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Corrigendum

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Concerne toutes les langues

Proposal for a

**COUNCIL DIRECTIVE**

**concerning the general arrangements for excise duty**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### 1) CONTEXT OF THE PROPOSAL

#### • Grounds for and objectives of the proposal

The provisions contained in Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products<sup>1</sup> need to be reviewed to take into account the introduction of the Excise Movement and Control System (hereafter: EMCS). The EMCS has been put into place following Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products<sup>2</sup>.

As a result, notably, the provisions relating to movements under suspension of excise duty need to be adapted so as to allow such movements to be covered by procedures under this new system. Changes to this effect would provide a simplified and paperless environment for trade, while permitting more integrated, faster and risk oriented control approaches for excise authorities (cf. third and fourth recital of Decision 1152/2003/EC).

Apart from these new provisions, other amendments of the rules set out in Directive 92/12/EEC are considered to be necessary such as:

- to update the language used in the directive, taking into account new legislative standards;
- to recast the text enhancing the logical structure and to take out those provisions which have lost relevance over time;
- to take account of legal developments and new legal concepts;
- to simplify and modernise the excise procedures, with the aim of reducing excise obligations for traders in particular for traders carrying out cross-border business without compromising excise controls.

Given the nature and reach of such changes, it is appropriate to replace Directive 92/12/EEC in its entirety.

The new text proposed also incorporates the essence of an earlier proposal, made with a view to modify Articles 7 to 10 of that Directive and contained in document COM(2004)227<sup>3</sup>.

#### • General context

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<sup>1</sup> OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2004/106/EC (OJ L 359, 4.12.2004, p. 30).

<sup>2</sup> OJ L 162, 1.7.2003, p. 5.

<sup>3</sup> OJ C 122, 30.4.2004, p. 44.

Directive 92/12/EEC ensures the proper functioning of the internal market with regard to general issues connected with the free movement of excise goods.

Review of this legislation will increase legal certainty for traders and will allow traders and administrations to better benefit from the possibilities offered by IT procedures.

Discussions in the Council on the Commission's proposal for a modification of Articles 7-10 of Directive 92/12/EEC (included in COM/2004/227) were halted in January 2005, awaiting further legal developments as well as initiatives tending to review and modernise the Directive. The said proposal is now integrated into Chapter V of the new text submitted. Some modifications have been made in order to improve the wording and structure of the text, and in order to align these provisions to the other changes relating to movements under duty suspension.

- **Existing provisions in the area of the proposal**

The text submitted is intended to replace Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such goods.

- **Consistency with the other policies and objectives of the Union**

This proposal is in line with the main policies and objectives of the Union. It seeks to improve the existing rules and to adapt them to the current circumstances. The aim is to simplify procedures and to increase transparency for intra-Community trade, notably through a procedure in which movement of excise goods under suspension of excise duty take place under EMCS. This new procedure also facilitates risk based monitoring procedures for national administrations.

## 2) **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

On 20 January 2006, the Commission launched an on-line consultation on the website of its Directorate General for Taxation and Customs Union. The consultation period ended on 30 April 2006.

The consultation was based on a paper which provided information on the current legal framework and various aspects of the forthcoming reform. It underlined the need to review Community excise legislation to provide the necessary legal basis for the EMCS. The paper also gave an overview of other modifications which could be considered in the context of the review process.

A total of 73 contributions were received. Of that total, 20 were from national and European federations or associations, 52 were from business and one from a semi-governmental retail organisation. The great majority of respondents shared the view that the existing provisions should be reviewed and modernised and that in particular operation of the EMCS should be integrated into the applicable rules.

- **Collection and use of expertise**

The proposal was developed in close cooperation with a specialists working group under the auspices of the Excise Committee (which itself was established under Directive 92/12/EEC). The Commission's services undertook a number of bilateral discussions with interested Member States to further discuss the proposal.

- **Impact assessment**

Among the new elements contained in this proposal, the core is constituted by the legal rules ensuring application of the EMCS. The ensuing impact has to be attributed in essence not to the text proposed here but to Decision No 1152/2003/EC, through which creation of the EMCS was decided. As explained above, the new system, in particular, simplifies movements under suspension of excise duty and facilitates appropriate controls by Member States.

To the extent this proposal incorporates changes proposed in COM(2004)227, a detailed analysis of those changes has already been made in that document.

### 3) **LEGAL ELEMENTS OF THE PROPOSAL**

- **Summary of the proposed action**

To introduce the legal basis for the use of the EMCS along with some further changes aiming at more transparency for the taxation of excise duty. The proposal integrates the Commission's earlier proposal made with a view to modify Articles 7-10 of Directive 92/12/EEC (COM/2004/227).

- **Legal basis**

Article 93 of the Treaty.

- **Subsidiarity principle**

The subsidiarity principle applies insofar as the proposal does not fall under the exclusive competence of the Community.

The object of the proposal is to replace Directive 92/12/EEC by provisions fulfilling the same function, namely to ensure the proper functioning of the internal market in the particular field of excise goods.

The subsidiarity principle is respected, since this objective cannot be sufficiently achieved by actions of the Member States and can be better achieved at Community level.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason.

The Directive suggested is intended to replace Directive 92/12/EEC, in establishing provisions pursuing the same objective, taking account of the current technical and legal context. Like Directive 92/12/EEC, it does not go beyond what is necessary to

ensure the proper functioning of the internal market in the particular field of excise goods.

- **Choice of instruments**

Proposed instruments: Directive.

The proposal is to replace the current Directive 92/12/EEC by a Directive fulfilling the same function. Means other than a Directive would not be adequate in nature.

#### 4. **BUDGETARY IMPLICATIONS**

The adoption of the proposal will have no impact on the Community budget. Any impact in the matter, relating to the installation of EMCS, results from Decision 1152/2003/EC.

#### 5. **ADDITIONAL INFORMATION**

- **Repeal of existing legislation**

The adoption of the proposal will repeal existing legislation, namely Directive 92/12/EEC. A transitional period is foreseen in which Member States may still allow movements under suspension of excise duty to take place under cover of accompanying documents in paper form, in accordance with the said Directive.

- **Detailed explanation of the proposal**

The following detailed explanation article by article focuses on provisions which are new or have been changed in substance in comparison with the corresponding provisions of Directive 92/12/EEC. The correlation tables attached to the proposed new directive should be used to correlate the new with the existing provisions of Directive 92/12/EEC.

#### **Chapter I: General provisions**

Article 1 refers to the nature of the excise duty as being a tax on the consumption of excise goods. The definition of the different excise goods (which is necessary to identify exactly which goods are subjected to the provisions of this Directive), the structure of the excise duty to be applied (e.g. per hl; per degree alcohol; per 1000 pieces, etc.), the scope of possible exemptions, as well as the minimum rates of duty that Member States have to respect shall be set out in specific Directives.

Article 2(1) corresponds to Article 5(1) of Directive 92/12/EEC. However, the word "extraction" has been added in point a) in order to clarify that direct extraction from the soil is also covered by the word "production", as specified in Article 21(2) of

Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity<sup>4</sup>.

Articles 3(1) and 3(2) provide that the formalities relating to importation or exportation laid down by the Community customs provisions in force shall apply *mutatis mutandis* to the importation from or exportation to the territories referred to in Article 5(2) which form part of the Customs territory of the Community but fall outside the territorial scope of this Directive. These formalities already apply to excise goods by virtue of Articles 275 and 279 of Directive 2006/112/EC on the common system of VAT<sup>5</sup>. However, to clarify these situations, it is advisable to include these provisions in this directive as well.

In order to avoid duplication of procedures, Article 3(3) provides that for excise goods under a customs suspensive procedure or arrangements, the provisions laid down in this Directive on the production, processing and holding as well as the movement under suspension of excise duty shall not apply.

Article 4 provides a number of new or largely modified definitions and retains some of the old ones. Definitions containing normative provisions, such as the obligation to have an authorisation, have been moved to the corresponding normative sections.

Articles 5 and 6 provide where this Directive and the specific excise Directives apply. To enhance clarity, the structure of these provisions has been aligned to the structure used in Articles 6 and 7 of Directive 2006/112/EC on the common system of VAT.

In comparison with Directive 92/12/EEC, Gibraltar has been added to the list of territories in Article 5(3) (territories not forming part of the customs territory of the Community to which this Directive and the specific excise Directives do not apply), in order to remove any doubt as to whether, in view of the Act of Accession of the UK, the Community provisions on excise duty apply to Gibraltar as well. Furthermore, the words "subject to measures to adjust to their extreme remoteness" have been added in Article 5(4) concerning the Canary Islands, aligning as such this paragraph to Article 5(5) concerning the French overseas departments.

## **Chapter II: Incurrence of excise duty**

In Article 7(1), replacing the first subparagraph of Article 6(1) of Directive 92/12/EEC, the reference to shortages has been removed, as the occurrence of shortages under a duty suspension arrangement automatically constitutes a release for consumption as defined in Article 7(2). In Article 7(2), replacing the second subparagraph of Article 6(1) of Directive 92/12/EEC, the references to "irregular" events constituting a release for consumption have been removed, as the events constituting a release for consumption should be considered to cover both regular and irregular events.

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<sup>4</sup> OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

<sup>5</sup> OJ L 347, 11.12.2006, p. 1.

The second subparagraph of Article 7(2) contains a slightly modified definition of importation of excise goods, currently in Article 5(1), second and third subparagraphs of Directive 92/12/EEC.

Article 7(4) provides that excise goods shall not be considered released for consumption in case of their total destruction or irretrievable loss, including losses inherent in the nature of the goods. This provision replaces and simplifies Article 14 of Directive 92/12/EEC. In line with the nature of excise duty as a tax on the consumption of excise goods, the condition for the application of the proposed rule is whether the goods placed under a suspension arrangement have been destroyed and/or can still be used and therefore effectively be released - and made available - for consumption. Compared to current legislation, it will no longer be necessary for the competent authorities to establish the reason for the occurrence of the shortage, in terms of fortuitous events of *force majeure*. A further important difference with Article 14 of Directive 92/12/EEC is that, in case of intra-Community movements under suspension of excise duty, it will be for the Member State where the destruction or the loss of the goods occurs instead of the Member State of destination to decide on the application of Article 7(4).

Article 8, second subparagraph, clarifies that Member States are competent to define the procedures for reimbursement and remission of excise duty as well. The present provision (Article 16(2) of Directive 92/12/EEC) only refers to provisions for levying and collecting duty.

Article 9 replaces and simplifies Article 20 of Directive 92/12/EEC, providing for rules to identify the Member State entitled to recover excise duty in case of irregularities that occurred during the movement of excise goods under suspension of excise duty. Article 9(3) defines the term "irregularity" as a situation in which a movement under suspension of excise duty of excise goods has not ended in accordance with Article 19(2). This means that all or part of the goods concerned have not been subject to the latter provision. Furthermore, the term "offence" has been removed as the term "irregularity" covers offences as well. The principle laid down in Article 20(1) of Directive 92/12/EEC that excise duty shall be due in the Member State where the irregularity has been committed is already covered by the new Article 8 and should not be repeated here. Article 9(1) then only deals with the situation in which it is not possible to determine where the irregularity took place and generalises the rule that in that situation the release for consumption is deemed to have occurred in the Member State of dispatch. This includes the situation in which the irregularity has been detected in another Member State than the Member State of dispatch, at present covered by Article 20(2) of Directive 92/12/EEC. It also includes the situation where the excise goods do not arrive at their destination referred to in Article 20(3) of Directive 92/12/EEC.

Article 10 stipulates the conditions for reimbursement or remission of excise duty, other than specified in the cases of Articles 31(4) and 34(7) and replaces Article 22(1) and (2) of Directive 92/12/EEC. In comparison with the latter provisions, which only cover a specific situation, the proposal lays down as a general principle that it is for Member States to determine the cases and the conditions in which a reimbursement or remission of excise duty is granted. Reimbursement or remission should, however, not be possible in case this would allow the exempt consumption of excise goods other than those provided for under Article 11. The complex procedure



of Article 22(2) of Directive 92/12/EEC can be removed as it becomes redundant when the EMCS becomes operational.

Articles 11 and 12 take over the provisions concerning exemptions from Article 23(1) and (1a.) of Directive 92/12/EEC. The procedure of Article 23(2) of Directive 92/12/EEC is not reproduced in the proposal. It has never been used and can be considered to be covered by paragraph 1(e) of Article 11 of the proposal.

Article 13 provides an arrangement for tax-free shops which allow such shops situated in an airport or seaport only to supply excise goods under exemption of excise duty to travellers taking a flight or sea-crossing to a third territory or to a third country. In principle, there are no limits as to the quantity or value of the goods that can be purchased but those quantities can be restricted by Member States to prevent any possible evasion, avoidance or abuse.

### **Chapter III: Production, processing and holding**

Articles 14 and 15 correspond to Articles 11 to 13 of Directive 92/12/EEC.

### **Chapter IV: Movement of excise goods under suspension of excise duty**

This Chapter lays down the basic provisions and the procedures that apply to the movement of excise goods under suspension of excise duty under the EMCS.

Article 16 provides for the possibility to move excise goods under suspension of excise duty and enumerates the different movement destinations and various movement scenarios. Paragraph 1(b) provides for the possibility to start the movement at the place of importation under the responsibility of a registered consignor. Paragraph 2 allows the movement to continue to a place of direct delivery, which is a place indicated by the tax warehousekeeper or registered consignee under his responsibility.

Article 17 contains the provisions concerning the guarantee to be provided to cover the risk inherent in the movement under suspension of excise duty. In comparison with Article 15(3) of Directive 92/12/EEC, paragraph 1 provides a much wider circle of persons who shall be allowed to act as guarantor, so as to allow traders to better align the fiscal responsibility with the commercial responsibility of the movement.

Article 18, replacing Article 16 of Directive 92/12/EEC, contains the specific provisions concerning movements destined for a registered consignee or a temporary registered consignee (respectively called "registered trader" and "non-registered trader" in Directive 92/12/EEC). Provisions concerning chargeability and payment of duty have been removed from this Article and included in Article 7. The provisions concerning temporary registered consignees have been adapted to take account of the fact that under the EMCS, the authorisations of these operators will be included in the electronic database referred to in Article 22 of Council Regulation (EC) No 2073/2004 of 16 November 2004 on administrative cooperation in the field of excise duties<sup>6</sup>.

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<sup>6</sup> OJ L 359, 4.12.2004, p. 1.

Article 19 defines when a movement under suspension of excise duty shall be deemed to begin and end. This is necessary to determine the field of application of the various rules relating to movement under suspension of excise duty. It also provides the exact moment at which the responsibility for the goods is moved to and from the person responsible for the movement under excise duty suspension.

Article 20(1) provides that a movement of excise goods shall be considered to take place under suspension of excise duty only if it takes place under cover of an electronic administrative document (hereinafter: e-AD.) Paragraph 2 provides that the e-AD shall be submitted by the consignor using the computerised system developed under Decision No 1152/2003/EC (hereinafter referred to as the 'computerised procedure'). The e-AD replaces the current paper accompanying document prescribed in Article 18(1) of Directive 92/12/EEC. Paragraphs 3 to 6 describe the various stages that the e-AD has to pass through and provides, in particular, for the assignment of a unique Administrative Reference Code (ARC) which must be available throughout the movement.

Paragraphs 7 and 8 lay down specific provisions concerning respectively the possibility to cancel an e-AD before the start of the movement and to change the destination of the movement.

Article 21 allows for the data for the submitted e-AD (limited to energy products) to be filled in at a later stage.

Article 22 provides that the Member States may allow the consignor to split a movement of energy products.

Articles 23 and 24 provide for the use of an electronic 'report of receipt' or the 'report of export', for proof that the excise movement has ended correctly and describe the various stages that it has to pass through. These reports replace the copy of the paper accompanying document to be returned to the consignor for discharge, prescribed in Article 19 of Directive 92/12/EEC.

Article 25(2) stipulates that alternative proof of the correct ending of a movement may be provided in the absence of the electronic reports referred to in the previous Articles. Such proof is already accepted by the Member States at present on the basis of an agreement reached in the Committee on Excise Duty. To enhance legal certainty, this possibility should be included in the directive.

Article 26 lays down the procedures to be used when the computerised system is not available. Paragraph 1 concerns the submission of the e-AD and paragraph 2 concerns the declaration to be submitted by the consignor in case of change of destination and splitting of a movement.

Article 27 reflects the fact that, for the EMCS to fulfill its function properly, a higher degree of procedural harmonisation would be required, as compared to current legislation. It is proposed that the new Directive shall lay down the core elements of the procedure, but that a number of technical details shall be provided in implementing legislation.

Article 28 allows Member States to simplify the procedures for movements which take place entirely on their territory.

Article 29 allows for a simplification of the formalities for the movement of excise goods under suspension of excise duty, by agreement between two or more Member States for frequent and regular movements between certain economic operators. This provision replaces Article 19(2), third subparagraph of Directive 92/12/EEC which only referred to the procedure for discharging the accompanying document. Article 29 extends the possibility to simplify the formalities to the submission of the e-AD as simplifying discharge only is not meaningful under the EMCS.

Article 29(3) allows for the possibility for the Member States to simplify the procedures for movements via fixed pipelines, at present included in Commission Regulation (EEC) No 2719/92 of 11 September 1992 on the accompanying administrative document for the movement under duty-suspension arrangements of products subject to excise duty<sup>7</sup>.

## **Chapter V: Movement and taxation of excise goods after release for consumption**

This Chapter replaces Articles 7 to 10 of Directive 92/12/EEC and reproduces the Commission's earlier proposal for a modification of these articles included in COM(2004)227 of 2 April 2004. A detailed explanation of this Chapter can be found in the explanatory memorandum included in COM(2004)227.

Chapter V distinguishes three different scenarios in relation to the excise goods being held and or moved between Member States after the release for consumption.

- Article 30 concerns movements of goods acquired by private individuals. This Article replaces Articles 8 and 9 of Directive 92/12/EEC and corresponds to point 2 and 3 of Article 1 of the proposal included in COM(2004)227.
- Articles 31 to 33 concern excise goods which have already been released for consumption in one Member State and are held for commercial purposes in another Member State. These Articles replace Articles 7 of Directive 92/12/EEC and corresponds to point 1 of Article 1 of the proposal included in COM(2004)227.
- Article 34 provides for procedures applicable to sales made by traders who take responsibility, directly or indirectly, for the transport of excise goods to private individuals established in another Member State (so-called "distance selling"). This Article replaces Articles 10 of Directive 92/12/EEC and corresponds to point 4 of Article 1 of the proposal included in COM(2004)227.

Article 35 provides for a similar treatment of the destruction or loss of excise goods transported between Member States after the release for consumption, as for the destruction or loss occurring during a movement under suspension of excise duty.

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<sup>7</sup> OJ L 276, 19.9.1992, p. 1. Regulation as last amended by Regulation (EC) No 1792/2006 (OJ L 362, 20.12.2006, p. 1).

Article 36 does the same concerning the treatment of irregularities. These provisions correspond to point 5 of Article 1 of the proposal included in COM(2004)/227.

## **Chapter VI: Miscellaneous**

Article 37 allows Member States the possibility to impose on its territory the use of tax or fiscal markings. In comparison to Article 21 of Directive 92/12/EEC, the first paragraph has been completed in order to clarify that tax markings or identification marks may also be required when excise goods are transported to a Member State outside suspension of excise duty, in the situations referred to in Articles 31 and 34 of the proposal. Moreover, Article 37 contains a number of elements intended to clarify, in view of the judgment of the Court of Justice of the European Communities in Case C-374/06, *BATIG*, that such markings are not to give rise to a double tax burden, directly or indirectly. The last paragraph of Article 21 of Directive 92/12/EEC has not been included in the proposal as the use of the e-AD is already implied by the reference to Article 7(1) in the first paragraph of Article 34.

Article 38 allows Member States to exempt small wine producers from the requirements laid down in chapters III and IV.

Article 39 corresponds to paragraph 5 of Article 23 of Council Directive 92/12/EEC.

## **Chapter VII: Final provisions**

Article 40 concerns the Committee on excise duty which shall be designated as a regulatory committee under the provisions of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>8</sup>. Article 41 provides that the Committee shall, in addition, examine all issues raised by its Chairman to discuss the application of the Community provisions on excise duty.

Article 42 stipulates that the current Directive 92/12/EEC shall be repealed as of 1 April 2009 which is the foreseen date of entry into application of the computerised system. Article 43 provides that for an intermediate period, ending 31 December 2009 Member States may allow that some of the provisions relating to the use of the paper-based procedure for the monitoring of the movement of excise goods under suspension of excise duty under Directive 92/12/EEC shall continue to apply. Movements started under the provisions of Directive 92/12/EEC shall be required to use the formalities for discharging the movement as provided for in that Directive.

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<sup>8</sup> OJ L 184, 17.7.1999, p. 23. Decision as last amended by Decision 2006/512/EC, (OJ L 200, 22.7.2006, p. 11).

Proposal for a

**COUNCIL DIRECTIVE**

**concerning the general arrangements for excise duty**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission<sup>9</sup>,

Having regard to the opinion of the European Parliament<sup>10</sup>,

Having regard to the opinion of the European Economic and Social Committee<sup>11</sup>,

Whereas:

- (1) Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products<sup>12</sup> has been substantially amended several times. Since further amendments are to be made, it should be replaced in the interests of clarity.
- (2) Conditions for charging excise duty on the goods covered by Directive 92/12/EEC, hereinafter "excise goods", 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 Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages<sup>13</sup>, Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages<sup>14</sup>, Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco<sup>15</sup>, Council Directive 92/79/EEC of 19 October 1992 on the

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<sup>9</sup> OJ C , , p. .

<sup>10</sup> OJ C , , p. .

<sup>11</sup> OJ C , , p. .

<sup>12</sup> OJ L 76, 23.3.1992, p. 1. Directive as last amended by Directive 2004/106/EC (OJ L 359, 4.12.2004, p. 30).

<sup>13</sup> OJ L 316, 31.10.1992, p. 21. Directive as last amended by the 2005 Act of Accession.

<sup>14</sup> OJ L 316, 31.10.1992, p. 29.

<sup>15</sup> OJ L 291, 6.12.1995, p. 40. Directive as last amended by Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26).

approximation of taxes on cigarettes<sup>16</sup>, Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes<sup>17</sup> and Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity<sup>18</sup>.

- (4) Excise goods may be subject to other indirect taxes for specific purposes. In that case, however, and in order not to jeopardise the useful effect of Community 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 border-crossing formalities.
- (6) It is necessary to ensure the application of formalities when excise goods are moving from the territories which are defined as being part of the customs territory of the Community but which are excluded from the scope of this Directive to territories which are also so defined but to which this Directive does apply.
- (7) Since suspensive procedures under Council Regulation (EC) No 2913/92 of 12 October 1992 establishing the Community Customs Code<sup>19</sup> provide for adequate monitoring whilst excise goods are subject to the provisions of that Regulation, there is no need for the separate application of an excise monitoring system for the time that the excise goods are subject to a Community customs suspensive procedure or arrangement.
- (8) 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 Community level when excise goods are released for consumption.
- (9) Since excise duty is a tax on the consumption of certain goods, duty should not be charged in respect of excise goods which have been destroyed or irretrievably lost, irrespective of the circumstances of the destruction or loss.
- (10) 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.
- (11) In the event of an irregularity, excise duty should be due in the Member State on whose territory the irregularity has been committed which has led to the release for consumption. Where it is not possible to determine where the release for consumption has taken place, a place should be determined where release for consumption is deemed to have taken place. For reasons of legal certainty and to avoid any double taxation, a single Member State should be designated for that purpose.

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<sup>16</sup> OJ L 316, 31.10.1992, p. 8. Directive as last amended by Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49).

<sup>17</sup> OJ L 316, 31.10.1992, p. 10. Directive as last amended by Directive 2003/117/EC.

<sup>18</sup> OJ L 283, 31.10.2003, p. 51. Directive as last amended by Directive 2004/75/EC (OJ L 157, 30.4.2004, p. 100).

<sup>19</sup> OJ L 302, 19.10.1992, p. 1). Regulation as last amended by Regulation (EC) No 1791/2006 (OJ L 363, 20.12.2006, p. 1).

- (12) In addition to the cases of reimbursement provided for in this Directive, Member States should be able, where the purpose of this Directive so allows, to reimburse excise duty paid on excise goods released for consumption.
- (13) 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.
- (14) The situations in which tax-free sales to travellers leaving the territory of the Community are allowed should be clearly determined.
- (15) Since checks need to be carried out in production and storage facilities in order to ensure that the tax debt 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.
- (16) It is also necessary to lay down requirements to be complied with by authorised warehousekeepers and traders without authorised warehouse status.
- (17) It should be possible for excise goods, prior to their release for consumption, to move within the Community under suspension of excise duty and 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.
- (18) 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 dispatching the goods from that place of importation.
- (19) 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 may be lodged by any of the main actors involved in the movement, under the conditions set by the Member States.
- (20) It is necessary, in order to ensure the collection of taxes at the rates laid down by Member States, for the competent authorities to be in a position to follow the movements of excise goods and provision should therefore be made for a monitoring system for such goods.
- (21) For that purpose, it is appropriate to use the computerised system established by Decision No 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products<sup>20</sup>. Use of that system, as opposed to a paper-based system, accelerates the necessary formalities and facilitates the monitoring of movement of excise goods under suspension of excise duty.
- (22) It is appropriate to lay down the procedure by which traders inform the tax authorities of the Member States of consignments of excise goods dispatched or received. Due regard should be had to the situation of certain consignees not connected to the

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<sup>20</sup> OJ L 162, 1.7.2003, p. 5.

computerised system but who may receive excise goods moving under suspension of duty.

- (23) 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.
- (24) It is necessary to determine the procedures to be used in a case in which the computerised system is not available
- (25) Member States should be allowed to provide a special arrangement for the movement of excise goods under suspension of duty which takes place entirely on their territory, or conclude bilateral arrangements with other Member States to allow simplification.
- (26) The increase in the volume of commercial transactions conducted via the Internet and the abolition of duty-free sales to persons travelling within the Community have resulted in greater use being made of the provisions in Directive 92/12/EEC relating to movements within the Community, whether commercial or private, of goods on which excise duty has already been paid in a Member State. 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.
- (27) By virtue of the principle governing the single market, excise duty is to be charged in the Member State in which excise goods are acquired when they are acquired by private individuals for their own use and transported by them. That principle, should also apply in relation to excise goods for the personal use of a private individual transported by a third party on behalf of the private individual, since such transactions are purely private. For health protection reasons this principle should not, however, be extended to cover manufactured tobacco transported on behalf of a private individual.
- (28) It should be specified that the principle of taxation in the Member State of acquisition also applies to goods sent by one private individual to another without any payment, direct or indirect.
- (29) Where, following their release for consumption in a Member State, excise goods are held in another Member State, it is necessary to determine whether excise duty is due in the second Member State. For these purposes, it is necessary, in particular, to define the concept of "commercial purposes".
- (30) Excise goods purchased by persons who are not authorised warehousekeepers, which are dispatched or transported directly or indirectly by the vendor or on his behalf, should be subject to excise duty in the Member State of destination and provision should be made for a procedure to be followed by the vendor.
- (31) In order to avoid conflicts of interest between Member States and double taxation in cases in which excise goods already released for consumption in one Member State move within the Community, provision should be made for situations in which excise goods, following their release for consumption, are subject to irregularities.
- (32) In the absence of a common system of tax collection, Member States should be able to provide that goods released for consumption carry fiscal or national identification marks. However, the use of these marks should not place any obstacle in the way of



intra-Community trade. Since the use of these marks should not give rise to a double taxation burden, directly or indirectly, it should be made clear that any amount paid or guaranteed to obtain such 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.

- (33) 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.
- (34) 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.
- (35) Measures for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission<sup>21</sup>.
- (36) In order to allow a period of adjustment to the electronic control system for the movement of goods under suspension of excise duty, 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 92/12/EEC.
- (37) 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 and can therefore, by reason of its scale and effects, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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,

HAS ADOPTED THIS DIRECTIVE:

## CHAPTER I

### General provisions

#### *Article 1*

This Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of the following goods, hereinafter "excise goods":

- (1) energy products and electricity covered by Directive 2003/96/EC;

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<sup>21</sup> OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

- (2) alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC;
- (3) manufactured tobacco covered by Directives 95/59/EC, 92/79/EEC and 92/80/EEC.

#### *Article 2*

1. The following shall be subject to excise duty:
  - (a) the production, including extraction, of excise goods within the territory of the Community;
  - (b) the importation of excise goods into the territory of the Community.
2. Member States may apply other taxes to excise goods for specific purposes, provided that those taxes comply with the Community tax rules applicable for excise duty or value added tax as far as determination of the tax base, calculation of the tax, chargeability and monitoring of the tax are concerned.
3. Member States shall retain the right to levy:
  - (a) taxes on products other than excise goods;
  - (b) on the supply of services, including those relating to excise goods, taxes which cannot be characterised as turnover taxes.

However, the levying of such taxes may not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

#### *Article 3*

1. The formalities laid down by the Community customs provisions for the importation of goods into the customs territory of the Community shall apply *mutatis mutandis* to the entry of excise goods into the Community from a territory referred to in Article 5(2).
2. The formalities laid down by the Community customs provisions for the exportation of goods from the customs territory of the Community shall apply *mutatis mutandis* to the exportation of excise goods from the Community to a territory referred to in Article 5(2).
3. Chapters III and IV shall not apply to excise goods covered by a customs suspensive procedure or arrangement.

#### *Article 4*

For the purpose of this Directive as well as its implementing provisions, the following definitions shall apply:

- (1) *'duty suspension arrangement'* means a tax arrangement applied to the production, processing, holding or movement of excise goods not covered by a customs suspensive procedure or arrangement, excise duty being suspended;
- (2) *'customs suspensive procedure or arrangement'* means any one of the arrangements as provided for under Regulation (EEC) No 2913/92 relating to the customs supervision to which non-Community goods are subjected upon their entry into the Community customs territory, temporary storage, free zones or free warehouses, as well as any of the arrangements referred to in Article 84(1)(a) of that Regulation;
- (3) *'Member State' and 'territory of a Member State'* means the territory of each Member State of the Community to which the Treaty is applicable, in accordance with Article 299 thereof, with the exception of any territory referred to in Article 5(2) or (3);
- (4) *'Community' and 'territory of the Community'* means the territories of the Member States as defined in point (3).

#### *Article 5*

1. This Directive and the Directives referred to in Article 1 shall apply to the territory of the Community.
2. This Directive and the Directives referred to in Article 1 shall not apply to the following territories forming part of the customs territory of the Community:
  - (a) the Canary Islands;
  - (b) the French overseas departments;
  - (c) the Åland Islands;
  - (d) the Channel Islands.
3. This Directive and the Directives referred to in Article 1 shall not apply to the following territories not forming part of the customs territory of the Community:
  - (a) the Island of Heligoland;
  - (b) the territory of Büsingen;
  - (c) Ceuta;
  - (d) Melilla;
  - (e) Livigno;
  - (f) Campione d'Italia;
  - (g) the Italian waters of Lake Lugano;

- (h) Gibraltar.
4. Spain may give notice, by means of a declaration, that this Directive and the Directives referred to in Article 1 shall apply to the Canary Islands - subject to measures to adjust to their extreme remoteness - in respect of all or some of the excise goods referred to in Article 1, as from the first day of the second month following deposit of that declaration.
  5. France may give notice, by means of a declaration, that this Directive and the Directives referred to in Article 1 apply to the French overseas departments - subject to measures to adjust to their extreme remoteness - in respect of all or some of the excise goods referred to in Article 1, as from the first day of the second month following deposit of that declaration.
  6. The provisions of this Directive shall not prevent Greece from maintaining the specific status granted to Mount Athos as guaranteed by Article 105 of the Greek Constitution.

#### *Article 6*

1. In view of the conventions and treaties concluded with France, the United Kingdom, Italy and Cyprus respectively, the Principality of Monaco, the Isle of Man, San Marino and the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia shall not be regarded, for the purposes of the application of this Directive, as third countries.
2. Member States shall take the measures necessary to ensure that movements of excise goods originating in or intended for:
  - (a) the Principality of Monaco are treated as movements originating in or intended for France;
  - (b) the Isle of Man are treated as movements originating in or intended for the United Kingdom;
  - (c) San Marino are treated as movements originating in or intended for Italy;
  - (d) the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as movements originating in or intended for Cyprus.
3. Member States shall take the measures necessary to ensure that movements of excise goods originating in or intended for Jungholz and Mittelberg (Kleines Walsertal) are treated as movements originating in or intended for Germany.

## CHAPTER II

### Incurrence of excise duty

#### SECTION 1

##### TIME AND PLACE OF CHARGEABILITY

###### *Article 7*

1. Excise duty shall become chargeable at the time of release for consumption.

The release for consumption shall be determined in accordance with paragraphs 2, 3 and 4.

2. Release for consumption shall be any of the following:
  - (a) the departure of excise goods from a duty suspension arrangement;
  - (b) the production of excise goods outside a duty suspension arrangement;
  - (c) the importation of excise goods.

For the purposes of point (c), importation of excise goods shall take place when excise goods enter the territory of the Community without being subject to a customs suspensive procedure or arrangement or when excise goods are released from a customs suspensive procedure or arrangement.

However, where excise goods, immediately upon importation, are placed under a duty suspension arrangement, they shall not be considered to be released for consumption.

3. In the situations referred to in point (ii) of Article 16(1)(a) and Article 16(2), excise goods shall be considered released for consumption at the time of receipt of the goods by the registered consignee or at the time of the direct delivery.
4. The total destruction or irretrievable loss of excise goods, including losses inherent in the nature of those goods, shall not be considered released for consumption.

The loss or destruction of the excise goods in question shall be proven to the satisfaction of the competent authorities.

For the purposes of the first subparagraph, goods shall be irretrievably lost when they are rendered unusable by any person.

5. Each Member State shall lay down the rules and conditions under which the losses inherent in the nature of the goods referred to in paragraph 4 are determined.

### *Article 8*

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 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.

### *Article 9*

1. Where an irregularity has occurred, during a movement under suspension of excise duty, giving rise to the release for consumption of excise goods and it is not possible to determine where the release for consumption took place, it shall be deemed to have taken place in the Member State of dispatch.

However, if, before the expiry of a period of three years from the date on which the movement has begun in accordance with Article 19(1), it is ascertained in which Member State the release for consumption actually took place, that Member State shall inform the competent authorities of the Member State of dispatch.

Where the excise duty has been levied by the Member State of dispatch, it shall be reimbursed or remitted as soon as evidence of its collection by the other Member State has been provided.

2. Where the time of release for consumption is not known, such release shall be deemed to have taken place at the time the excise goods were dispatched.
3. For the purposes of paragraph 1, an irregularity shall mean a situation in which the movement has not ended in accordance with Article 19(2).

## **SECTION 2**

### **REIMBURSEMENT AND REMISSION**

### *Article 10*

In addition to the cases referred to in Article 31(4) and Article 34(7), Member States may, at the request of a trader in the course of his business, make excise goods which have been released for consumption eligible for reimbursement or remission of excise duty, provided that such reimbursement or remission does not give rise to exemptions other than those referred to in Article 11.

## SECTION 3

### EXEMPTIONS

#### *Article 11*

1. Excise goods, including those already released for consumption, shall be exempted from payment of excise duty where they are intended for any of the following:
  - (a) delivery in the context of diplomatic or consular relations;
  - (b) international organisations recognised as such by the public authorities of the host Member State, and by members of such organisations, within the limits and under the conditions laid down by the international conventions establishing such organisations or by headquarters agreements;
  - (c) the armed forces of any State party to the North Atlantic Treaty other than the Member State within which the excise duty is chargeable, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;
  - (d) the armed forces of the United Kingdom stationed in Cyprus pursuant to the Treaty of Establishment concerning the Republic of Cyprus dated 16 August 1960, for the use of those forces, for the civilian staff accompanying them or for supplying their messes or canteens;
  - (e) consumption under an agreement concluded with third countries or international organisations provided that such an agreement is allowed or authorised with regard to exemption from value added tax.
2. Exemptions shall be subject to conditions and limitations laid down by the host Member State. Member States may grant the exemption by means of a refund of excise duty.

#### *Article 12*

Without prejudice to Article 20(1), excise goods moving under suspension of duty to a consignee referred to in Article 11(1) shall be accompanied by an exemption certificate.

The Commission shall, in accordance with the procedure referred to in Article 40(2), lay down the form and content of the exemption certificate.

#### *Article 13*

1. Member States may exempt from payment of excise duty excise goods supplied by tax-free shops which are carried away in the personal luggage of travellers taking a flight or sea-crossing to a third territory or to a third country.

2. Goods supplied on board an aircraft or ship during the flight or sea-crossing to a third territory or a third country shall be treated in the same way as goods supplied by tax-free shops.
3. Member States shall take the measures necessary to ensure that the exemptions provided for in paragraphs 1 and 2 are applied in such a way as to prevent any possible evasion, avoidance or abuse.
4. For the purposes of this Article the following definitions shall apply:
  - (a) '*third territory*' means the territories referred to in Article 5(2) and (3);
  - (b) '*tax-free shop*' means any establishment situated within an airport or port which fulfils the conditions laid down by the competent public authorities, pursuant in particular to paragraph 3;
  - (c) '*traveller to a third territory or to a third country*' means any passenger holding a transport document, for air or sea travel, stating that the immediate destination is an airport or port situated in a third territory or a third country.

## **CHAPTER III**

### **Production, processing and holding**

#### *Article 14*

1. Each Member State shall determine its rules concerning the production, processing and holding of excise goods, subject to this Directive.
2. Production, processing and holding of excise goods shall be considered to take place under suspension of excise duty only if those activities occur in premises authorised pursuant to paragraph 3.
3. The competent authorities of the Member States shall authorise as "tax warehouses" premises that are to be used for the production, processing and holding of excise goods, as well as for their receipt or dispatch, under duty suspension arrangements.

#### *Article 15*

1. The opening and operation of a tax warehouse by a natural or legal person, hereinafter an "authorised warehousekeeper", shall be subject to authorisation from the competent authorities of the Member State where the tax warehouse is situated.

The authorisation may not be refused on the sole ground that the natural or legal person is established in another Member State and intends itself to operate the tax warehouse through a representative or branch in the Member State of authorisation.

The authorisation shall cover the activities referred to in Article 14(3).



2. An authorised warehousekeeper shall be required to:
  - (a) provide, if necessary, a guarantee to cover the risk inherent in the production, processing and holding of excise goods;
  - (b) comply with the requirements laid down by the Member State within whose territory the tax warehouse is situated;
  - (c) keep, for each tax warehouse, accounts of stock and movements of excise goods;
  - (d) enter into his tax warehouse, upon their arrival, all excise goods moving under suspension of excise duty;
  - (e) consent to all monitoring and stock checks.

The conditions for the guarantee referred to in point (a) shall be set by the competent authorities of the Member State in which the tax warehouse is authorised.

## **CHAPTER IV**

### **Movement of excise goods under suspension of excise duty**

#### **SECTION 1**

#### **GENERAL**

#### *Article 16*

1. Excise goods may be moved under suspension of excise duty within the territory of the Community:
  - (a) from a tax warehouse to one of the following destinations:
    - (i) another tax warehouse;
    - (ii) a natural or legal person authorised by the competent authorities of the Member State of destination, under the conditions fixed by those authorities, to receive excise goods moving under suspension of excise duty dispatched from another Member State, hereinafter the "registered consignee";
    - (iii) a place where the excise goods leave the territory of the Community, as referred to in Article 24(1);
    - (iv) a consignee referred to in Article 11(1), where the goods are dispatched from another Member State;

- (b) from the place of importation to any of the destinations referred to in point (a), where those goods are dispatched by a natural or legal person authorised for that purpose by the competent authorities of the Member State of importation, under the conditions fixed by those authorities, hereinafter the "registered consignor".
2. By way of derogation from points (i) and (ii) of paragraph 1(a), the Member State of destination may, under the conditions it may fix, allow excise goods to be moved under suspension of excise duty to a place of direct delivery situated on its territory, where that place has been designated by the authorised warehousekeeper in the Member State of destination or by the registered consignee.
- The authorised warehousekeeper and the registered consignee shall remain responsible for submitting the report of receipt referred to in Article 23(1).
3. Paragraphs 1 and 2 shall apply to movements of excise goods at a zero rate which have not been released for consumption.

#### *Article 17*

1. The competent authorities of the Member State of dispatch, under the conditions fixed by them, shall require that the risks inherent in the movement under suspension of excise duty are covered by a guarantee, which may be provided by one or more of the following persons:
- (a) the authorised warehousekeeper of dispatch;
  - (b) the registered consignor;
  - (c) the transporter or carrier;
  - (d) the owner of the excise goods;
  - (e) the consignee.
2. The guarantee shall be valid throughout the Community.
- The detailed rules for the guarantee shall be laid down by the Member States.
3. The Member State of dispatch may waive the obligation to provide the guarantee in respect of the following movements of excise goods under suspension of excise duty:
- (a) movements which take place entirely on its territory;
  - (b) where the other Member States concerned so agree, movements of energy products within the Community by sea or by fixed pipeline.

#### *Article 18*

1. A registered consignee may neither hold nor dispatch excise goods under a duty suspension arrangement.

He shall comply with the following requirements:

- (a) guarantee payment of excise duty under the conditions fixed by the competent authorities of the Member State of destination;
  - (b) keep accounts of deliveries of excise goods;
  - (c) enter excise goods moving under suspension of excise duty upon arrival in the accounts without delay;
  - (d) consent to all monitoring and stock checks.
2. For a trader receiving excise goods only occasionally, the authorisation referred to in point (ii) of Article 16(1)(a) shall be limited to a specified quantity of excise goods, a single consignor and a specified period of time.

A registered consignee authorised for the purposes of the first subparagraph shall comply with the following requirements:

- (a) guarantee payment of excise duty under the conditions fixed by the competent authorities of the Member State of destination;
- (b) consent to any check enabling the competent authorities of the Member State of destination to satisfy themselves that the goods have actually been received.

#### *Article 19*

1. The movement of excise goods under suspension of excise duty shall be deemed to begin when the goods leave the tax warehouse of dispatch or the place of importation.
2. The movement of excise goods under suspension of excise duty shall be deemed to end when the consignee has taken delivery of the goods or, in the case referred to in point (iii) of Article 16(1)(a), when the goods have left the territory of the Community.

## **SECTION 2**

### **PROCEDURE TO BE FOLLOWED ON A MOVEMENT OF EXCISE GOODS UNDER SUSPENSION OF EXCISE DUTY**

#### *Article 20*

1. A movement of excise goods shall be considered to take place under suspension of excise duty only if it takes place under cover of an electronic administrative document processed in accordance with paragraphs 2 and 3.
2. For the purpose of paragraph 1, the consignor shall submit a draft electronic administrative document to the competent authorities of the Member State of

dispatch using the computerised system established by Decision No 1152/2003/EC, hereinafter "the computerised system".

3. The competent authorities of the Member State of dispatch shall carry out an electronic verification of the completeness and correctness of the data in the draft electronic administrative document.

Where these data are complete and correct, they shall assign to the document a unique administrative reference code.

They shall send the electronic administrative document containing the administrative reference code to the consignor.

4. In the cases referred to in points (i), (ii) and (iv) of Article 16(1)(a), the competent authorities of the Member State of dispatch shall forward the electronic administrative document to the competent authorities of the Member State of destination, which shall forward it to the consignee where the consignee is an authorised warehousekeeper or a registered consignee.

Where the excise goods are intended for an authorised warehousekeeper in the Member State of dispatch, the competent authorities of that Member State shall forward the electronic administrative document directly to him.

5. In the case referred to in point (iii) of Article 16(1)(a), the competent authorities of the Member State of dispatch shall forward the electronic administrative document to the competent authorities of the Member State where the export declaration is lodged in application of Article 161(5) of Regulation (EC) No 2913/92, hereinafter the "Member State of export", if that Member State is different from the Member State of dispatch.

6. The consignor shall communicate the administrative reference code to the person accompanying the goods.

The code shall be available throughout the movement under suspension of excise duty.

7. The consignor may cancel the electronic administrative document as long as the movement has not begun under Article 19(1).

8. The consignor may amend the destination during the movement under suspension of excise duty, to show a new destination which must be one of the destinations referred to in points (i), (ii) or (iii) of Article 16(1)(a) or, where applicable, in Article 16(2).

#### *Article 21*

In the case of movements under suspension of excise duty of energy products by sea or inland waterways to a consignee who is not definitely known at the time when the consignor submits the draft electronic administrative document referred to in Article 20(2), the competent authorities of the Member State of dispatch may authorise the consignor to omit the data concerning the consignee in that document.

As soon as those data are known, the consignor shall transmit them to the competent authorities of the Member State of dispatch.

#### *Article 22*

The competent authority of the Member State of dispatch may allow, under the conditions fixed by that Member State, that the consignor, using the computerised system, splits a movement under suspension of excise duty of energy products into two or more movements provided that the total quantity of excise goods does not change.

Member States may also provide that such a splitting may not be carried out on their territory.

#### *Article 23*

1. On receipt of excise goods at any of the destinations referred to in points (i), (ii) or (iv) of Article 16(1)(a) or in Article 16(2), the consignee shall without delay submit a report of their receipt, hereinafter the "report of receipt", to the competent authorities of the Member State of destination using the computerised system.

Those authorities shall provide consignees referred to in Article 11(1) with such assistance as is necessary to enable a report of receipt to be submitted by means of the computerised system.

2. The competent authorities of the Member State of destination shall carry out an electronic verification of the completeness and correctness of the data in the report of receipt and subsequently confirm its registration to the consignee and send it to the competent authorities of the Member State of dispatch.
3. The competent authorities of the Member State of dispatch shall forward the report of receipt to the consignor. Where the places of dispatch and of destination are situated in the same Member State, the competent authorities of that Member State shall forward the report of receipt directly to the consignor.

#### *Article 24*

1. In the case referred to in point (iii) of Article 16(1)(a), a report, hereinafter the "report of export", shall be completed by the competent authorities of the Member State of export on the basis of the attestation drawn up by the customs office of exit as referred to in Article 793(2) of Commission Regulation (EC) No 2454/93<sup>22</sup>, or by the office where the formalities referred in Article 3(2) of this Directive are accomplished, certifying that the excise goods have left the territory of the Community.
2. The competent authorities of the Member State of export shall carry out an electronic verification of the completeness and correctness of the data resulting from the attestation referred to in paragraph 1, and shall, where the Member State of dispatch

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<sup>22</sup> OJ L 253, 11.10.1993, p. 1.

is different from the Member State of export, send the report of export to the competent authorities of the Member State of dispatch.

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

#### *Article 25*

1. The report of receipt or the report of export shall constitute proof that the movement has ended in accordance with Article 19(2).
2. In the absence of the report of receipt or the report of export, including in a case in which the computerised system is not available, alternative proof of the end of the movement under suspension of excise duty may be provided through an endorsement by the competent authorities of the Member State of destination, based on appropriate evidence, that the excise goods dispatched have reached their stated destination or, in the case referred to in point (iii) of Article 16(1)(a), through an endorsement by the competent authorities of the Member State in which the customs office of exit is located, certifying that the excise goods have left the territory of the Community.

A document submitted by the consignee containing the same data as the report of receipt shall constitute appropriate evidence for the purposes of the first subparagraph.

#### *Article 26*

1. Where the computerised system is not available, an authorised warehousekeeper or a registered consignor may start a movement of excise goods under suspension of excise duty under the following conditions:
  - (a) the goods are accompanied by a paper document containing the same data as the draft electronic administrative document referred to in Article 20(2);
  - (b) he must inform the competent authorities of the Member State of dispatch at the time of dispatch.

When the availability of the system is restored, the consignor shall submit a draft electronic administrative document without delay. That document shall replace the paper document referred to in point (a) of the first subparagraph as soon as it has been processed in accordance with Article 20(3), and the procedure relating to the electronic administrative document shall apply.

Until such time as the electronic administrative document has been processed in accordance with Article 20(3), the movement shall be considered to take place under suspension of excise duty under cover of the paper document.

2. Where the computerised system is not available, an authorised warehousekeeper or a registered consignor may communicate the information referred to in Article 20(8) or Article 22 using alternative means of communication. To that end he shall inform the

competent authorities of the Member State of dispatch at the time that the change of destination or splitting of the movement is initiated.

The second subparagraph of paragraph 1 shall apply *mutatis mutandis*.

Until such time as the competent authorities of the Member State of dispatch have carried out the necessary electronic verification and sent the corresponding electronic administrative document to the consignor, the movement or movements concerned shall be considered to take place under suspension of excise duty under cover of the information submitted in accordance with the first subparagraph.

3. The Commission may, in accordance with the procedure referred to in Article 40(2), determine the rules and procedures to be followed in cases in which the computerised system is not available.

#### *Article 27*

The Commission shall, in accordance with the procedure referred to in Article 40(2), adopt measures to determine:

- (1) the structure and content of the messages to be exchanged for the purposes of Articles 20 to 24 between the persons and competent authorities concerned by a movement of excise goods under suspension of excise duty and between the competent authorities so concerned;
- (2) the rules and procedures relating to the exchanges of the messages referred to in point (1).

### **SECTION 3**

#### **SIMPLIFIED PROCEDURES**

#### *Article 28*

Member States may establish simplified procedures in respect of movements under suspension of excise duty which take place entirely on their territory.

#### *Article 29*

The Member States concerned may, by agreement, establish simplified procedures for the purposes of the following movements under suspension of excise duty:

- (1) frequent and regular movements between certain economic operators in two or more Member States;
- (2) frequent and regular movements between certain economic operators in a single Member State via another Member State;

- (3) movements via fixed pipelines between two or more Member States.

## CHAPTER V

### **Movement and taxation of excise goods after release for consumption**

#### SECTION 1

##### ACQUISITION BY PRIVATE INDIVIDUALS

###### *Article 30*

1. Excise duty on excise goods acquired by private individuals for personal use and transported from one Member State to another by them shall be charged only in the Member State in which the excise goods are acquired.

As regards excise goods other than manufactured tobacco acquired by private individuals, the first subparagraph shall also apply in cases where the goods are transported on their behalf.

Taxation in the Member State of acquisition shall also apply to excise goods dispatched by one private individual to another without any payment, direct or indirect.

2. To determine whether the excise goods referred to in paragraph 1 are intended for personal use, 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.



## SECTION 2

### HOLDING IN ANOTHER MEMBER STATE

#### *Article 31*

1. Where excise goods which have already been released for consumption in one Member State are held for commercial purposes in another Member State, excise duty shall become chargeable in that other Member State.

Commercial purposes shall be deemed to be all purposes other than personal use by private individuals, as determined in accordance with Article 30(2).

In the cases referred to in Article 30(1), where manufactured tobacco is not transported by the private individuals concerned, it shall be deemed to be held for commercial purposes.

2. Without prejudice to Article 36, where excise goods which have already been released for consumption in one Member State move within the Community, those goods shall not be regarded as held for commercial purposes until they reach the Member State of destination, provided that they are moving under cover of the formalities set out in Article 32(3)(a), (b) and (c), or those set out in Article 34(4)(a), (b) and (c), as the case may be.
3. Excise goods which are held on board a vessel or aircraft making crossings or flights between two Member States but which are not available for sale when the vessel 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.
4. The excise duty in the Member State where the release for consumption took place shall be reimbursed or remitted where the competent authorities of the Member State of destination have found that excise duty has become chargeable.

#### *Article 32*

1. In the situation referred to in the first subparagraph of Article 31(1), the person liable to pay the excise duty shall be the person holding the excise goods or on whose behalf the goods are held.

However, where the excise goods are held with a view to their delivery to a trader or body subject to public law established in the Member State of holding, that trader or body shall be the person liable to pay the excise duty.

In the case referred to in the second subparagraph, the competent authorities shall, on his request, authorise the vendor to replace the trader or body subject to public law concerned as the person liable to pay the excise duty, provided that the vendor complies with the requirements of Article 34(4).

2. Where the person holding the excise goods, or on whose behalf they are held, is not established in the Member State of holding, he shall comply with the requirements set out in Article 34(4).
3. In cases other than those referred to in the third subparagraph of paragraph 1 and in paragraph 2, the person liable to pay the excise duty shall do the following:
  - (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) ensure that when the goods are moved between Member States, they are accompanied by a document, hereinafter "the accompanying document";
  - (c) pay the excise duty of the Member State of destination in accordance with the procedure laid down by that Member State;
  - (d) 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.
4. The Commission shall, in accordance with the procedure referred to in Article 40(2), adopt measures laying down the form and content of the accompanying document.

### *Article 33*

1. Where excise goods already released for consumption in a Member State are to be moved to a place of destination in that Member State via the territory of another Member State, the following requirements shall apply:
  - (a) such movement shall take place under cover of the accompanying document and shall follow 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 tax authorities of the place of destination;
  - (d) the consignor and the consignee shall consent to any checks enabling their respective tax 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, Member States may, by means of bilateral administrative agreements, authorise a simplified procedure.

## SECTION 3

### DISTANCE SELLING

#### *Article 34*

1. Excise goods already released for consumption in one Member State which are purchased by persons acting in their capacity as private individuals 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.
2. In the case referred to in paragraph 1, the excise duty shall become chargeable at the time of delivery of the excise goods.
3. The excise duty in the Member State of destination shall be chargeable to the vendor.
4. The vendor shall comply with the following requirements:
  - (a) register his identity with the tax authorities of the Member State of dispatch of the excise goods;
  - (b) before dispatching the excise goods, guarantee payment of the excise duty with a tax office specifically designated for the purpose of distance selling, by the Member State of destination;
  - (c) indicate on the commercial documents accompanying the consignments of excise goods the identification number referred to in the third subparagraph of paragraph 5;
  - (d) at the end of a given period, to be determined by each Member State, send the tax office referred to in point (b) a document setting out the quantities of excise goods delivered during that period.
5. The Member State of destination shall determine the conditions for calculating the guarantee referred to in point (b) of paragraph 4.

When lodging the guarantee, the vendor shall produce the identifying document referred to in point (a) of paragraph 4.

The Member State of destination shall then allocate the vendor an identification number.

6. The document referred to in point (d) of paragraph 4 shall be endorsed by the tax authorities referred to in point (a) of paragraph 4, and, where appropriate, shall be accompanied by the administrative and commercial documents required by the Member State of destination.

The excise duty shall be paid in accordance with the procedure laid down by the Member State of destination.

7. In the case referred to in paragraph 1, the excise duty in the first Member State shall be reimbursed or remitted, at the vendor's request, where the vendor has followed the procedures laid down in paragraph 4.

Where the vendor is an authorised warehousekeeper, Member States may stipulate that the reimbursement or remission procedure be simplified.

8. The Commission shall, in accordance with the procedure referred to in Article 40(2), lay down the form and content of the documents referred to in points (a) and (d) of paragraph 4 and shall determine the data to be mentioned in the commercial documents referred to in point (c) thereof.

## **SECTION 4**

### **DESTRUCTION AND LOSS**

#### *Article 35*

Where excise goods are subject to excise duty on the basis of Article 31(1), first subparagraph, or of Article 34(1), the duty shall not be chargeable in respect of excise goods that are subject to total destruction or irretrievable loss.

The second and third subparagraphs of Article 7(4) shall apply *mutatis mutandis* in relation to these goods.

The guarantee lodged pursuant to Article 32(3)(a) or Article 34(4)(b) shall be totally or partially released.

## **SECTION 5**

### **IRREGULARITIES DURING THE MOVEMENT OF EXCISE GOODS**

#### *Article 36*

1. Where excise goods which are moving in accordance with Article 31(2) do not reach the Member State of destination, excise duty shall be chargeable, in accordance with the first subparagraph of Article 31(1), in the Member State where the movement concerned ended or where the goods departed from that movement.

The duty shall be due from the person who guaranteed payment thereof in accordance with Article 32(3)(a) or Article 34(4)(b).

Once evidence is provided that the competent authorities of the Member State concerned have found excise duty to be chargeable, the Member State of release for consumption shall reimburse or remit the excise duty; the Member State of destination shall release the guarantee lodged pursuant to Article 32(3)(a) or Article 34(4)(b).

Where the movement ends, or the goods depart therefrom, in the Member State of release for consumption, the Member State of destination shall release the guarantee lodged pursuant to Article 32(3)(a) or Article 34(4)(b).

2. Where it is not possible to determine where the movement referred to in paragraph 1 ended or where the goods departed from that movement, that event, hereinafter "the irregularity", shall be deemed to have taken place in the Member State of release for consumption.

However, if before the expiry of a period of three years from the date of dispatch of the goods, it is ascertained in which Member State the irregularity took place, that Member State shall inform the competent authorities of the Member State of release for consumption.

As soon as evidence of collection of excise duty by the other Member State has been provided, the Member State of release for consumption shall remit or reimburse the duty it has charged or collected.

3. For the purposes of this Article, where it is not known when the irregularity took place, it shall be deemed to have taken place at the time the excise goods were dispatched.

## **CHAPTER VI**

### **Miscellaneous**

#### **SECTION 1**

#### **MARKING**

##### *Article 37*

1. Without prejudice to Article 7(1), Member States may require that excise goods carry tax markings or national identification marks used for fiscal purposes at the time when they are released for consumption in their territory, or, in the cases provided for in Article 31(1), first subparagraph, and Article 34(1), when they enter their territory.
2. Any Member State which requires the use of tax marking or national identification marks as set out in paragraph 1 shall be required to make them available to authorised warehousekeepers of the other Member States.
3. Without prejudice to any provisions they may lay down in order to ensure that this Article is implemented properly and to prevent any fraud, evasion or abuse, Member States shall ensure that these markings or marks do not create obstacles to the free movement of excise goods.

When such markings or marks are affixed to excise goods, any amount paid or guaranteed to obtain such markings or marks shall be reimbursed, remitted or released by the Member State which issued them if excise duty has become chargeable and has been collected in another Member State.

4. Tax markings or identification marks within the meaning of paragraph 1 shall be valid in the Member State which issued them. However, there may be mutual recognition of these markings between Member States.

## **SECTION 2**

### **SMALL WINE PRODUCERS**

#### *Article 38*

1. Member States may exempt small wine producers from the requirements of Chapters III and IV and from the other requirements relating to movement and monitoring. Where these small producers themselves carry out intra-Community transactions, they shall inform their relevant authorities and comply with the requirements laid down by Commission Regulation (EC) No 884/2001<sup>23</sup>.
2. ‘*Small wine producers*’ shall be understood to mean persons producing on average less than 1 000 hl of wine per year.
3. Where small wine producers are exempt in accordance with paragraph 1, the consignee shall, by means of the document required by Regulation (EEC) No 884/2001 or by a reference to it, inform the competent authorities of the Member State of destination of wine deliveries received.

## **SECTION 3**

### **STORES FOR BOATS AND AIRCRAFT**

#### *Article 39*

Until the Council has adopted Community provisions on stores for boats and aircraft, Member States may maintain their national provisions on the subject.

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<sup>23</sup> OJ L 128, 10.5.2001 p. 32.

## CHAPTER VII

### Final provisions

#### *Article 40*

1. The Commission shall be assisted by a committee referred to as the 'Committee on Excise Duty'.
2. Where reference is made to this paragraph, Articles 5 and 7 of Decision 1999/468/EC shall apply.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

#### *Article 41*

The Committee on Excise Duty shall, in addition to its tasks under Article 40, examine the matters raised by its chairman, either on his own initiative or at the request of the representative of a Member State, concerning the application of Community provisions on excise duty.

#### *Article 42*

Directive 92/12/EEC is repealed with effect from [1 April 2009].

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in the Annex.

#### *Article 43*

Until [31 December 2009], Member States of dispatch may continue to allow movements of excise goods under suspension of excise duty to be initiated under cover of the formalities set out in Articles 15(6) and Article 18 of Directive 92/12/EEC.

Those movements as well as their discharge shall be subject to the provisions referred to in the first subparagraph as well as to Article 15(4) and (5) and Article 19 of Directive 92/12/EEC. Article 15(4) of that Directive shall apply with regard to all the guarantors designated in accordance with Article 17(1) of this Directive.

Articles 20 to 26 of this Directive shall not apply to those movements.

#### *Article 44*

1. Member States shall adopt and publish, by [28 February 2009] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive.

They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from [1 April 2009].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

#### *Article 45*

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

#### *Article 46*

This Directive is addressed to the Member States.

Done at Brussels, ...

*For the Council*  
*The President*



**ANNEX**

<b>Correlation Table 1: Directive 92/12/EEC &gt; New Directive</b>			
<b>Article Directive 92/12/EEC</b>	<b>New Article</b>	<b>Article Directive 92/12/EEC</b>	<b>New Article</b>
1	1	15(6)	21
2	5, 6	16	18
3(1)	1	17	-
3(2)	2(2)	18(1)	20(1), 20(2), 27
3(3)	2(3)	18(2-6)	-
4	4	19	20(3-5), 23, 24, 29
5(1)	2(1), 7(2)	20	9
5(2)	7(2)	21	37
5(3)	-	22(1), 22(2)	10
		22(3)	31(4)
		22(4)	34(7)
		22(5)	-
6(1)	7(1), 7(2)	23(1)	11
		23(1a)	12
		23(2)	-
6(2)	8	23(3)	-
7	31, 32, 33	23(4)	-
8	30	23(5)	39
9	30	24	40, 41
10	34	25	-
11	14(1), 14(2)	26	-
12	15(1)	26a	-
13	15(2)	27	-
14	7(4), 7(5)	28	-
15(1)	16(1), 16(3)	29	38
15(2)	-	30	-
15(3)	17	30a	-
15(4)	19(2)	31	44, 45
15(5)	20(8)	32	46

**Correlation Table 2: New Directive > Directive 92/12/EEC**

New Article	Article Directive 92/12/EEC	New Article	Article Directive 92/12/EEC
1	1, 3(1)	21	15(6)
2(1-3)	5(1), 3(2), 3(3)	22	New
3	New	23	19
4	4	24	19
5, 6	2	25	New
7(1), 7(2)	6(1), 5(1), 5(2)	26	New
7(3)	New	27	18(1)
7(4), 7(5)	14	28	New
8	6(2)	29	19(2)
9	20	30	8, 9
10	22(1), 22(2)	31, 32, 33	7
		31(4)	22(3)
		34(7)	22(4)
11	23(1)	34	10
12	23(1a)		
13	New	35	New (COM/2004/227)
14	11	36	New (COM/2004/227)
15	12, 13	37	21
16(1), 16(3)	15(1)	38	29
16(2)	New		
17	15(3)	39	23(5)
18	16	40	24(1-3)
19(1)	New	41	24(4)
19(2)	15(4)	42	New
20(1), 20(2)	18(1)	43	New
20(3-5)	19	44	31
20(6), 20(7)	New	45	31
20(8)	15(5)	46	32