goods and irregular production or processing, outside a duty suspension arrangement;
  - d the importation of excise goods, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement, or the irregular entry of excise goods, unless the customs debt was extinguished under points (e), (f), (g) or (k) of Article 124(1) of Regulation (EU) No 952/2013. If the customs debt was extinguished according to the point (e) of Article 124(1) of Regulation (EU) No 952/2013, Member States may provide in their national law for a penalty taking into account the amount of excise debt which would have been incurred.
- 4 The time of departure from a duty suspension arrangement as referred to in point (a) of paragraph 3 shall be deemed to be:
  - a the time of receipt of the excise goods by the registered consignee in the situations referred to in point (a)(ii) of Article 16(1);
  - b the time of receipt of the excise goods by the consignee in the situations referred to in point (a)(iv) of Article 16(1);
  - c the time of receipt of the excise goods at the place of direct delivery in the situations referred to in Article 16(4).

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5 The total destruction or irretrievable loss, total or partial, of excise goods under a duty suspension arrangement, as a result of unforeseeable circumstances or force majeure, or as a consequence of an authorisation to destroy the goods by the competent authorities of the Member State, shall not be considered a release for consumption.

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

7 Partial loss due to the nature of the goods that occurs during a duty suspension movement between the Member States shall not be considered a release for consumption in so far as the amount of loss falls below the common partial loss threshold for those excise goods, unless a Member State has reasonable cause to suspect fraud or irregularity. That part of a partial loss which exceeds the common partial loss threshold for those excise goods shall be treated as a release for consumption.

8 A Member State may lay down its own rules for the treatment of partial losses under duty suspension arrangement not covered by paragraph 7.

9 The total destruction or irretrievable loss, total or partial, of the excise goods as referred to in paragraph 5 shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss, total or partial, occurred or, when it is not possible to determine where the loss occurred, where it was detected.

Where total destruction or irretrievable loss, total or partial, of the excise goods is established, the guarantee lodged in accordance with Article 17 shall be released, fully or partially, as appropriate, upon the production of satisfactory proof.

10 The Commission shall adopt delegated acts in accordance with Article 51 establishing the common partial loss thresholds referred to in paragraph 7 of this Article and in Article 45(2) having regard, inter alia, to the nature of the goods, the physical and chemical characteristics of the goods, the ambient temperature during the movement, the distance of the movement or time consumed during movement, specifying the excise goods, the corresponding common partial loss threshold as a percentage of the total quantity and other relevant aspects related to transport of the goods.

In the absence of common partial loss thresholds, Member States shall continue to apply the national provisions.

#### *Article 7*

### **Person liable to pay excise duty**

- 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 point (a) of Article 6(3):
    - (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 9(1), (2) and (4): the authorised warehousekeeper, the registered consignor or any other person who guaranteed the payment in accordance with Article 17(1) and (3) 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;
- b in relation to the holding or storage of excise goods as referred to in point (b) of Article 6(3): the person holding or storing the excise goods, or any other person involved in the holding or storage of the excise goods, or any combination of such persons in accordance with the principle of joint and several liability;
  - c in relation to the production, including processing, of excise goods as referred to in point (c) of Article 6(3): 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 or irregular entry of excise goods as referred to in point (d) of Article 6(3): the declarant as defined in point (15) of Article 5 of Regulation (EU) No 952/2013 (the ‘declarant’) or any other person as referred to in Article 77(3) of that Regulation and, in the case of irregular entry, any other person involved in that irregular entry.

2 Where several persons are liable for payment of the same excise duty, they shall be jointly and severally liable for such debt.

#### *Article 8*

##### **Chargeability conditions and rates of excise duty to be used**

The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which the 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.

By way of derogation from the first paragraph, when excise duty rates are changed, stocks of excise goods already released for consumption may be subject, where appropriate, to an increase in, or a reduction of, the excise duty.

#### *Article 9*

##### **Irregularities during movements of excise goods under duty suspension**

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 point (a) of Article 6(3), the release for consumption shall take place in the territory of 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 point (a) of Article 6(3), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred on the territory of 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.

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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 point (a) of Article 6(3) has been detected during the movement, an irregularity shall be deemed to have occurred in the Member State of dispatch at the time when the movement began, unless, within a period of four months from the start of the movement in accordance with Article 19(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 19(2), or of the place where the irregularity occurred.

Where the person who guaranteed the payment in accordance with Article 17 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 that person to provide evidence of the end of the movement in accordance with Article 19(2), or of the place where the irregularity occurred.

5 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 19(1), it is ascertained in which Member State the irregularity actually occurred, paragraph 1 shall apply.

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’ means a situation occurring during a movement of excise goods under a duty suspension arrangement, other than the one referred to in Article 6(5) and (6), due to which a movement, or a part of a movement of excise goods, has not ended in accordance with Article 19(2).