

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

CHAPTER V

Movement and taxation of excise goods after release for consumption

Section 1

Acquisition by private individuals

Article 32

Acquisition by a private individual

1 Excise duty on excise goods acquired by a private individual for his or her own use, and transported from the territory of one Member State to the territory of another Member State by this private individual, 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 the 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 point (e) of paragraph 2, 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 behalf of a private individual.

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For the purposes of this paragraph, ‘atypical mode of transport’ means 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 economic operators.

Section 2

Procedure to be followed for movements of excise goods which have been released for consumption in the territory of one Member State and are moved to the territory of another Member State in order to be delivered there for commercial purposes

Article 33

General

1 Where excise goods that have been released for consumption in the territory of one Member State are moved to the territory of another Member State to be delivered there for commercial purposes or used there, they shall be subject to excise duty in the Member State of destination.

Within the scope of the arrangements in this Section, excise goods shall only be moved from a certified consignor to a certified consignee.

2 For the purposes of this Article, excise goods shall be regarded as ‘delivered for commercial purposes’ where they have been released for consumption in the territory of one Member State, have been moved from that Member State to the territory of another Member State and are delivered either to a person other than a private individual or to a private individual if the movement is not covered by Article 32 or Article 44. However, excise goods shall not be regarded as delivered for commercial purposes where they are transported by that private individual for his or her own use, when moved from the territory of the other Member State.

3 The movement of excise goods under this Article shall begin when the excise goods leave the certified consignor’s premises or any location in the Member State of dispatch, which shall be notified before the start of the movement to the competent authorities of the Member State of dispatch.

4 The movement of excise goods under this Article shall end when the certified consignee has taken delivery of the excise goods at his or her premises or any location in the Member State of destination, which shall be notified before the start of the movement to the competent authorities of the Member State of destination.

5 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 of destination.

Article 34

Chargeable event

1 The certified consignee shall be liable to pay the excise duty, which shall be chargeable when the goods have been delivered to the Member State of destination, except where an irregularity under Article 46 occurs during the movement.

2 In case of lack of registration or certification of one or all persons involved in the movement, these persons shall also become liable to pay the excise duty.

3 Excise goods which are held on board a boat or aircraft making sea-crossings or flights between the territories of 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 subject to excise duty in that Member State.

Article 35

Conditions for movement of excise goods under this Section

1 A movement of excise goods shall be considered to comply with the requirements under this Section only if it takes place under cover of an electronic simplified administrative document processed in accordance with Article 36.

2 The certified consignee under Article 34(1) shall comply with all of the following requirements:

- a before the goods are dispatched provide a guarantee covering the inherent risks of non-payment of excise duties that can occur during the movement via the territories of the transited Member States and in the Member State of destination;
- b pay the excise duty due in the Member State of destination in accordance with the procedure laid down by that Member State at the end of the movement of the goods;
- 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.

3 By way of derogation from point (a) of paragraph 2, the competent authorities of the Member State of destination may, under the conditions fixed by them, allow the guarantee to be provided by the transporter or carrier, the owner of the excise goods, the certified consignor, or jointly by any combination of two or more of those persons with or without the certified consignee.

4 The guarantee referred to in point (a) of paragraph 2 shall be valid throughout the Union.

5 Member States shall lay down detailed rules governing the provision and the validity of a guarantee.

6 An authorised warehousekeeper or a registered consignor may act as a certified consignor for the purposes of this Section after having notified the competent authorities of the Member State of dispatch.

7 An authorised warehousekeeper or a registered consignee may act as a certified consignee for the purposes of this Section after having notified the competent authorities of the Member State of destination.

8 For a certified consignor or certified consignee sending or receiving excise goods only occasionally, the certification referred to in points (12) and (13) of Article 3 shall be limited to a specified quantity of excise goods, a single consignee or consignor and a specified period of time. Member States may limit the certification to a single movement. Such a temporary certification may also, notwithstanding the requirements of points (12) and (13) of Article 3, be given to private individuals acting as consignors or consignees when excise goods are delivered for commercial purposes under Article 33(2).

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Article 36

Electronic simplified administrative document

1 Where excise goods are to be moved under this Section, the certified consignor shall submit a draft electronic simplified administrative document to the competent authorities of the Member State of dispatch using the computerised system.

2 The competent authorities of the Member State of dispatch shall carry out an electronic verification of the data provided in the draft electronic simplified administrative document.

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

Where those data are valid, the competent authorities of the Member State of dispatch shall assign to the document a unique simplified administrative reference code and shall communicate it to the certified consignor.

3 The competent authorities of the Member State of dispatch shall forward the electronic simplified administrative document without delay to the competent authorities of the Member State of destination, which shall forward it to the certified consignee.

4 The certified consignor shall provide the person accompanying the excise goods, or where there is no person accompanying the goods, the transporter or carrier, with the unique simplified administrative reference code. The person accompanying the excise goods, the transporter or the carrier shall provide that code to the competent authorities upon request through the movement.

5 During a movement of excise goods under this Section, the certified consignor may, using the computerised system, change the destination to another place of delivery in the same Member State operated by the same certified consignee, or to the place of dispatch. For that purpose, the certified consignor shall submit a draft electronic change of destination document to the competent authorities of the Member State of dispatch using the computerised system.

Article 37

Report of receipt

1 On receipt of the excise goods, the certified 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 to the competent authorities of the Member State of destination, using the computerised system.

2 The competent authorities of the Member State of destination shall carry out an electronic verification of the data provided in the report of receipt.

Where those data are not valid the certified consignee shall be informed thereof without delay.

Where those data are valid, the competent authorities of the Member State of destination shall provide the certified consignee with a confirmation of the registration of the report of receipt and send it to the competent authorities of the Member State of dispatch.

The report of receipt shall be deemed to be sufficient proof that the certified consignee has fulfilled all of the necessary formalities and has made, if applicable and unless the excise goods are exempted from payment of excise duty, any payments of excise duty due to the Member State of destination or a duty suspension arrangement in accordance with Chapter III.

3 The competent authorities of the Member State of dispatch shall forward the report of receipt to the certified consignor.

4 The excise duty paid in the Member State of dispatch shall be reimbursed, upon request and on the basis of the report of receipt referred to in paragraph 1.

Article 38

Fallback procedure and recovery at dispatch

1 By way of derogation from Article 36, where the computerised system is unavailable in the Member State of dispatch, the certified consignor may start a movement of excise goods provided that:

- a the goods are accompanied by a fallback document containing the same data as the draft electronic simplified administrative document referred to in Article 35(1);
- b the certified consignor informs the competent authorities of the Member State of dispatch before the beginning of the movement.

The Member State of dispatch may require from the certified consignor a copy of the document referred to in point (a) of the first subparagraph, the verification by the Member State of dispatch of the data contained in that copy and, where the certified consignor is responsible for the unavailability of the computerised system, appropriate information on the reasons for that unavailability before the beginning of the movement.

2 As soon as the availability of the computerised system is restored, the certified consignor shall submit a draft electronic simplified administrative document in accordance with Article 36(1).

As soon as the data in the draft electronic simplified administrative document have been verified in accordance with Article 36(2), if those data are valid, that document shall replace the fallback document referred to in point (a) of the first subparagraph of paragraph 1 of this Article. Article 36(3) and Article 37 shall apply *mutatis mutandis*.

3 A copy of the fallback document referred to in point (a) of the first subparagraph of paragraph 1 shall be kept by the certified consignor in his or her records.

4 Where the computerised system is unavailable in the Member State of dispatch, the certified consignor may amend the destination of the goods as referred to in Article 36(5) and shall communicate that information to the competent authorities of the Member State of dispatch using alternative means of communication. The certified consignor shall inform the competent authorities of the Member State of dispatch before the change of destination is initiated. Paragraphs 2 and 3 of this Article shall apply *mutatis mutandis*.

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Article 39

Fallback documents and recovery of data — report of receipt

Where excise goods are to be moved under this Section and the report of receipt cannot be submitted at the end of the movement of the excise goods in accordance with Article 37(1), either because the computerised system is unavailable in the Member State of destination or because the procedures referred to in Article 38(2) have not yet been carried out, the certified consignee shall, except in duly justified cases, submit a fallback document containing the same data as the report of receipt and stating that the movement has ended to the competent authorities of the Member State of destination.

Except where the report of receipt can be submitted promptly by the certified consignee via the computerised system as provided for in Article 37(1), or except in duly justified cases, the competent authorities of the Member State of destination shall send a copy of the fallback document referred to in the first subparagraph to the competent authorities of the Member State of dispatch. The competent authorities of the Member State of dispatch shall forward the copy to the certified consignor or keep it available for the certified consignor.

As soon as availability of the computerised system is restored in the Member State of destination or the procedures referred to in Article 38(2) have been carried out, the certified consignee shall submit a report of receipt in accordance with Article 37(1). Article 37(2) and (3) shall apply *mutatis mutandis*.

Article 40

Alternative proofs of receipt

1 Notwithstanding Article 39, the report of receipt required by Article 37(1) shall constitute proof that the excise goods have been delivered to the certified consignee.

2 By way of derogation from paragraph 1, in the absence of the report of receipt for reasons other than those mentioned in Article 39, alternative proof of delivery of excise goods may be provided by means of an endorsement by the competent authorities of the Member State of destination, based on appropriate evidence, that the excise goods dispatched have reached their destination.

The fallback document referred to in the first paragraph of Article 39 shall constitute appropriate evidence for the purposes of the first subparagraph of this paragraph.

3 Where the endorsement by the competent authorities of the Member State of destination has been accepted by the competent authorities of the Member State of dispatch, it shall be deemed to be sufficient proof that the certified consignee has fulfilled all of the necessary formalities and has made any payments of excise duty due to the Member State of destination.

Article 41

Derogation from the obligation to use the computerised system — simplified procedures in two or more Member States

By agreement and under conditions fixed by all the Member States concerned, simplified procedures may be established for movements of excise goods under this Section which occur between the territories of two or more Member States.

Article 42

Movement of goods released for consumption between two places in the territory of the same Member State via the territory of another Member State

1 Where excise goods already released for consumption in the territory of a Member State are moved to a place of destination in the territory of 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 electronic simplified administrative document referred to in Article 35(1) following an appropriate itinerary;
- b the certified consignee shall attest to having received the goods in accordance with the rules laid down by the competent authorities of the place of destination;
- c the certified consignor and the certified 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.

Article 43

Delegation of power and conferral of implementing power for the movement of goods to be delivered for commercial purposes

1 The Commission shall adopt delegated acts in accordance with Article 51 establishing the structure and content of the electronic administrative documents exchanged through the computerised system for the purposes of Articles 36 and 37, [X¹and of fallback documents referred to in Articles 38, 39 and 40] in the context of movement of excise goods under this Section.

2 The Commission shall adopt implementing acts establishing the rules and procedures to be followed for the exchange of the electronic administrative documents through the computerised system for the purposes of Articles 36 and 37 and the rules and procedures for the use of the fallback documents referred to in Articles 38, 39 and 40 in the context of movement of excise goods under this Section. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 52.

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Editorial Information

- X1** Substituted by [Corrigendum to Council Directive \(EU\) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty \(Official Journal of the European Union L 58 of 27 February 2020\)](#).

Section 3

Distance selling

Article 44

Distance selling

1 Excise goods already released for consumption in the territory of one Member State, that are purchased by a person, other than an authorised warehousekeeper, a registered consignee or a certified consignee, who is established in another Member State and who does not carry out an independent economic activity, and that are dispatched or transported to the territory of another Member State directly or indirectly by a consignor who carries out an independent economic activity or on his or her behalf shall be subject to excise duty in the Member State of destination.

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 consignor.

However, the Member State of destination may allow the consignor to appoint a tax representative, established in the Member State of destination, as the person liable to pay excise duty. The tax representative shall be approved by the competent authorities of that Member State. Member States may provide that, in cases where the consignor or the tax representative has not respected the provision of point (a) of paragraph 4, the person liable to pay the excise duty shall be the consignee of the excise goods.

- 4 The consignor or tax representative shall comply with the following requirements:
- a before dispatching the excise goods, register his or her 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 have been delivered;
 - 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 or multilateral agreements.

5 In the case referred to in paragraph 1, the excise duty levied in the first Member State shall be reimbursed, at the request of the consignor, where the consignor or 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 loss

Article 45

Destruction and loss

1 In the situations referred to in Article 33(1) and Article 44(1), in the event of the total destruction or irretrievable loss of the excise goods during their transport in the territory of a Member State other than the Member State in which they were released for consumption, 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 that Member State, the excise duty shall not be chargeable in that Member State.

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

2 In the event of partial loss due to the nature of the goods that occurs during their transport in the territory of a Member State other than the Member State in which they were released for consumption, excise duty shall not be chargeable in that Member State where the amount of loss falls within the common partial loss threshold for those excise goods set out in accordance with Article 6(9), unless a Member State has reasonable cause to suspect fraud or irregularity.

3 The total destruction or irretrievable loss, total or partial, of the excise goods as referred to in paragraph 1 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 the total destruction or irretrievable loss, total or partial, of the excise goods is established, the guarantee lodged in accordance with point (a) of Article 35(2) or point (a) of Article 44(4) shall be released, fully or partially, as appropriate, upon the production of satisfactory proof.

Section 5

Irregularities during the movement of excise goods

Article 46

Irregularities during the movement of excise goods

1 Where an irregularity has occurred during a movement of excise goods under Article 33(1) or Article 44(1), in the territory of a Member State other than the territory of 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 44(1), in the territory of a Member State other than the territory of 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 the territory of 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 point (a) of Article 35(2) or point (a) of Article 44(4) and from any person who participated in the irregularity. Where several persons are liable for payment of the same excise duty, they shall be jointly and severally liable for such debt.

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 point (a) of Article 35(2) or point (a) of Article 44(4).

4 For the purposes of this Article, ‘irregularity’ means a situation occurring during a movement of excise goods under Article 33(1) or Article 44(1), not covered by Article 45 due to which a movement, or a part of a movement, of excise goods has not duly ended.

5 Any lack of registration or certification of one or all persons involved in the movement contrary to Article 33(1) or point (a) of Article 44(4) or any lack of respect of the provisions under Article 35(1) shall be deemed to be an irregularity. Paragraphs 1 to 4 shall apply accordingly, unless the consignee is liable to pay the excise duty according to the last sentence of Article 44(3).