Procedure file

Basic information

CNS - Consultation procedure Directive	2008/0051(CNS)	Procedure completed
General arrangements for excise duty Amended by 2008/0150(CNS) Amended by 2013/0280(CNS) Amended by 2018/0124(CNS) Repealed by 2018/0176(CNS) Amended by 2021/0418(CNS) Subject 2.70.02 Indirect taxation, VAT, excise duties		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs	PPE-DE LULLING Astrid	11/03/2008
	Committee for opinion	Rapporteur for opinion	Appointed
	CONT Budgetary Control	The committee decided not to give an opinion.	
	ITRE Industry, Research and Energy	PSE DOS SANTOS Manuel	13/06/2008
	IMCO Internal Market and Consumer Protection	ALDE NEWTON DUNN Bill	25/03/2008
	REGI Regional Development	The committee decided not to give an opinion.	
	AGRI Agriculture and Rural Development	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Employment, Social Policy, Health and Consumer Affairs	2916	16/12/2008
	Economic and Financial Affairs ECOFIN	2901	04/11/2008
	Economic and Financial Affairs ECOFIN	2872	03/06/2008
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	KOVÁCS László	

Key events

14/02/2008	Legislative proposal published	COM(2008)0078	Summary
11/03/2008	Committee referral announced in Parliament		

03/06/2008	Debate in Council	2872	
13/10/2008	Vote in committee		Summary
21/10/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0417/2008	
04/11/2008	Debate in Council	2901	Summary
17/11/2008	Debate in Parliament		
18/11/2008	Results of vote in Parliament		
18/11/2008	Decision by Parliament	T6-0541/2008	Summary
16/12/2008	Act adopted by Council after consultation of Parliament		
16/12/2008	End of procedure in Parliament		
14/01/2009	Final act published in Official Journal		

Technical information

Procedure reference	2008/0051(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amended by 2008/0150(CNS) Amended by 2013/0280(CNS) Amended by 2018/0124(CNS) Repealed by 2018/0176(CNS) Amended by 2021/0418(CNS)
Legal basis	EC Treaty (after Amsterdam) EC 093
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/60115

Documentation gateway

Legislative proposal		COM(2008)0078	14/02/2008	EC	Summary
Committee draft report		PE407.726	17/06/2008	EP	
Committee opinion	IMCO	PE407.799	11/09/2008	EP	
Amendments tabled in committee		PE412.070	17/09/2008	EP	
Committee opinion	ITRE	PE409.634	08/10/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0417/2008	21/10/2008	EP	
Economic and Social Committee: opinion, report		CES1681/2008	22/10/2008	ESC	
Text adopted by Parliament, 1st reading/single reading		T6-0541/2008	18/11/2008	EP	Summary

Commission response to text adopted in plenary		SP(2008)7295	12/12/2008	EC	
Follow-up document		COM(2013)0850	03/12/2013	EC	Summary
Follow-up document		SWD(2013)0490	03/12/2013	EC	
Follow-up document		COM(2017)0184	21/04/2017	EC	Summary
Follow-up document		SWD(2017)0131	21/04/2017	EC	

Additional information

European Commission	EUR-Lex

Final act

Directive 2008/118
OJ L 009 14.01.2009, p. 0012 Summary

General arrangements for excise duty

PURPOSE: to replace Council Directive 92/12/EEC on the general arrangements for products subject to excise duty, and on the holding, movement and monitoring of such products, by introducing the legal basis for the use of the Excise Movement and Control System (EMCS) along with some further changes aiming at more transparency for the taxation of excise duty.

PROPOSED ACT: Council Directive.

BACKGROUND: the provisions contained in Council Directive 92/12/EEC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products need to be reviewed to take into account the introduction of the Excise Movement and Control System, a supervisory system for movements of goods for which duty has not been paid. This system has been put into place following Decision No 1152/2003/EC on computerising the movement and surveillance of excisable products (see COD/2001/0185).

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.

Apart from these new provisions, other amendments of the rules set out in Directive 92/12/EEC are considered to be necessary. In particular, it is necessary to: (i) update the language used in the directive, taking into account new legislative standards; (ii) recast the text and take out those provisions which have lost relevance over time; (iii) take account of legal developments and new legal concepts; (iv) 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.

These provisions for the private and commercial movement of excise goods within the EU were already proposed by the Commission in 2004 (see CNS/2004/0072). However, following discussions in Council, it was decided that they should be suspended until the Commission proposed a complete review of the Directive on the general arrangements for products subject to excise duty, as it has now done.

CONTENT: this proposal is in line with the main policies and objectives of the Union. It seeks to simplify procedures and to increase transparency for intra-Community trade, notably through a procedure in which movements of excise goods under suspension of excise duty take place under EMCS. This new procedure also facilitates risk based monitoring procedures for national administrations.

Once operational, it will replace the paper-based procedures and will be a crucial tool for tackling fraud. Moreover, it will facilitate trade by reducing related costs, as guarantees for duties will be released much more quickly.

The EMCS will introduce electronic processing for declaring, monitoring and discharging movements of excise products under suspension of excise duties within the EU. EMCS will therefore:

- allow both Member States and traders to monitor movements electronically in real-time;
- reduce the time needed for the discharge of tax liability for excise movements;
- provide excise authorities with the essential tools to effectively address fraud by permitting a more integrated, faster and risk oriented approach to controls.

First movements under EMCS are expected to start in 2009.

The Commission's proposal also includes elements to simplify and liberalise the rules on intra-EU movements of products (mainly alcohol) on which excise duty has already been paid in a Member State :

- for private individuals, the proposal aims to clarify the existing rules and to bring them more into line with the internal market principle that products acquired by private individuals for their own use should be taxed in the Member State in which they are bought;
- for goods moved for commercial purposes, the Commission proposes that the basic principle whereby excise duty is payable in the Member State of destination is maintained, but that the procedures to be followed in that Member State are simplified and harmonised.

General arrangements for excise duty

The Committee on Economic and Monetary Affairs adopted a report drafted by Astrid LULLING (EPP-DE, LU), and amended the proposal for a Council directive concerning the general arrangements for excise duty.

The main amendments ? adopted in the framework of the consultation procedure ? are as follows:

Definitions : the committee inserted definitions for 'importation of excise goods', 'registered consignee', 'registered consignor, 'authorised warehouse keeper', 'tax warehouse', and 'place of importation'.

Time and place of chargeability : the amendments aim to : clarify the circumstances applicable to the importation of excise goods; clarify the cases when national authorities would subject the destruction of goods under a duty suspension arrangement; define the case when the excise goods under suspension of excise duty do not arrive at their destination, due to an irregularity; remove any uncertainty with regard to excise duty liability in the case of an irregularity taking place and the place of release for consumption being known; clarify the position as regards liability where the excise stamps of one Member State are subject to an irregularity in another Member State.

Exemptions: Members propose that excise goods will be exempted from payment of excise duty where they are intended for delivery to an approved research and development facility, laboratory, government department or other approved party for the purpose of quality testing, pre-market introductory examination and verification for possible counterfeiting, provided that the goods involved are not deemed to be in commercial quantities. The refund conditions established by the Member State shall not result in unduly burdensome exemption procedures. In addition, Members felt that, as regards connecting flights, it should remain possible to make tax-free purchases at all stages of a journey undertaken via connecting flights with a third territory or third country as the final destination.

Production, processing and holding of excise goods: where the excise duty has not been paid, this shall take place in a tax warehouse. The Commission proposal had stated that the authorisation to open and run a tax warehouse will be regulated by competent authorities in the Member State where the warehouse is situated. Members feel that this authorisation shall be subject to conditions that the authorities may lay down for the purposes of preventing any possible evasion or abuse. However, it may not be refused on the sole ground that the natural or legal person is established in another Member State.

Movement of excise goods under suspension of excise duty: Members wish to specify the conditions for the movement of excise goods when under suspension of excise duty. They also propose that third parties acting on behalf of the persons mentioned should be allowed to provide the guarantee covering the risks inherent in the movement under suspension of excise duty. In addition, an amendment states that, the competent authorities of the Member State of dispatch may, under conditions they have set, allow for an overall guarantee to be provided for lower excise duties, or for no guarantee to be provided, provided that fiscal responsibility for the transport is at the same time assumed by the party responsible for the transport. This authorisation will only be granted to certain specified persons. The point at which the goods leave the tax warehouse or the place of importation shall be determined by the dispatch of a supplementary information message without delay to the competent authority by the authorised warehouse keeper or the registered consignor.

Furthermore, the committee introduced amendments to aiming to : (a) give Member States the possibility of monitoring the flows in real time and of carrying out the requisite checks where necessary (Decision No 1152/2003/EC); (b) to determine precisely the transition from the suspensive warehousing arrangements or suspensive temporary storage arrangements to the suspensive arrangements on movements covered, if necessary, by a guarantee provided by another party.

Procedure to be followed on a movement of excise goods under suspension of excise duty: Members note that the EMCS system will only be deployed in phases. The presence of a printout containing the administrative reference code for the goods dispatched, amongst other information, is essential so as not to hamper roadside inspections on intra-Community transport. As with the computerised transit system (NCTS), the accompanying printout should contain all the information included in the electronic message. A further amendment introduces two conditions if the "consignor" wishes to split a movement under suspension into two or more movements, and an obligation for Member States to inform the Commission of the authorised splitting consignments. Lastly, the competent authorities of the Member State of dispatch shall forward the report of export to the consignor no later than the working day following reception of the certificate stating that the excise goods have left the territory of the Community.

Acquisition by private individuals: Members felt that, not only should the indicative limits in Directive 92/12/EC not be scrapped, but they should be strengthened by making them compulsory. Free movement in the single market cannot serve as a pretext for avoiding the payment of excise duties, particularly when these respond to public health requirements. Member States' guide levels shall be no less than:

(a) For tobacco products:

- 400 cigarettes;

- 200 cigarillos (cigars of a maximum weight of 3 grammes each);

- 100 cigars,

- 0,5 kilogramme of smoking tobacco;

(b) For alcoholic beverages:

- 5 litres of spirit drinks;

- 10 litres of intermediate products;

- 45 litres of wine (including a maximum

of 30 litres of sparkling wine);

- 55 litres of beer.

Member States may also provide for excise duty to become chargeable in the Member State of consumption in respect of the acquisition of mineral oils already released for consumption in another Member State if those goods have been moved atypically by or for private individuals.

Distance selling: the committee specified that the vendor should obtain an identification document from the authorities of the Member State of dispatch before commencing his distance selling activities.

A new recital states that, to enhance the functioning of the internal market, further efforts should be made to come to a gradual harmonisation of excise duty within the European Union, while taking into account matters such as public health, the protection of the environment and budgetary considerations.

General arrangements for excise duty

The Council agreed on a general approach, pending the opinion of the European Parliament and the lifting of a parliamentary reservation by one delegation, on a draft Directive adapting the current excise duty arrangements in the EU and permitting the introduction of a computerised excise duty monitoring system.

General arrangements for excise duty

The European Parliament adopted, by 328 votes to 319 with 34 abstentions, a legislative resolution, amending the proposal for a Council directive concerning the general arrangements for excise duty. The report had been tabled for consideration in plenary by Astrid LULLING (EPP-DE, LU), on behalf of the Committee on Economic and Monetary Affairs.

The main amendments ? adopted in the framework of the consultation procedure ? are as follows:

Definitions: Parliament inserted definitions for 'importation of excise goods', 'registered consignee', 'registered consignor, 'authorised warehouse keeper', 'tax warehouse', and 'place of importation'.

Incurrence of excise duty: the amendments aim to :

- clarify the circumstances applicable to the importation of excise goods;
- clarify the cases when national authorities would subject the destruction of goods under a duty suspension arrangement;
- define the case when the excise goods under suspension of excise duty do not arrive at their destination, due to an irregularity;
- remove any uncertainty with regard to excise duty liability in the case of an irregularity taking place and the place of release for consumption being known;
- clarify the position as regards liability where the excise stamps of one Member State are subject to an irregularity in another Member State.

Exemptions: Members propose that excise goods will be exempted from payment of excise duty where they are intended for delivery to an approved research and development facility, laboratory, government department or other approved party for the purpose of quality testing, pre-market introductory examination and verification for possible counterfeiting, provided that the goods involved are not deemed to be in commercial quantities.. The refund conditions established by the Member State shall not result in unduly burdensome exemption procedures. Excise duty, including that on petroleum oils, may be reimbursed or remitted in accordance with the procedure laid down by each Member State. A Member State shall apply the same procedure to national goods as to those from other Member States.

Duty-free shops: 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, sea-crossing or land-crossing to a third territory or to a third country. The Commission's original proposal had suggested that air and sea travellers should have access to duty free purchases only when their immediate destination was outside the EU. Parliament felt that those with a final destination outside the EU should also be able to take advantage of duty free shopping at each stop along the route to a third country. The Commission's proposal had the effect of abolishing duty free shops on external land borders, but MEPs voted to keep them.

Production, processing and holding of excise goods:where the excise duty has not been paid, this shall take place in a tax warehouse. The Commission proposal had stated that the authorisation to open and run a tax warehouse will be regulated by competent authorities in the Member State where the warehouse is situated. Members feel that this authorisation shall be subject to conditions that the authorities may lay down for the purposes of preventing any possible evasion or abuse. However, it may not be refused on the sole ground that the natural or legal person is established in another Member State.

Movement of excise goods under suspension of excise duty: Members wish to specify that Excise goods may be moved under suspension of excise duty between two points within the territory of the Community, including through a third country or through a region in a third country. They also propose that third parties acting on behalf of the persons mentioned should be allowed to provide the guarantee covering the risks inherent in the movement under suspension of excise duty. In addition, an amendment states that, the competent authorities of the Member State of dispatch may, under conditions they have set, allow for an overall guarantee to be provided for lower excise duties, or for no guarantee to be provided, provided that fiscal responsibility for the transport is at the same time assumed by the party responsible for the transport. This authorisation will only be granted to certain specified persons. The point at which the goods leave the tax warehouse or the place of importation shall be determined by the dispatch of a supplementary information message without delay to the competent authority by the authorised warehouse keeper or the registered consignor.

Furthermore, Parliament introduced amendments to aiming to: (a) give Member States the possibility of monitoring the flows in real time and of carrying out the requisite checks where necessary (Decision No 1152/2003/EC); (b) to determine precisely the transition from the suspensive warehousing arrangements or suspensive temporary storage arrangements to the suspensive arrangements on movements covered, if necessary, by a guarantee provided by another party.

Procedure to be followed on a movement of excise goods under suspension of excise duty: given that the EMCS system will only be deployed in phases, Members felt that the presence of a printout containing the administrative reference code for the goods dispatched, amongst other information, is essential so as not to hamper roadside inspections on intra-Community transport. A further amendment introduces two conditions if the "consignor" wishes to split a movement under suspension into two or more movements, and an obligation for Member States

to inform the Commission of the authorised splitting consignments. In addition, the competent authorities of the Member State of dispatch shall forward the report of export to the consignor no later than the working day following reception of the certificate stating that the excise goods have left the territory of the Community.

Tobacco and alcohol: Members felt that the indicative limits in Directive 92/12/EC not be deleted, as the Commission had proposed. Member States' guide levels shall be no less than:

(a) for tobacco products:

- 400 cigarettes;

- 200 cigarillos (cigars of a maximum weight of 3 grammes each);

- 100 cigars,

- 0,5 kilogramme of smoking tobacco;

(b) for alcoholic beverages:

- 5 litres of spirit drinks;

- 10 litres of intermediate products;

- 45 litres of wine (including a maximum

of 30 litres of sparkling wine);

- 55 litres of beer.

Member States may also provide for excise duty to become chargeable in the Member State of consumption in respect of the acquisition of mineral oils already released for consumption in another Member State if those goods have been moved atypically by or for private individuals. Atypical movement may include the movement of fuel in containers other than the vehicle tank or a suitable spare fuel container or the movement of liquid heating fuels by means other than tankers being used for a commercial entrepreneur.

Distance selling: Parliament specified that the vendor should obtain an identification document from the authorities of the Member State of dispatch before commencing his distance selling activities.

A new recital states that, to enhance the functioning of the internal market, further efforts should be made to come to a gradual harmonisation of excise duty within the European Union, while taking into account matters such as public health, the protection of the environment and budgetary considerations.

General arrangements for excise duty

PURPOSE: to recast and modernise excise duty arrangements in the EU in order to combat excise duty fraud more effectively and to increase transparency for the taxation of excise duty.

LEGISLATIVE ACT: Council Directive 2008/118/EC concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

CONTENT: this Directive lays down general arrangements in relation to excise duty which is levied directly or indirectly on the consumption of: (a) energy products and electricity covered by Directive 2003/96/EC; (b) alcohol and alcoholic beverages covered by Directives 92/83/EEC and 92/84/EEC; (c) manufactured tobacco covered by Directives 95/59/EC, 92/79/EEC and 92/80/EEC.

The new Directive provides a legal framework for the use of the Excise Movement and Control System (EMCS), established by Decision No 1152/2003/EC of the European Parliament and of the Council, which shall be applicable from 1 April 2010. The current Council Directive 92/12/EC will be repealed as of that date.

The EMCS will provide a simplified and paperless environment for trade and will help to better tackle excise fraud by creating a faster and more efficient means of information exchange between excise authorities.

The new Directive also allows Member States to simplify existing rules for commercial movements, including distance sales, of excise goods from one Member State to another on which excise duty has already been paid in the Member State of dispatch.

The Directive also includes elements designed to simplify and liberalise the rules on intra-Community movements of goods (mainly alcohol and tobacco) on which excise duty has already been paid in a Member State.

For private individuals, the Directive aims to clarify the existing rules on moving goods from one Member State to another, and to bring them more into line with the internal market principle that products acquired by private individuals for their own use should be taxed in the Member State in which they are bought. In terms of the rules applicable to intra-Community movements of goods, Member States may lay down guide levels, solely as a form of evidence, which 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 kg;

(b) for alcoholic beverages:

- spirit drinks: 10 litres;
- intermediate products: 20 litres;
- wines: 90 litres (including a maximum of 60 litres of sparkling wines);

- beers: 110 litres.

Member States may also provide that excise duty shall become due in the Member State of consumption on the acquisition of mineral oils already released for consumption in another Member State if such products are transported using atypical modes of transport by a private individual or on his behalf.

For goods moved for commercial purposes, the Directive proposes to maintain the basic principle that excise is payable in the Member State of destination, but to harmonise and simplify the procedures to be followed in that Member State . In this context, "held for commercial purposes" has been defined.

Lastly, 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 to a third territory or to a third country taking a flight or sea-crossing. However, the Directive provides for a transitional period (until 1 January 2017) during which Member States are authorised to continue to exempt from excise duty goods supplied by existing tax-free shops situated at their land border with a third country.

ENTRY INTO FORCE: 15/01/2009.

TRANSPOSITION: 01/01/2010.

APPLICATION: 01/04/2010.

General arrangements for excise duty

The Commission presented a report on the implementation and evaluation of Council Directive 2008/118/EC concerning the general arrangements for excise duty. The Directive lays down the arrangements for the holding and movement of excise goods within the territory of the European Union.

In general, the Commission considered that arrangements for the holding and movement of excise goods should not distort competition, hinder the free movement of such goods within the EU, nor should such arrangements hinder tax collection or facilitate fiscal fraud.

In the light of the findings of the two studies commissioned by the Commission and an evaluation of this regulatory area under its better and effective Regulation (REFIT) programme, the Commission drew the following conclusions:

Suspension of excise duty: the Commission considered that the current arrangements for the holding and movement of excise goods under excise duty suspension work in an effective and efficient way, and in a way which could not be achieved without Union-wide action.

The report noted that the introduction of the Excise Movement and Control System (EMCS) for the supervision of movements of excise goods under duty suspension helps to improve the collection of excise duty.

As a result of the reduction in time required to process movement information EMCS has reduced the overall administrative costs for many Member States.

In 2014 alone, EMCS resulted in annual savings of between EUR 27.5 million and EUR 37 million.

Business to business duty paid movements: the Directive establishes the common rules for two types of intra-European Union commercial movements of excise goods on which duty has already been paid (i.e. released for consumption): consignments between traders (B2B) and the distance selling of excise goods to a private individual in another Member State (B2C). These arrangements are of particular interest to SMEs.

According to the report, 'duty paid' arrangements impose a substantial burden on businesses and are not compatible with the objective of encouraging the free movement of goods within the single market, due to the continued use of paper-based procedures, and variation in the approaches taken by Member State.

Average processing time varied between 4 and 8 hours depending on the nature of the consignment. This compares with a few minutes on average for the administration of an EMCS movement.

Accordingly, the Commission considered that the use of EMCS for duty paid procedures would streamline this type of trade, render rules more transparent and clear and would enable traders to recover easily and quickly the duty paid in the Member State of dispatch.

Issues to be resolved: the Commission suggested improvements that may be achieved by the planned amendment to Directive 2008/118/EC and its implementing regulations, in particular as regards the following points:

- coordination between customs and excise procedures: the large numbers of unclosed movements in the case of indirect export of excise goods continues to be a matter of concern. A clear legal base for transit and better harmonisation of the rules for the treatment of imported excise goods might also be useful.
- authorisations: requirements for authorisations to hold and move excise goods and for simplifications vary between Member States. These authorisations are subject to complex requirements which create excessive obstacles for traders;
- handling of shortages, excesses, other exceptions and the fight against fraud: EMCS is generally believed to have reduced fraud. The major problems identified by Member States were the entry of excessively long journey times by traders and a lack of certain data in the e-AD, such as the ownership of the goods at dispatch and destination, which could assist in risk analysis;
- duty paid procedures aimed at small and medium enterprises: these arrangements do not function well. They are a source of administrative burden and high trader compliance cost as well as a potential source of fraud. The arrangements for the distance selling of excise goods are even worse, with the generalised use of tax representatives making legitimate commercial business unviable.

Follow up: the Commission intends to examine the following issues:

- legal and technical improvements to the treatment of irregularities and the handling of claims by Member States;

- the usefulness of proposing a less burdensome regime than either EMCS or the SAAD system for the movement of excise goods of low fiscal risk, such as denatured alcohol, flavourings, perfumes and certain energy products;
- legal and technical changes to the arrangements used for the supervision of the import, export and transit of excise goods;
- the partial or full automation of the duty paid B2B arrangements with a view to reducing administrative burden and compliance costs on traders and Member States;
- the means to improve the arrangements for the cross-border distance selling of excise goods.

The Commission will take these conclusions into account in its preparations to revise Directive 2008/118/EC and will carry out an open public consultation and an Impact Assessment.