

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

COUNCIL DIRECTIVE (EU) 2020/262

of 19 December 2019

laying down the general arrangements for excise duty

(recast)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament<sup>(1)</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>(2)</sup>,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive 2008/118/EC<sup>(3)</sup> has been substantially amended several times. Since further amendments are to be made, that Directive should be recast in the interests of clarity.
- (2) Conditions for charging excise duty on goods covered by Directive 2008/118/EC need to remain harmonised in order to ensure the proper functioning of the internal market.
- (3) It is appropriate to specify the excise goods to which this Directive applies and to refer for that purpose to Council Directives 92/83/EEC<sup>(4)</sup>, 92/84/EEC<sup>(5)</sup>, 2003/96/EC<sup>(6)</sup> and 2011/64/EU<sup>(7)</sup>.
- (4) Excise goods may be subject to other indirect taxes for specific purposes. In such cases, however, and in order not to jeopardise the useful effect of Union rules relating to indirect taxes, Member States should comply with certain essential elements of those rules.
- (5) In order to ensure free movement, taxation of goods other than excise goods should not give rise to formalities connected with the crossing of frontiers.
- (6) It is necessary to ensure the application of formalities when excise goods are moving between the territories which are defined as being part of the customs territory of the Union but which are excluded from the scope of this Directive and territories to which this Directive does apply.

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- (7) Since it remains necessary for the proper functioning of the internal market that the concept, and conditions for chargeability, of excise duty be the same in all Member States, it is necessary to make clear at Union level when excise goods are released for consumption and who is liable to pay the excise duty.
- (8) Since excise duty is a tax on the consumption of goods, duty should not be charged in respect of excise goods which, under certain circumstances, have been totally destroyed or are irretrievably lost.
- (9) In addition to total destruction or irretrievable loss of goods, partial losses may occur due to the nature of the goods. Except under duly justified circumstances, no duty should be charged for those partial losses insofar as they do not exceed the pre-established common partial loss thresholds.
- (10) In case of unintentional excess of goods discovered during a movement under a duty suspension movement, Member States should be able to permit the excess goods to be introduced in a tax warehouse under duty suspension.
- (11) In order to ensure uniform treatment of partial losses throughout the Union, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU) should be delegated to the Commission in respect of determining the common partial loss thresholds. When determining these partial loss thresholds, the Commission should take into account in particular aspects related to the physical and chemical characteristics of the goods (such as nature of excise goods, especially energy products (volatility), the ambient temperature during movement, the distance of movement or time consumed during movement). It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>(8)</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (12) Arrangements for the collection and reimbursement of duty have an impact on the proper functioning of the internal market and should therefore follow non-discriminatory criteria.
- (13) In the event of an irregularity during movements of excise goods under a duty suspension arrangement, excise duty should be due in the Member State in the territory of which the irregularity leading to a release for consumption has been committed or, if it is not possible to establish where the irregularity has been committed, it should be due in the Member State where the irregularity has been detected. Where excise goods do not arrive at their destination and no irregularity has been detected, the irregularity shall be deemed to have occurred in the Member State of dispatch.

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- (14) In addition to the cases of reimbursement provided for in this Directive, Member States should, where the purpose of this Directive so requires, reimburse excise duty paid on excise goods released for consumption.
- (15) The rules and conditions for the deliveries which are exempt from the payment of excise duty should remain harmonised. For the exempted deliveries to organisations situated in other Member States, use should be made of an exemption certificate.
- (16) In order to ensure uniform conditions regarding the form of the exemption certificate, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>(9)</sup>.
- (17) The situations in which tax-free sales to travellers leaving the territory of the Union are allowed should be clearly determined with a view to avoiding evasion and abuse. Since persons travelling over land can move more frequently and more freely as compared to persons travelling by boat or aircraft, the risk of non-respect of the duty and tax free import allowances by the traveller and consequently the control burden for the customs authorities is substantially higher in the case of travel over land. It is therefore appropriate to provide that excise duty-free sales at land borders should not be allowed.
- (18) Since checks need to be carried out in production and storage facilities in order to ensure that the duty is collected, it is necessary to retain a system of warehouses, subject to authorisation by the competent authorities, for the purpose of facilitating such checks. It should be understood that holding or storing of excise goods implies physical possession of these goods.
- (19) It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and economic operators without authorised warehousekeeper status.
- (20) It should be possible for excise goods, prior to their release for consumption, to move within the Union under suspension of excise duty. Such movement should be allowed from a tax warehouse to various destinations, in particular another tax warehouse but also to places equivalent for the purposes of this Directive.
- (21) The movement of excise goods under suspension of duty should also be allowed from their place of importation to those destinations and accordingly provision should be made with regard to the status of the person allowed to dispatch, but not allowed to hold or store, the goods from that place of importation.
- (22) In order to ensure the proper application of the provision concerning the end of the movement of excise goods under suspension, it should be clarified that the movement ends when the consignee is in a position to know precisely what quantity of goods he has actually received. The unloading and entering into the accounts may be used as evidence for the end of the movement.
- (23) In order to allow the use of the external transit procedure following the export procedure, the customs office of exit should become a possible destination of a movement under excise duty suspension. The moment when the duty suspension arrangement ends in that case should be specified. It should be specified that the

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competent authorities in the Member State of export should complete the report of export on the basis of the confirmation of exit which the customs office of exit sends to the customs office of export at the start of the external transit procedure. In order to allow the external transit procedure to take over the responsibilities for the excise goods under this Directive, Article 189 of Commission Delegated Regulation (EU) 2015/2446<sup>(10)</sup> has been amended by Commission Delegated Regulation (EU) 2018/1063<sup>(11)</sup>. Consequently, Union excise goods should also be allowed to be placed under the external transit procedure.

- (24) In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration at importation when excise goods released for free circulation are moved from the place of importation under duty suspension, information on the consignor and the consignee and a proof that imported goods will be dispatched from the Member State of importation to another Member State should be provided by the person who declares the excise goods for importation to the competent authorities in the Member State of importation.
- (25) In order to safeguard the payment of excise duty in a case of non-discharge of the excise movement, Member States should require a guarantee, which should be lodged by the authorised warehousekeeper of dispatch or the registered consignor or, if the Member State of dispatch so allows, by another person involved in the movement, under the conditions set by the Member States.
- (26) Several Member States already grant a guarantee waiver for the movement of energy products by fixed pipelines as that type of movement presents a very low fiscal risk. In order to harmonise the requirements for the provision of a guarantee in such cases, it is appropriate to waive the guarantee requirement for movements of energy products by fixed pipelines in all Member States.
- (27) In order to ensure a speedy completion of the necessary formalities and facilitate the supervision of movements of excise goods moved under suspension of excise duty, it is appropriate to use the computerised system under Decision (EU) 2020/263 of the European Parliament and of the Council<sup>(12)</sup> for the exchange of electronic administrative documents between the persons and competent authorities concerned ('the computerised system').
- (28) In order to ensure that the documents used in the context of movement of excise goods under a duty suspension arrangement are readily understandable in all Member States and can be processed by the computerised system, including when the computerised system is not available, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of laying down the structure and content of those documents.
- (29) In order to ensure uniform conditions for the completion, presentation and submission of documents used in the context of movement of excise goods under a duty suspension arrangement, including when the computerised system is not available, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

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- (30) It is appropriate to lay down the procedure by which economic operators inform the competent authorities of the Member States of dispatch and destination of consignments of excise goods. Due regard should be had to the situation of certain consignees not connected to the computerised system but who may receive excise goods moving under suspension of duty.
- (31) In order to ensure the proper functioning of the rules relating to movement under suspension of excise duty, the conditions for the start of the movement as well as the end, and the discharge of responsibilities, should be clarified.
- (32) In order to enable the competent authorities to ensure consistency between the electronic administrative document and the customs declaration for export in cases where excise goods are moved under duty suspension before being taken out of the territory of the Union, the person who declares the excise goods for export should inform the competent authorities in the Member State of export of the unique administrative reference code.
- (33) In order to enable the Member State of dispatch to take appropriate action, the competent authority in the Member State of export should inform the competent authority in the Member State of dispatch of any irregularities that occur during the export or of the fact that the goods are no longer to be taken out of the territory of the Union.
- (34) In order to enable the consignor to assign a new destination to the excise goods, the Member State of dispatch should inform the consignor that the goods are no longer to be taken out of the territory of the Union.
- (35) In order to improve the possibility of carrying out controls during a movement of excise goods, the person accompanying the excise goods, or where there is no accompanying person, the transporter or carrier, should be able to present the unique administrative reference code, in any form, to the competent authorities to allow them to retrieve details of the excise goods.
- (36) It is necessary to determine the procedures to be used in a case in which the computerised system is not available.
- (37) In order to align the procedures under this Directive with those provided for in Article 335(4) of Commission Implementing Regulation (EU) 2015/2447<sup>(13)</sup>, and in order to simplify the recognition of alternative evidence of exit in the Member State of dispatch, a minimum list of standard alternative evidence of exit, proving that the goods have been taken out of the territory of the Union, should be established.
- (38) Member States should be allowed to provide for a special arrangement for the movement of excise goods under suspension of duty which takes place entirely within their territory, or conclude bilateral or multilateral agreements with other Member States to allow simplification. Member States that are not party to bilateral or multilateral agreements should not be obliged to accept special arrangement made under such an agreement.

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- (39) It is appropriate to clarify the taxation and procedural rules relating to the movement of goods on which excise duty has already been paid in a Member State without changing their general structure.
- (40) Where excise goods are acquired by private individuals for their own use, and transported from the territory of one Member State to the territory of another Member State by them, excise duty should be paid in the Member State in which the excise goods are acquired, in accordance with the principle governing the internal market.
- (41) Excise duty levels for tobacco products and alcoholic beverages applied by Member States vary due to a number of factors, such as fiscal and public health policy and such divergences in some cases are significant. In this context, Member States should be able to contain risks, which are facilitating tax fraud, avoidance or abuse, threatening or undermining public policy or protection of health and life of humans. Therefore Member States should be able to take appropriate and proportionate measures enabling them to determine whether excise goods transported from the territory of one Member State to the territory of another Member State by a private individual were acquired by that private individual for his or her own use.
- (42) In cases where, following their release for consumption in a Member State, excise goods are delivered for commercial purposes in another Member State, it is necessary to establish that excise duty is due in the second Member State. For those purposes, it is necessary, in particular, to define the concept of ‘delivered for commercial purposes’.
- (43) The computerised system, which is currently used for the movement of excise goods under duty suspension, should be extended to the movement 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. The use of that computerised system will simplify the monitoring of such movements and ensure the proper functioning of the internal market.
- (44) Where excise goods are released for consumption in the territory of one Member State and are moved to the territory of another Member State to be delivered there for commercial purposes, it is appropriate to clarify who is liable to pay the duty and when the duty is chargeable.
- (45) To avoid unnecessary investment, the computerisation of the movement of excise goods which are 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 should be set up reusing as much of the existing arrangements for movements under duty suspension as possible. For that purpose and in order to facilitate such movements the guarantee provisions for those movements should be aligned to the guarantee provisions for movements under excise duty suspension in order to widen the choice of guarantors.
- (46) In order to facilitate the existing registration of economic operators dealing with the duty suspension arrangements, it is necessary to give a tax warehouse and a registered consignor the possibility, after having notified the competent authorities of the Member State of dispatch, to act as a certified consignor for excise goods which are released

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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. At the same time a tax warehouse or a registered consignee should be able to act as a certified consignee for those excise goods.

- (47) It is necessary to determine the procedures to be used where the computerised system is not available and a fallback document is to be used.
- (48) Member States should be allowed to provide for a special arrangement for the movement of excise goods which are 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 on the basis of bilateral or multilateral agreements with other Member States to allow simplification. Member States that are not party to bilateral or multilateral agreements should not be obliged to accept special arrangement made under such an agreement.
- (49) In order to ensure that the documents used in the context of movement of excise goods considered to be delivered for commercial purposes are readily understandable in all Member States and can be processed by the computerised system, including when the computerised system is not available, the power to adopt acts in accordance with Article 290 of the TFEU should be delegated to the Commission in respect of laying down the structure and content of those documents.
- (50) In order to ensure uniform conditions for the completion, presentation and submission of documents used in the context of movement of excise goods considered to be delivered for commercial purposes, including when the computerised system is not available, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (51) Where excise goods are acquired by persons who are not authorised warehousekeepers or registered consignees and who do not carry out an independent economic activity, and those goods are dispatched or transported by a consignor who carries out an independent economic activity or who dispatches or transports the goods on his or her own behalf, excise duty should be paid in the Member State of destination. Provision should be made for a procedure to be followed by the consignor for payment of the excise duty. In order to ensure the payment in the Member State of destination, the consignor or his or her tax representative should register his or her identity and guarantee payment of the excise duty with the competent office specifically designated under the conditions laid down by the Member State of destination. In order to facilitate those arrangements, the consignor should be able to choose whether to use a tax representative to comply with requirements of registration and payment of guarantee. If neither the consignor nor the tax representative fulfils these requirements, the consignee should be held liable to pay the excise duties in the Member State of destination.
- (52) In order to avoid conflicts of interest between Member States and double taxation in cases in which excise goods already released for consumption in the territory of one Member State move within the Union, provision should be made for situations in which excise goods, following their release for consumption, are subject to irregularities.

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- (53) Member States should be able to provide that goods released for consumption carry tax markings or national identification marks. The use of those markings or marks should not place any obstacle in the way of intra-Union trade. Since the use of those markings or marks should not give rise to a double taxation burden, it should be made clear that any amount paid or guaranteed to obtain such markings or marks is to be reimbursed, remitted or released by the Member State which issued the marks if excise duty has become chargeable and has been collected in another Member State. However, in order to prevent any abuse, Member States which issued such markings or marks should be able to make reimbursement, remission or release conditional on the presentation of evidence that they have been removed or destroyed.
- (54) Application of the normal requirements relating to the movement and monitoring of excise goods could put a disproportionate administrative burden on small wine producers. Therefore, Member States should be able to exempt those producers from certain requirements.
- (55) Account should be taken of the fact that, with regard to excise goods used as stores for boats and aircraft, no suitable common approach has yet been found.
- (56) With respect to excise goods used for the construction and maintenance of cross border bridges between Member States, those Member States should be allowed to adopt measures derogating from the normal rules and procedures applying to excise goods moving from the territory of one Member State to the territory of another Member State, in order to reduce the administrative burden.
- (57) In order to allow a period of adjustment to the electronic control system for the movement of goods, Member States should be able to benefit from a transitional period during which such movement may continue to be carried out subject to the formalities laid down by Directive 2008/118/EC.
- (58) Since the objective of this Directive, namely ensuring common arrangements in relation to certain aspects of excise duty, cannot be sufficiently achieved by the Member States but can rather, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve that objective.
- (59) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.
- (60) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the date of application of the Directives set out in Annex I, Part B,

HAS ADOPTED THIS DIRECTIVE:



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- (1) Opinion of 27 March 2019 (not yet published in the Official Journal).
- (2) Opinion of 17 October 2018 ([OJ C 62, 15.2.2019, p. 108](#)).
- (3) Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC ([OJ L 9, 14.1.2009, p. 12](#)).
- (4) Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages ([OJ L 316, 31.10.1992, p. 21](#)).
- (5) Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages ([OJ L 316, 31.10.1992, p. 29](#)).
- (6) Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity ([OJ L 283, 31.10.2003, p. 51](#)).
- (7) Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco ([OJ L 176, 5.7.2011, p. 24](#)).
- (8) [OJ L 123, 12.5.2016, p. 1](#).
- (9) Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers ([OJ L 55, 28.2.2011, p. 13](#)).
- (10) Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code ([OJ L 343, 29.12.2015, p. 1](#)).
- (11) Commission Delegated Regulation (EU) 2018/1063 of 16 May 2018 amending and correcting Delegated Regulation (EU) 2015/2446 supplementing Regulation (EU) No 952/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code ([OJ L 192, 30.7.2018, p. 1](#)).
- (12) Decision (EU) 2020/263 of the European Parliament and of the Council of 15 January 2020 on computerising the movement and surveillance of excise goods (see page 43 of this Official Journal).
- (13) Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015 laying down detailed rules for implementing certain provisions of Regulation (EU) No 952/2013 of the European Parliament and of the Council laying down the Union Customs Code ([OJ L 343, 29.12.2015, p. 558](#)).