



**COUNCIL OF
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NOTE

from:	Presidency
to:	Working Party on Tax Questions – Indirect Taxation (Excise duties)
Subject:	Proposal for a Council Directive concerning the general arrangements for excise duties

Delegations will find attached a Presidency compromise text on the above proposal.

The compromise text reflects discussions held in the Working Party. Only corrections to the wording of Articles were taken into account. Comments concerning recitals will be addressed at a later stage. Compromise text on Chapter V is included in the text as well.

The text includes also several minor technical and linguistic changes.

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 Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

(1)...

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

General provisions

Article 1

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;

¹ OJ C , , p. .
² OJ C , , p. .
³ OJ C , , p. .

- (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.

Presidency Note:

Several delegations observed that we have to take into account special monitoring and control arrangements for natural gas electricity and some other energy products defined in the Directive 2003/96/EC. It can however be argued that special arrangements remain intact already under the present wording (the wording refers to “general” arrangements). The Presidency therefore proposes not to change that wording. It is for each individual Directive referred to in Article 1(1) to define its scope of application (which may go beyond provisions relating to structures and rates).

Article 2

1. **Excise goods** shall be subject to excise duty **at the time of:**
 - (a) **their** production, including, **where applicable. their** extraction, [...] within the territory of the Community; **or**
 - (b) **their entry** [...] into the territory of the Community.
2. Member States may apply **further** 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 **may levy taxes on:**
 - (a) [...] products other than excise goods;
 - (b) [...] the supply of services, including those relating to excise goods, [...] 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.

Presidency Note:

Proposed changes follow the discussions of the Working Party. The introductory sentence is changed to reflect the fact that excise goods are subject to excise duty and not production or importation. Paragraph 3 has been clarified to state clearly that the provision applies to the existing taxes as well as to new taxes Member States might introduce.

Article 3

1. The formalities laid down by the Community customs provisions for the **entry** 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 **exit** of goods from the customs territory of the Community shall apply *mutatis mutandis* to the **exit** 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.
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Presidency Note:

The Presidency suggests minor changes to the text to align it to the terminology of customs rules and to cover all possible customs arrangements applicable upon entry or exit of goods from the customs territory, not only export procedure. It should also be noted that the customs rules do not define term "importation" but "entry of goods into customs territory".

In relation to this Article and several further Articles, a question was raised during the WP meetings, whether a special provision is needed to cover situations where goods are dispatched between Member States via one of the EFTA countries. The Presidency examined the issue and came to the conclusion that no special provision is needed. The general provisions on movement under suspension of excise duty cover also a dispatch of goods between Member States via EFTA countries.

A question with respect to envisaged change of customs rules was raised as well. The modernized Community customs code has been adopted already and is expected to be published in the Official Journal in the beginning of June. However, taking into account final provisions of the Code, it is questionable if the modernised Customs code will become applicable before this Directive comes into force. Taking this fact into account, the Presidency decided not to change provisions related to the customs rules at this stage.

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 special procedures 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 point (5)**;
- (4) *'Community' and 'territory of the Community'* means the territories of the Member States as defined in point (3).
- (5) 'third territory' means the territories referred to in Article 5, paragraphs (2) and (3);**
- (6) 'third country' means any State or territory to which the Treaty is not applicable;**
- (7) 'importation of excise goods' means the entry into the territory of the Community of excise goods unless the goods upon their entry into the Community are subject to a customs suspensive procedure or arrangement as well as their release from a customs suspensive procedure or arrangement.**

Presidency Note:

During our meeting it has been established that a broad consensus exists with respect to the placement of definitions in the text. It has been established by the Working party that listing of all general definitions in one Article is preferred approach. To take this into account the Presidency has moved some of the definitions from other Articles to Article 4. The substance of definitions was not changed. However, some definitions are particular for certain provisions or are part of other comprehensive procedures (for example a definition of a warehousekeeper). Those definitions are left in the text where they are defined in more precise manner.

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.

Presidency Note:

On the basis of the request of the Spanish delegation with respect to the mentioning of Gibraltar in the paragraph 3, the Presidency, together with the interested Member States, is still in the progress of finding appropriate wording to address concerns of all parties involved.

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.
[...]
2. **Release for consumption shall be any of the following:**
 - (a) **the departure of excise goods, including irregular departure, from a duty suspension arrangement, unless the excise goods are immediately placed under another duty suspension arrangement;**
 - (b) **the holding of excise goods outside a duty suspension arrangements for which excise duty has not been levied pursuant to the applicable provisions of Community law and national legislation;**
 - (c) **the production of excise goods, including irregular production, outside a duty suspension arrangement;**
 - (d) **the importation of excise goods, including irregular importation, unless the excise goods are placed, immediately upon importation, under a duty suspension arrangement.**
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 receipt of the goods at the place of direct delivery.**
4. The total destruction or irretrievable loss of excise goods **under a duty suspension arrangement,** including losses inherent in the nature of those goods, shall not be considered released for consumption.

The total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the competent authorities where the total destruction or irretrievable loss occurred. In the case of a movement under duty suspension arrangement, the loss or destruction shall be proven to the satisfaction of the competent authorities of the Member State determined in accordance with Article 9.

Member States may subject the deliberate destruction of goods under a duty suspension arrangement to the prior approval by the competent authorities.

For the purpose of this Directive, goods shall be totally destroyed or irretrievably lost when they are rendered unusable as excise goods by any person.

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

Presidency Note:

Taking into account various comments made by delegations during Working party meetings, The Presidency proposes a range of changes to the wording of Article 7 to provide for further clarity of the text.

It has been proposed to include a special provision in para 2 with respect to goods that are exempted from excise duty but not used in accordance with the purposes for which they were granted exemption. It is understanding of the Presidency that these goods are already released for consumption upon granting exemption from excise duty. If subsequently, they are used for other purposes than exempt purposes, the chargeability is covered by other provisions of paragraph 2.

Article 7a

1. The person liable to pay the excise duty shall be:

(a) In relation to the departure of excise goods from a suspension arrangement as referred to in letter (a) of Article 7(2):

i) the person who releases or on whose behalf the excise goods are released from the duty suspension arrangement;

ii) in case of an irregularity during a movement of excise goods under suspension of duty as defined in Article 9(2): the person or persons who guaranteed the payment in accordance with Article 17(1);

- iii) in addition to the person referred to in (i) and (ii) above, any person who participated in the irregular departure and who was aware or who should reasonably have been aware of the irregular nature of the departure;**
- b) in relation to the holding of excise goods as referred to in letter (b) of Article 7(2), any person involved in the holding of the excise goods;**
- c) in relation to the production as referred to in letter (c) of Article 7(2), the producer or any person involved in the irregular production;**
- d) in relation to the importation as referred to in Article letter (d) of 7(2), the person who declares the goods or on whose behalf the goods are declared upon importation or any person involved in the irregular importation.**
- 2. Where several persons are liable for payment of one excise duty debt, they shall be jointly and severally liable for such debt.**

Presidency Note:

Taking into account comments from a number of Member States that a general provision on persons liable for the payment of excise duties is needed, a new Article 7a is added. The wording from the document CED 593 was used as a basis for drafting this provision.

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 been committed during a movement under suspension of excise duty, giving rise to an irregular departure of excise goods from the duty suspension arrangement in accordance with Article 7(2)(a), release for consumption of excise goods shall take place in the Member State where the irregularity was committed.**

- 2.** 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.

- 3.** 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.

- 4.** 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), **including the destruction or losses referred to in Article 7(4).**

Presidency Note:

A new first paragraph is added to cover cases of irregularities where it can be established where the irregularity took place. In this case, the chargeable event shall take place in the Member State where the irregularity was committed.

SECTION 2

REIMBURSEMENT AND REMISSION

Article 10

In addition to the cases referred to in Article 31(4), Article 34(7), and Article 36(1) and (2), excise goods which have been released for consumption may, at the request of a person concerned, be eligible for reimbursement or remission of excise duty by the competent authorities of the Member State where they were released for consumption in the situations fixed by the Member States and in accordance with the conditions that Member State shall lay down for the purpose of preventing any possible evasion or abuse.

Such reimbursement or remission may not give rise to exemptions other than those provided for in Article 11 as well as by one of the Directives referred to in Article 1.

Presidency Note:

A reference was added to Article 36(1) and (2), which also provide for a refund in certain situations.

Following remarks from several Member States, the Presidency proposes to allow reimbursement or remission not only to trader but also to other eligible persons, depending on the circumstances of each individual case. Not only exemptions defined by this Directive should be taken into account, but also exemptions provided for by other Directives that deal with excise goods and are mentioned in Article 1 of this Directive.

Further changes are proposed to add to the clarity of the text.

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.

Presidency Note to Articles 11 and 12:

During the Working party meeting, a question was raised with respect to the formalities that should be carried out by international organisations, diplomatic representatives and/or NATO armed forces pursuant to this Directive.

It should be observed that, already under the current provisions of Article 23(1a) of Directive 92/12/EEC, movements of excise goods under suspension of duty destined for the eligible institutions and persons listed in Article 23(1) must be accompanied by an administrative accompanying document (AAD) as well as by an exemption certificate. The computerisation of the AAD does not fundamentally change the procedure applicable to these movements. The only difference concerns the discharge of the movement. At present, the eligible organisation or person must send back copy 3 of the AAD to the consignor for discharge. Under EMCS, the discharge will have to be sent to the consignor via EMCS. The FESS (Functional Excise System Specification) version 3.03 provides in that respect (see point 3.3.7 of Section II) that "If the consignee is (...) an exempted organisation, he submits the data to be entered in the report of receipt in the way determined by the authorities of his Member State." Member States may, for instance, provide for an electronic access for these operators (e.g. using a web-application) or provide that they enter the data concerning the discharge into EMCS on their behalf.

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)** '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;
- (b)** '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 **final** destination is an airport or port situated in a third territory or a third country.

Presidency Note:

A definition of a third territory was moved to Article 4. An amendment to letter (b) of Article 13(3) is proposed to clarify the provision.

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 **a "tax warehouse"** premises **and/or areas** 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.

Presidency Note:

A technical change is proposed to Article 14(3). A warehouse could also be a designated area (for example courtyard) not only a premise. To clarify this point raised during our discussions, the wording is amended accordingly.

Article 15

1. **The opening and operation of a tax warehouse by any person or body subject to public law, hereinafter "authorised warehousekeeper", shall be subject to authorisation from the competent authorities of the Member State where the tax warehouse is situated. This authorisation shall be subject to conditions that the authorities may lay down for the purposes of preventing any possible evasion or abuse.**

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 **any of** 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, **unless where Article 16(2) applies**;
 - (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.

Presidency Note:

First subparagraph of paragraph 1 is changed to clarify the text. It stipulates explicitly that the authorisation can be subject to conditions that authorities may lay down.

Subparagraph 3 is clarified as the authorisation can cover one, some or all activities referred to in Article 14(3).

Paragraph 2(d) is clarified to take into account exceptional situations for direct deliveries.

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 [..]:
 - (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 **or consignees** 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".

‘Place of importation’ shall be the place where goods are when they are released for free circulation in accordance with Article 79 of Regulation (EEC) No 2913/92.

2. By way of derogation from points (i) and (ii) of paragraph 1(a) **and paragraph 1(b)**, 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 **also** to movements of excise goods at a zero rate which have not been released for consumption.

Presidency Note:

A request to add a definition of place of importation of excise goods was raised during our previous meetings. To meet this request, a new subparagraph to point (b) of paragraph 1 is added.

Paragraph 3 is clarified.

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 **or on behalf of** 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.

Presidency Note:

A question was raised if any other person who is interested in movement of excise goods can lodge a guarantee. The Presidency examined the issue and proposes more general approach by amending the beginning of paragraph 1.

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 **person** 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) **before dispatch of the excise goods**, 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.

Presidency Note:

Minor changes are proposed for clarity reasons.

Article 19

- 1. The movement of excise goods under suspension of excise duty shall [...] 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 [...] 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.

Presidency Note:

Minor changes are proposed for clarity reasons.

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 provide the person accompanying the goods with either a printed copy of the e-AD or commercial documentation containing the administrative reference code.**

These documents 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).

Presidency Note:

The Presidency noted a request to define more precisely documents on which administrative reference code must appear and which must accompany the goods during transport. Paragraph 6 is amended accordingly.

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.

Presidency Note:

During the last meeting of the Working Party, the suggestion was made to include a time-limit for providing the missing information (at the latest when the delivery of goods takes place). The Presidency is however not convinced of the need to add such a time-limit. First of all, there may be practical issues if, for instance, the means of transport arrives at the destination outside office hours, making it impossible for the consignor to complete the information in EMCS immediately. Secondly, the information must in any case be submitted before the consignee can submit a report of receipt to EMCS.

Article 22

The competent authority of the Member State of dispatch may allow, under the conditions fixed by that Member State, that the consignor [...] splits a movement under suspension of excise duty of energy products into two or more movements provided that:

1. **the total quantity of excise goods does not change and**
2. **splitting is carried out on a territory of a Member States which permits such procedure.**

Member States shall communicate to the Commission information on conditions for splitting consignments on their territory or any subsequent changes thereof. The Commission shall establish the means to share information among Member States.

Presidency Note:

The Presidency considers that information on the possibility and conditions for splitting consignments on a territory of any Member States must be made known to other Member States, therefore a mechanism for exchange of information must be provided for. It seems appropriate to establish exchange of information via Commission, who already has means at place to provide for such an exchange of information (i. e. Excise duties manual on CIRCA).

Furthermore, the words "using the computerised system" have been removed.

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, **but in principle not later than in 15 days after the end of the movement**, 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/or** 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.

Presidency Note:

During the Working party meetings, a request to define a time-limit in which the consignee must submit report of receipt to the competent authorities was raised. To meet this request, an addition to paragraph 1 is proposed. However, it is not possible to define all practical situations (large shipments, containers etc.) the time-limit is not defined in absolute terms but only as a principle.

The question on verification of correctness of data was raised. Also this issue depends on different practical situations therefore a change in paragraph 2 is proposed.

As far as consignees referred to Article 11 are concerned, please see Presidency note to Article 11 and 12.

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 2454/93¹ 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/or** correctness of the data resulting from the attestation referred to in paragraph 1, and shall, where the Member State of dispatch 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.
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¹ OJ L 253, 11.10.1993, p. 1.

Presidency Note:

See Presidency note to Article 23.

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.

Presidency Note:

During the Working party meetings, a question was raised whether the proof in paragraph 2 should be regarded as alternative or as a provisional proof. The Presidency examined the issue and for the time being does not propose any change to the wording of the Article.

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 **shall**, 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.

Presidency Note:

A request was noted during the last Working party meeting that the Commission should determine the rules and procedures to be followed in cases in which the computerised system is not available. The provision of paragraph 3 is amended accordingly.

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, **including the possibility to waive the requirement of electronic supervision of such movements.**

Presidency Note:

Questions have been raised whether Member States are entitled to simplify the procedures in the sense to waive the electronic supervision of movement. As the intention was to allow also for such simplifications, it is necessary to clarify the text.

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.

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.

3. For the purposes of applying point (e) of paragraph 2, Member States may lay down guide levels, solely as a form of evidence. These guide levels may not be lower than:

(a) for tobacco products:

- cigarettes - 800 items
- cigarillos (cigars weighing not more than 3 g each) - 400 items
- cigars - 200 items
- smoking tobacco - 1,0 kg;

(b) for alcoholic beverages:

- spirit drinks - 10 l
- intermediate products - 20 l
- wines (including a maximum of 60 l of sparkling wines) - 90 l
- beers - 110 l.

4. Member States may also provide that excise duty shall become due in the Member State of consumption on the acquisition of mineral oils already released for consumption in another Member State if such products are transported using atypical modes of transport by private individuals or on their behalf. Atypical transport shall mean the transport of fuels other than in the tanks of vehicles or in appropriate reserve fuel canisters and the transport of liquid heating products other than by means of tankers used on behalf of professional traders.

Presidency Note:

During the last meeting of the Working party, a question of taxation of excise goods, sent as gifts from one private person to another one in another Member State. To resolve this issue, the Presidency proposes to include a new subparagraph in paragraph 1. Identical text was already included in the original Commission's proposal for Article 30.

The term "personal purpose" is replaced by "personal use" as proposed by several delegations during the Working party meeting.

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, they shall be subject to excise duty and excise duty shall become chargeable in that other Member State.

The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which duty becomes chargeable in that other Member State.

'Commercial purposes' shall be deemed to be all purposes other than personal **use** of a private individual, as determined in accordance with Article **30(1)**.

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 **and has been collected** in that Member State.

Presidency Note:

The term “personal purposes” is replaced by “personal use”. The reference in paragraph 1 is corrected and paragraph 4 is amended to reflect that the duty needs to be collected in the other Member State before it is reimbursed or remitted in the first Member State.

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 **of the Member State of destination** 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.

Presidency Note:

For clarity reasons an amendment to paragraph 1 is proposed.

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 **Member State** of departure;
 - (c) the consignee shall attest to having received the goods in accordance with the rules laid down by the competent authorities of the **Member State** of destination;
 - (d) the consignor and the consignee shall consent to any checks enabling their respective competent authorities to satisfy themselves that the goods have actually been received.
2. Where excise goods are moved frequently and regularly under the conditions specified in paragraph 1, the Member States concerned may agree to apply a simplified procedure in derogation from paragraph 1.

Presidency Note:

The Presidency proposes a minor change to the text for consistency purposes. The same terminology is used in Article 32.

SECTION 3

DISTANCE SELLING

Article 34

1. Excise goods already released for consumption in one Member State which are purchased for personal **use** by private individuals residing in another Member State 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.

"Member State of destination" shall mean the Member State of arrival of the consignment or of transport.

2. In the case referred to in paragraph 1, the excise duty shall become chargeable in the Member State of destination at the time of delivery of the excise goods. The chargeability conditions and rate of excise duty to be applied shall be those in force on the date on which duty becomes chargeable.

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

3. The vendor shall be the person liable to pay the excise duty in the Member State of destination. However, Member States may give the vendor the option of designating a tax representative as the person liable to pay the excise duty in his place **and to comply with the requirements referred at in points (b) to (d) of paragraph 4.** This option shall depend on the conditions and implementing rules laid down by each Member State.

4. The vendor shall comply with the following requirements:

- (a) register his identity with the competent authorities of the Member State of dispatch of the excise goods **and obtain an identification document from those authorities;**

- (b) before dispatching the excise goods, guarantee payment of the excise duty with a single 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 single office referred to in point (b) a return setting out all the information required to calculate the excise duty that has become chargeable during that period. Member States shall, subject to conditions which they may lay down, allow the vendor to make such returns by electronic means, and may also require that electronic means are used.

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 competent authorities referred to in point (a) of paragraph 4, and, where appropriate, shall be accompanied by the commercial documents required by the Member State of destination.
7. In the case referred to in paragraph 1, the excise duty in the [...] Member State **of departure** 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. Member States may lay down specific rules for applying paragraphs 1 to 6 to excise goods that are covered by special national distribution arrangements.
9. 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.

Presidency Note:

Minor changes are proposed for clarity reasons.

Taking into account comments made during the last Working party meeting, a text of paragraph 3 is clarified. The provision defines that the tax representative is not responsible only for payment of excise duty but also for complying with other requirements from paragraph 4.

SECTION 4

DESTRUCTION AND LOSS

Article 35

1. 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 the Member State of destination** in respect of excise goods that are **during their transport** 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(2)(a) or Article 34(4)(b) shall be totally or partially released.

2. Without prejudice to Article 36, the duty on shortages other than the losses referred to in paragraph 1 of this Article shall be levied on the basis of the rates applicable in the Member State concerned at the time the losses, duly established by the competent authorities, occurred, or if necessary at the time the shortage was recorded.

Presidency Note:

Amendments to paragraph 1 are included for clarity reasons.

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, they shall be subject to excise duty and 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 Member State collecting the duty shall inform the competent authorities of the Member State of departure.

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 in that Member State, the Member State of release for consumption shall reimburse or remit the excise duty [...] levied; 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.

By way of derogation from Article 9, when excise duty becomes chargeable due to an irregularity with respect to excise goods to which tax markings or marks are affixed, the duty is chargeable in the Member State which issued the tax markings or marks.

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.

Presidency Note:

During the Working party meeting, Member States expressed concerns with respect to the excise goods to which tax marks or markings are affixed. They would be willing to remit or reimburse the amounts paid for such markings or marks only, if the marks or markings are removed from excise goods and/or destroyed under supervision of a competent authority. In practice, this could lead to double taxation of such products and would be contrary of the objective of the provision of Article 37(3).

The Presidency therefore suggests an alternative approach and to make an exception to the rule contained in Article 9 of this Directive. By the amended provision the duty would be chargeable in the Member State which issued the tax markings or marks, regardless, where the irregularity takes place.

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 884/2001¹.
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 **(EC)** 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.

¹ OJ L 128, 10.5.2001 p. 32.

SECTION 4

SPECIAL ARRANGEMENTS

Article 39a

- 1. The council, acting unanimously on a proposal from the Commission, may authorise any Member State to introduce special measures for derogating from the provisions of this Directive, in order to simplify the procedure or to prevent certain forms of tax evasion or avoidance.**
- 2. A Member State wishing to introduce the measure referred to in paragraph 1 shall send an application to the Commission and provide it with all the necessary information. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within two months of receipt of the application and specify what additional information is required.**
Once the Commission has all the information it considers necessary for appraisal of the request it shall within one month notify the requesting Member State accordingly and it shall transmit the request, in its original language, to the other Member States.
- 3. Within three months of giving the notification referred to in the second subparagraph of paragraph 2, the Commission shall present to the Council either an appropriate proposal or, should it object to the derogation requested, a communication setting out its objections.**
- 4. The procedure laid down in paragraphs 2 and 3 shall, in any event, be completed within eight months of receipt of the application by the Commission.**

Presidency Note:

The Working Party agreed that a new provision should be added to provide for a possibility to conclude agreements, derogating from the provisions of this Directive.

To draft such a provision, an existing provision of Article 396 from the VAT Directive 2006/112/EC was used as a basis and some minor changes were introduced to take into account differences between excise duties and VAT.

The Presidency would also like to draw the attention of Member States to the recent ECJ judgement in the case C-133/06 from 8 May 2008 that might have effect on the validity of the provision of Article 396 of the VAT Directive 2006/112/EC and on the proposed text of Article 39a of this Directive. The Presidency, together with the Council legal service is still examining the possible impact of that judgement.

CHAPTER VII

Transitional and 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

- 1.** 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.

2. Movements of excise goods which were initiated before [1 April 2009] shall be carried out and discharged in accordance with the provisions of Directive 92/12/EEC.

This Directive shall not apply to those movements.

Presidency Note:

Taking into account advice of the Council legal service, the order of Articles 42 and 43 was reversed.

During the Working party meeting, concerns were raised with respect to the dates in Article 42, 43 and 44. The Presidency noted these concerns but while we are still waiting for the outcome of envisaged meetings on this aspect as announced by the Commission, decided not to propose any changes to that respect in this Compromise text. We will have to come back to this issue after the meeting of Directors General will take place.

Transitional arrangement is needed for movements, initiated before the new EMCS system came into application, but not completed by that date. It would be appropriate that such movements are discharged under the provisions that were applicable upon starting the movement.

Article 43

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

However, it shall continue to apply within the limits and for the purposes defined in Article 42.

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.

Presidency Note:

Second paragraph is added to reflect the need that some provisions of Directive 92/12/EEC remain applicable also after the day of repealing the Directive as such.

Article 44

- 1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from [28 February 2009].** 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. **The methods of making such reference shall be laid down by Member States.**

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 [...] day [...] of its publication in the *Official Journal of the European Union*.

Presidency note to Articles 44 and 45:

Some changes are proposed to align provisions with usual provisions applied in other tax directives.

Article 46

This Directive is addressed to the Member States.

Done at Brussels, ...

*For the Council
The President*