

**Master in Customs and supply chain compliance**

**July 2017**

**Master thesis research**

**Improving the excise legal framework for intra  
EU e-commerce of alcoholic beverages**

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## Chapter 1. Title and Preface

This thesis is written in completion of the executive master in customs and supply chain compliance. Holding of a master in economics, I wanted to use my thirteen years' experience in the field of customs and excise duties in the legal and client management departments in combination with the knowledge acquired during the master to contribute to the excise duty IT and legal framework.

This work wouldn't have been possible without the support of my academic supervisor, Pr Walter De Wit and co-reader Dr Morteza Pourakbar. I'm also grateful for the chance I had to interview together two of the top experts from the E.U. commission from DG TAXUD/C2. Firstly Mrs. Ursula Krampe from the customs department - and secondly, Colin O'Driscoll - Head of Sector EMCS and Administrative Cooperation at the excise duty department, especially given the fact that the combination of excise duty and customs legislations was particularly enlightening.

I would also like to thank the many contributors from the business side who took time to discuss about the models and reacted on my call for contributions on professional networks. The contributors are experts from Loyens & Loeff, especially the attorney Bert Gevers who organized the meeting with in-house Benelux specialists and lawyers, and a specialist from Nedcargo, namely Jörg Bruijn, Excise duty expert. They provided an excellent and constructive feedback.

To conclude, I want to thank my family who was so comprehensive and supportive during the research and writing process.

## Chapter 2. Executive summary

While cross-border e-commerce is booming in the world, there is still one branch that has not been greatly impacted by this growth in the last years, namely the alcoholic beverages.

Cross border movements of excise duty goods sold using e-commerce in the E.U. are submitted to a lot of regulations. This thesis is about the fiscal excise duty legislation for those types of movements. This work aims at developing a new legal and IT model for these movements in order to facilitate the trade in this particular area.

The first step in the process was to analyze the current legal framework in order to assess to which extent this framework is suitable for this kind of business. These specific movements are ruled by two main movements arrangements foreseen in the so called movements directive (2008/118) : the suspensive arrangement and the duty paid arrangement.

In the suspension arrangement, the excise duty was not paid in the country of origin and are suspended during transport. This arrangement requires both the consignor and the consignee to hold an authorization in their respective member states, delivered according to national rules and conditions, and submitted to a guarantee. To circumvent this obligation for the consignee, the seller can apply for a tax warehouse in each Member state and then forward the goods to the end-user. This is only possible for big players handling large volumes.

In the duty paid arrangement, the excise duty is paid in the country of origin. Before each movement, the seller must provide a guarantee in the member state of destination and use paper documents. After the movement, the excise duties must be paid in the member state of destination and these documents and/or the proof of payment are sent back to the consignor to obtain a reimbursement. All the steps of this procedure are national specifics and must be realized in the local language. In case of returning goods, nothing is foreseen in the legislation and all steps have to be repeated the other way around. These formalities are certainly not suitable for B2C and very heavy for B2B.

On the other hand, all these legal requirements deeply impact common logistics concepts generally used by the sellers. It influences the flow of goods, the way the inbound logistics have to be organized, the management of inventory (for instance the E.O.Q. – economic order quantity is impacted by the transactional costs and the guarantees), the transport cost, the reverse logistics (especially when goods are to be reused or returned) and security.

A **new model for the suspension arrangement** can be inspired by the **centralized clearance** in the field of customs. To this effect, it is remarkable to notice that the current legal framework in the field of customs already foresees easy centralized import declarations from one unique member state for all goods imported from third countries to different member states. Nevertheless, the same facilitation for excise goods coming from the E.U. and sold in the E.U. doesn't exist. To simplify, it would be easier to install an e-shop of alcoholic beverages in Switzerland to deliver to European customers than to install it in the E.U.. Starting from this statement, a new model could be built to allow for the same kind of simplification within the excise duty suspension arrangement. This facilitation should be reserved to trusted traders and would require a new authorization named **Authorised Excise Duty Operator (AEDO)** relying on a grounded audit, comparable to the AEO authorization in the field of customs. This system should also need the **EOSS** (Excise one stop shop) developed in the model about the duty paid arrangement.

In the **duty paid arrangement**, a new model could be inspired by the new VAT simplification called **One stop shop**, which will come into force in 2019. This new procedure allows an e-seller to register, declare and pay all E.U. VAT through a single portal in the Member state of dispatch. All payments are then balanced amongst the Member states and transferred to them. While the VAT is very similar to the excise duty, nothing comparable was foreseen for the excise duty even if this topic has been a subject of discussion for years. This work provides a legal and IT framework for the building of an **excise duty one stop shop (EOSS)** applied to the movements of goods in the duty paid arrangement. The model would allow the e-seller of alcoholic beverages to use electronic messages (**e-SAD**) instead of paper to send the messages, to register only in his own member state, to allow for risk analysis on the e-messages by the government, to lower the burden for the government authorities and to provide an electronically authenticated proof of payment of the excise duty at destination to facilitate the reimbursement at departure.

A SWOT (Strength, weaknesses, opportunities, threats) analysis was conducted by presenting the two models and by interviewing experts from the Commission and the business world. The results of this analysis showed that the presented models were both realistic but that some specific aspects must be taken into account. In particular, it was observed that these solutions would enhance facilitation and could drive companies from the grey zone to the green zone by reducing the administrative burden. Companies would therefore have better control on their compliance, compared to paper clearance. This model would also

positively impact the quality of data for the Member states and eventually lead to access to track and trace systems used for the delivery. It was also observed that the servers capacity should be adapted, that non fiscal barriers could still apply on the process (for example taxes on glass bottles or alcohol regulatory restrictions) and that some member states could be reluctant to develop this particular business. More specifically, it would be essential that excise duty is harmonized with VAT and customs procedures and that IT systems are compatible to process all different procedures smoothly.

Further research could be initiated on those findings. It could focus on specific logistics aspects like the impact of guarantees on the E.O.Q. for excise duty goods, the organization of returning goods in the field of excise duty taking both the logistics and the legal framework into account, or on a precise bpm representation and examination of a value network for the models.

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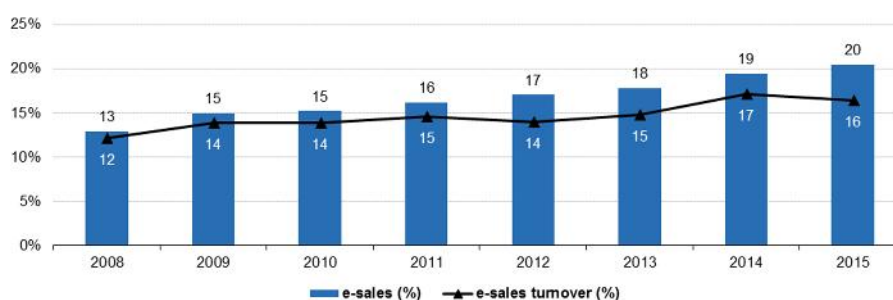
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## Chapter 3. Introduction

The main current legal basis for the movements of excise goods is the *Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC*. At the time of publishing of this directive, and even more during the preparatory work in the previous years, e-commerce was just in its infancy and one would hardly believe that in such a short time it would know such growth around the globe a few years later as illustrated in the next figure.

*Figure 1 : E-sales and turnover from e-sales, 2008 to 2015, EU28*

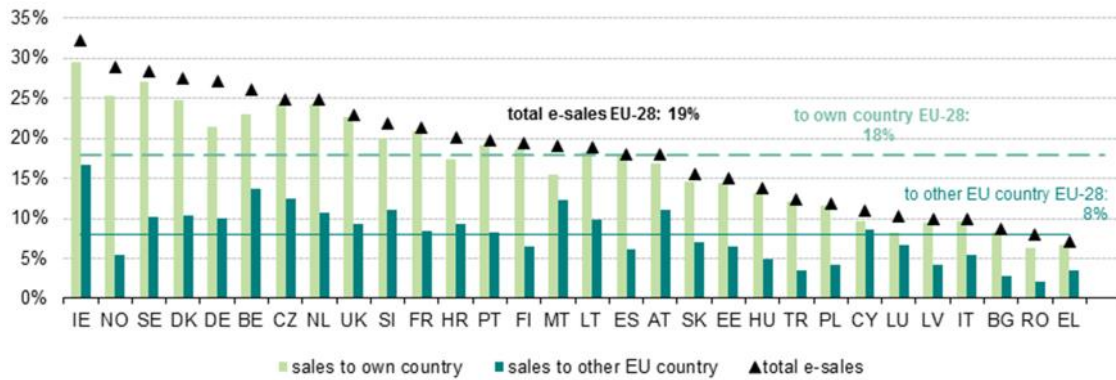


Note: 2008 data without enterprises in the NACE Rev 2 group 95.1 referring to 'Repair of computers and communication equipment'.

Source : Eurostat 2016

In 2014, in the EU, the percentage of companies selling **cross-border** through e-commerce represented 8% compared to 19% of companies using e-commerce in general but this percentage varies grandly between the E.U. countries.

Figure 2 : E-commerce sales to own country and other EU countries, 2014 (% enterprises)

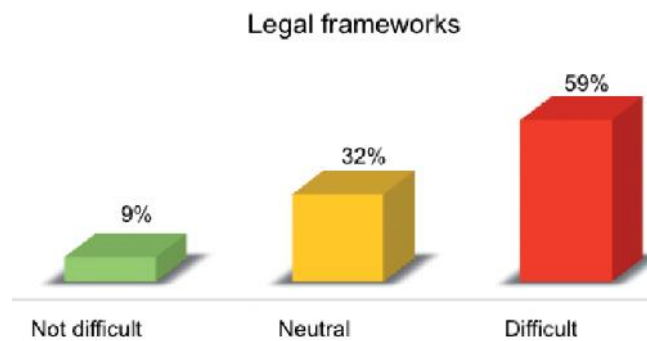


Source : Eurostat

The average spread between 8% and 19%, also present in relatively small countries (in terms of surface) shows that the E.U. market isn't as integrated as it could be and that facilitation could play a significant role to close this gap and develop e-commerce.

As stated in the Ecommerce Europe Priority Paper of April 2016 and the EU e-commerce barometer 1/2016<sup>1</sup>, **59% of the companies find the legal framework difficult to overcome to sell cross-border within Europe.** In the precedent Barometer in 2015, the percentage was 46%.

Figure 3 Perceived level of difficulty for companies selling cross-border (% enterprises)



Source: Ecommerce Europe, Preliminary analysis of the Cross-border E-commerce Barometer 2016

<sup>1</sup> E.U. Cross-border E-commerce Barometer 2016.

The 2016 Barometer also shows that companies encounter more difficulties in some countries than others, and that the top 3 barriers are: “*Legal frameworks, complicated and expensive taxation systems (VAT) and logistics/distribution issues*”<sup>2</sup>.

This work will focus on the e-commerce of excise duty goods and analyze whether the current design of the legal framework is suitable to facilitate this kind of cross-border trade.

When a motivated entrepreneur wants to start a new international e-shop for the sale of alcoholic beverages like wine or beer for instance, he will first notice that there are very few small companies dealing with these goods and he will most probably think that there is an opportunity to develop a prosperous new business. He would usually start by meeting his local customs authorities to learn how to organize his business in order to fulfill his obligations regarding the excise duties.

Unfortunately for him, it is very much likely that when he comes out of his customs office, his enthusiasm will very much be attenuated if not annihilated after a specialist would have told him how to fulfill all legal obligations in the field of excise duty in each country he wants to do business with. Strangely, the single market seems not to have reached that very specific tax area. Even if some common provisions exist, their national implementation causes enormous problems to allow for this business. Of course, the Member states have reasons enough to impose a strong regulation of these activities with respect to the potential loss of income that could result from a less regulated framework. **If we take the example of a semi-trailer truck full of vodka bottles, the total excise duties would almost amount<sup>3</sup> 300 000€ in Belgium** (which applies middle ranged excise duty rate compared to the E.U. countries). This amount speaks to the imagination of everyone.

Amongst the E.U. countries, the excise duties vary between 562€ (BG) to 5455€ per hl of pure ethylalcohol<sup>4</sup>.

Notwithstanding these considerations, it would be interesting to study the current legal framework and investigate whether a new legal framework could be developed, taking into account the mitigation of the fraud risks, the new technologies available at this moment, the existing solutions for other taxes (in particular VAT and customs) and the logistics needed for this business.

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<sup>2</sup> Ibid. p.19

<sup>3</sup> Considering 37,5° vodka, 33 pallets, 264hl \*0.375 = 99hl pure alcohol and Belgian excise duties of 2992€ (rate of 1/07/2016)

<sup>4</sup>From European Commission, REF 1047 rev1, July 2016, EXCISE DUTY TABLES

It is very natural for tax authorities and business to have opposite ideas on those questions, especially because they have different point of views, objectives and references and because when starting a discussion, it is very likely that they won't understand each other, just like two persons speaking different languages.

But, based on a good description of the problems and the needs of everyone, it could be possible to develop a new legal framework which, associated with new technologies, could reconcile both party and meet their individual interests.

## Chapter 4. Problem definition

Currently, the E.U. legislation for the movements of alcoholic beverages creates such an administrative burden that only a few big players, selling large volumes of goods, are able to offer cross-border e-commerce to their customers without excessive costs.

**The main principle is that the excise duty is levied on excise duty goods in the country of consumption of these goods.** Therefore, in the case of cross border sales, the excise duty has to be paid in the country of destination. The rate of this national tax differs amongst the member states but the European legislation provides a general framework for the holding, the processing and the cross-border movements of the excise goods.

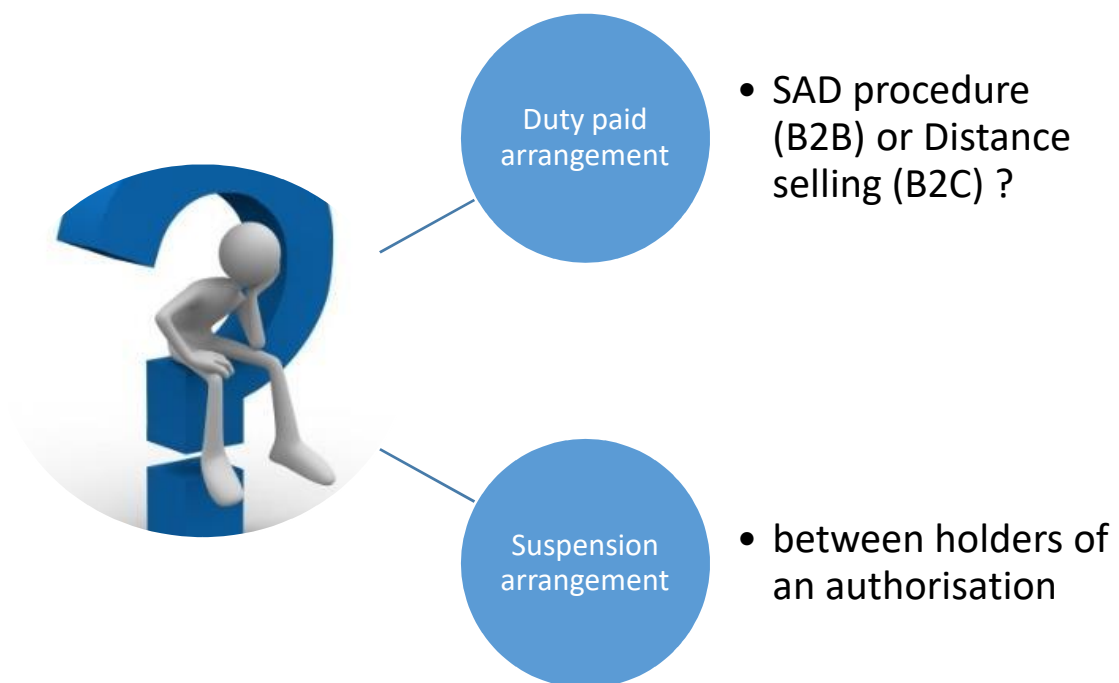
These goods can be held under two types of arrangements:

- The **duty paid arrangement**: is related to the **goods upon which the excise duty was already levied**. Those goods are free to circulate within a single Member state. These are the type of goods one can find in regular shops.
- The **suspension arrangement**: for goods where **the excise duty is suspended** and has not been paid yet. A typical example is the tax warehouse of a brewery. The brewer can hold the goods without paying the excise duty before selling them or sending them to another tax warehouse.

The E.U. cross border **movements** are ruled by different procedures depending on the arrangement used and the type of consignee. To sum up, **two main types of movements are allowed when selling cross-border, depending on the status of the goods at dispatch**:

- Under the **duty paid arrangement**: for goods where the excise duty is already paid in the member state of dispatch at the beginning of the movement. In the duty paid arrangement, the **Simplified Accompanying Document (SAD)** is used for **B2B** and **the distance selling procedure is used for B2C**;
- Under the **suspension arrangement**: for goods where **the excise duty is suspended** and is not paid at the beginning of the movement. This kind of movement can only take place between holders of an authorization (at dispatch and destination but of different kinds depending on the needs) using electronic messages (e-AD) exchanged in the European electronic system Excise control system (EMCS).

*Figure 4 : Current arrangement for the movement of excise goods under the current legislation*



Nevertheless, as will be shown in detail in Chapter 7 about the “as is” situation, those procedures are very complex and linked to many national procedures that are left to the member states. This creates a gigantic administrative burden for companies.

For example, **under the suspension arrangement**, the current legislation forces the sellers to apply for an authorization in each country of departure and destination in order to sell their products without too large transactional costs. On the other hand, the legal framework **for excise goods already released for consumptions (duty paid)** requires systematic human

intervention (using transactional guarantees and reimbursement procedures in each country) which makes it useless (because too expensive) for this particular business, especially for small consignments.

This business also faces specific logistic issues related to the legal framework like the management of stocks in the warehouses (linked to legal guarantees), reverse logistics (what if the consignee wants to send his order back?) or the last mile cost. This will be covered in section 7, § 1, e.

### 1. Scope:

This work covers cross-border e-commerce in general, thus B2C and B2B within the E.U..

The goods under customs arrangements are excluded from this analysis because their tax treatment is completely different and relies on different law texts – namely the Union Customs Code (UCC). Only the E.U. territories covered by the common legal framework in the field of excise duty<sup>5</sup> will be considered here.

The notion of alcoholic beverages covers beer, wines, other fermented beverages, intermediate products and ethyl alcohol<sup>6</sup>.

### 2. Goal and research questions:

A new legal framework should be considered, relying on supply chain considerations, in general for e-commerce and more specifically for alcoholic beverages. It should be coupled with updated/new electronic systems, for instance an upgraded version of EMCS including the e-SAD and other features, and also consistent with the new VAT framework to come for e-commerce (new one stop shop<sup>7</sup>) and the UCC. The analysis of the possible transposition of the new VAT rules for e-commerce and of the centralized clearance in the customs area to the excise duty legal framework also constitutes a contribution to the knowledge base.

**The main research question can be formulated as such:**

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<sup>5</sup> Some territories are excluded by art. 5 of Directive 2008/118

<sup>6</sup> Directive 1992/83 CE

<sup>7</sup> Proposal for a Council Directive, SWD(2016) 379 final, Modernising VAT for cross-border B2C e-commerce

- **How to design a basic model for a new legal and IT framework for movements of excise duty goods to allow for intra-EU e-commerce of alcoholic beverages?**

**Sub-questions:**

- What are the current legal provisions for this business in the field of excise duty?
- What means the practical implementation of these provisions for the business and how can an e-seller organize his business to comply with those regulations?
- What explains the current difficulties for SME to sell alcoholic beverages cross-border using e-commerce?
- What are the logistic difficulties of this kind of business which are related to the current legal framework?
- Which electronic systems can be upgraded/developed to facilitate this business?
- Which lessons can be learned from the newly proposed VAT legal framework for e-commerce (One stop shop) and how can they be transposed to the excise duty framework?
- Which lessons can be learned from the UCC Centralized clearance and how can it be transposed to the excise duty framework?
- Which pragmatic model(s) can be proposed to answer the problem raised in the problem definition and what are the pros and cons?

Chapter 5. [Review of research literature and body of knowledge:](#)

This thesis is mostly related to legal matters but relying on logistics concepts applied to this specific business. Therefore, the body of knowledge basically consists of law texts (mainly European but also national) and of relevant literature for the supply chain side.

1. [Body of knowledge on the legal side :](#)

a) [EU law :](#)

The Excise duties are ruled by Council **directive 2008/118/EC** of 16 December 2008 *concerning the general arrangements for excise duty and repealing Directive 92/12/EEC*. **This directive establishes the general framework for the Common provisions for common excise duty goods.** It encompasses the general rules for production, processing and holding of these goods and also for the movements of these goods under the suspension

arrangement and outside of it (the movements of duty paid goods). This directive has been transposed in national law by each Member state which can also establish national provisions on certain matters. In this work, it is specifically important for reimbursement and guarantee procedures.

Beside these provisions, the EU also established product specific provisions for energy products<sup>8</sup>, alcohol and alcoholic beverages<sup>9</sup> and manufactured tobacco<sup>10</sup>.

The specific provisions on alcohol beverages won't be used here as essentially the movements are considered, except for the scope of **the notion of alcoholic beverages** which can be found in directive 92/83/CE and covers **beer, wines** (still and sparkling), **other fermented beverages, intermediate products and ethyl alcohol**.

For the movements of duty paid goods, the *Commission Regulation (EEC) No 3649/92 of 17 December 1992 on a simplified accompanying document for the intra-Community movement of products subject to excise duty which have been released for consumption in the Member State of dispatch* provides the procedure and the **document** (SAD) to be used for these movements (duty paid).

The counterpart for the **suspension regime** is the *COMMISSION REGULATION (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty* which provides the format of the messages to be used in EMCS<sup>11</sup> (especially the e-ad replacing the previous paper AAD) and some procedural aspects.

The Functional Excise System Specifications (FESS v 3.95) is the basis for the **IT side of EMCS**.

#### b) Belgian law :

In the examples provided in this thesis concerning the current legislation, the Belgian law will be used to illustrate the obligations of the seller who wants to sell alcohol to a Belgian consignee from another country. This Belgian law is the result of the transposition of the

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<sup>8</sup> Directive 2003/96/EC

<sup>9</sup> Directive 92/83/EEC

<sup>10</sup> Directive 95/59/EC

<sup>11</sup> The Excise movement control system (EMCS) is the IT system used by all Member states to exchange the electronic messages used for movements of excise goods in the suspension arrangement



directive 2008/118 and consists of three main texts all named after the directive as « *concerning the general arrangements for excise duty* »:

- Law of 22/12/ 2009 relative au régime général d'accise (published on 31/12/2009)
- Royal decree of 17/03/2010 relatif au régime général d'accise (published on 26/03/2010) –
- Ministerial decree of 18/03/2010 relatif au régime général d'accise (published on 26/03/2010)

## 2. Body of knowledge on the logistics side:

As this work covers some logistics concepts applied to this particular topic, some material and articles are particularly relevant to the general logistics theory as the book “Global logistics & supply chain management” from *Mangan, Lalwani, Butcher, Javadpour (2012)* but also some scientific articles about the closed loop model (*Beamon, 1999; Govindan, Soleimani, Kannan, 2015*), the reverse logistics (*Qian Xiao Yan, Han Yong, Da Qinli, Stokes, 2012; Rogers, Lembke, 1998; Rogers, Lembke, Bernardino, 2013a, 2013b*) and the last mile theory (*Gosso, 2015; Boyer, Prud'homme, Chung, 2009; Gevaers, Van de Voorde, Vanelslander, 2014; Lee, Whang, 2001*).

## Chapter 6. Research methods:

The thesis is **mostly legal** but relying on **logistics concepts** applied to the analyzed business. The methodology will essentially be design science because the result should be a proposal of model for a legal and IT adaptation and an assessment of the required electronic tool aimed at improving the current framework for this topic.

The idea is **first to analyze the As-Is situation considering the current legal framework and the associated issues, especially in terms of administrative burden and logistics. Secondly**, starting from there, the goal is to consider legal solutions to make this business possible and **to design a new model of IT and legal framework for the suspension arrangement and the duty paid arrangement.**

The proposed models rely on adapted or new specifically designed IT systems. These will be inspired by existing similar solutions for other tax areas (VAT and customs). The proposed

solutions should also cover the risk mitigation of potential fraud in order to take into account the interests of the tax administrations.

The proposed models were also assessed by conducting interviews with a logistic provider (Nedcargo), trade and legal consultants (Loeyens and Loeff Benelux) and experts from the European Commission (D.G. Taxud). These interviews consisted in a detailed explanation followed by a discussion formalized through a SWOT analysis (Strength, weaknesses, opportunities, threats) of the models.

The participants were:

- 2 experts of D.G. TAXUD (one from the excise duty department - Colin O'Driscoll - Head of Sector EMCS and Administrative Cooperation at European Commission - DG TAXUD/C2 and one from the customs department - Mrs. Ursula Krampe – DG TAXUD/C2.);
- 6 consultants/lawyers of the Law firm Loyens and Loeff from the Benelux (Bert Gevers – Attorney Belgium, Jochen Vankerckhoven – Attorney Belgium, Jack Nuijten Tax advisor Netherlands, Kees Bouwmeester – tax advisor Netherlands, Gerard Kreijen – Attorney Netherlands, Yassine el Bojaddaini – Tax Lawyer Netherlands, Olivier Coulon – Tax Lawyer Luxembourg;
- 1 expert from the forwarding agency Nedcargo from the Netherlands: Jörg Bruijn Excise duty specialist.

During those sessions, the current situation was first presented and followed by a discussion related to a SWOT analysis. The original SWOT analysis is given in the annexes. The results of the different sessions were compiled and are presented in Chapter 7, 2, b and c.

## Chapter 7. Case description

### 1. As-Is problem analysis

#### a) Introduction

To understand the current legal framework, it is essential to distinguish the two main arrangements for cross border movements of excise duty goods, namely the suspension arrangement – covered in section b - and the duty paid arrangement – covered in section c-. The problems associated with each type of arrangement will be described in details in its respective section. Section d will highlight specifically logistics oriented considerations and concerns associated with the described framework, especially regarding the reverse logistics, the security, the transportation cost, the inventory management and inbound logistics.

#### b) The current legal framework for the movement of excise goods under suspension arrangements applied to the e-commerce of alcoholic beverages

The first possibility for the cross border movements in the EU of alcoholic beverages is the use of EMCS under suspension of excise duty. These movements are ruled by chapter IV of directive 2008/118/EC. The suspension arrangement means that before the movement, the goods must be held in a tax warehouse<sup>12</sup> and the excise duty has not been levied yet<sup>13</sup>. This means that the consignor (here our seller for e-commerce) has applied for an authorization in the country of departure. To obtain and keep this authorization, he must<sup>14</sup> :

- Provide a guarantee for the holding, processing and production of the excise goods and also for the sending of these goods;

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<sup>12</sup> According to art. 4 of Directive 2008/118, a tax warehouse is: « a place where excise goods are produced, processed, held, received or dispatched under duty suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located »

<sup>13</sup> Please note that the registered consignor was not covered here as it relates only to imports from non-fiscal territories or third countries.

<sup>14</sup> Art. 16 and 18 *ibid.*

- Comply with national requirements (e.g. specific to the premises, audit for risk assessment, clear past about fraud records, specific accounts or minimal quantities);
- Keep accounts of stocks;
- Enter and register the goods at the end of a suspension movement;
- Consent to monitoring and checks.

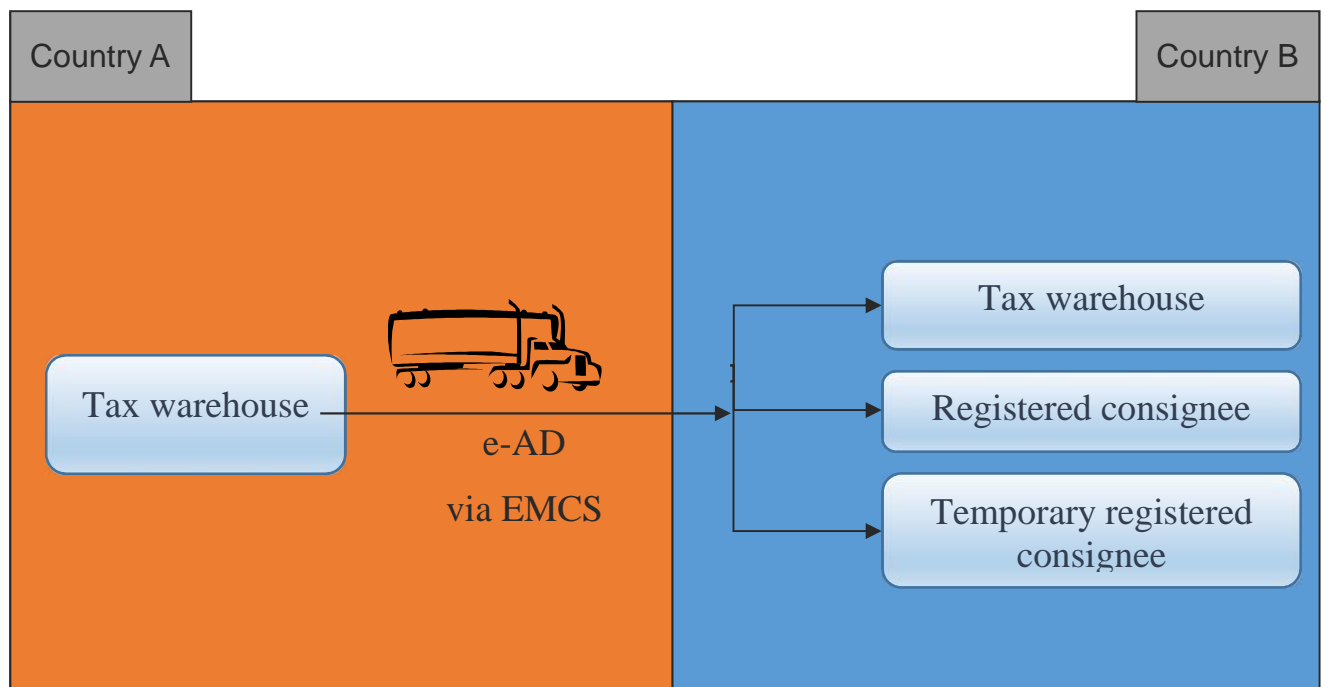
Then, he will be allowed to send the goods to an authorized operator in the country of destination using EMCS. The consignee must be registered according to one of the three following statutes:

- **Tax warehouse** – see footnote 12 for the definition;
- **Registered consignee** – “*a natural or legal person authorised by the competent authorities of the Member State of destination, **in the course of his business** and under the conditions fixed by those authorities, **to receive** excise goods moving under a duty suspension arrangement from another Member State*”;
- **Temporary registered consignee** – i.e. a registered consignee “*receiving excise goods only occasionally [...] limited to a specified quantity of excise goods, a single consignor and a specified period of time. Member States may limit the authorization to a single movement*”<sup>15</sup>. Note that this authorization can be granted to private persons.

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<sup>15</sup> Art. 19, 3, *ibid.*, please note that the directive doesn't really define a specific status for temporary registered consignees but this distinction eases the description and will be used throughout this work.

*Figure 5 : Authorizations under suspension for intra EU cross country e-commerce*



Where the warehousekeeper may hold, process, produce and send the goods under suspension, the (temporary/) registered consignee may only receive goods. Immediately after the latter receives the goods, these will be considered as released for consumption<sup>16</sup> and the excise will be chargeable while the warehousekeeper at reception may hold them under suspension after reception.

The registered consignee must also fulfill some conditions to obtain and keep his authorization<sup>17</sup> :

- Provide a guarantee;
- Enter the goods into his accounts after reception of the goods;
- Consent to checks by the national authorities.

For an e-shop, this has strong implications that are developed in the following sub-sections.

*i. The need to be registered in each country of destination or to find a third party who is registered*

This is a large constraint when using this arrangement. The biggest issue is that each Member state has his own procedure of registration, which implies different languages and different guarantees.

<sup>16</sup> Art. 7, 3, (a) *ibid.*

<sup>17</sup> Art. 19, 2, *ibid.*

Secondly, the e-shop will have different options:

- **Ask each client to be registered:**

**This option is not realistic** except for specialized consignees receiving large volumes because it implies to guarantee the movements, to go through the whole registration process (sometimes implying an audit or a check of criminal records), to have a VAT number (except for temporary registered consignees) and to access EMCS. This is not what a customer would expect when ordering a few bottles of wine on the website of an e-shop.

- **Register himself in each country of destination:**

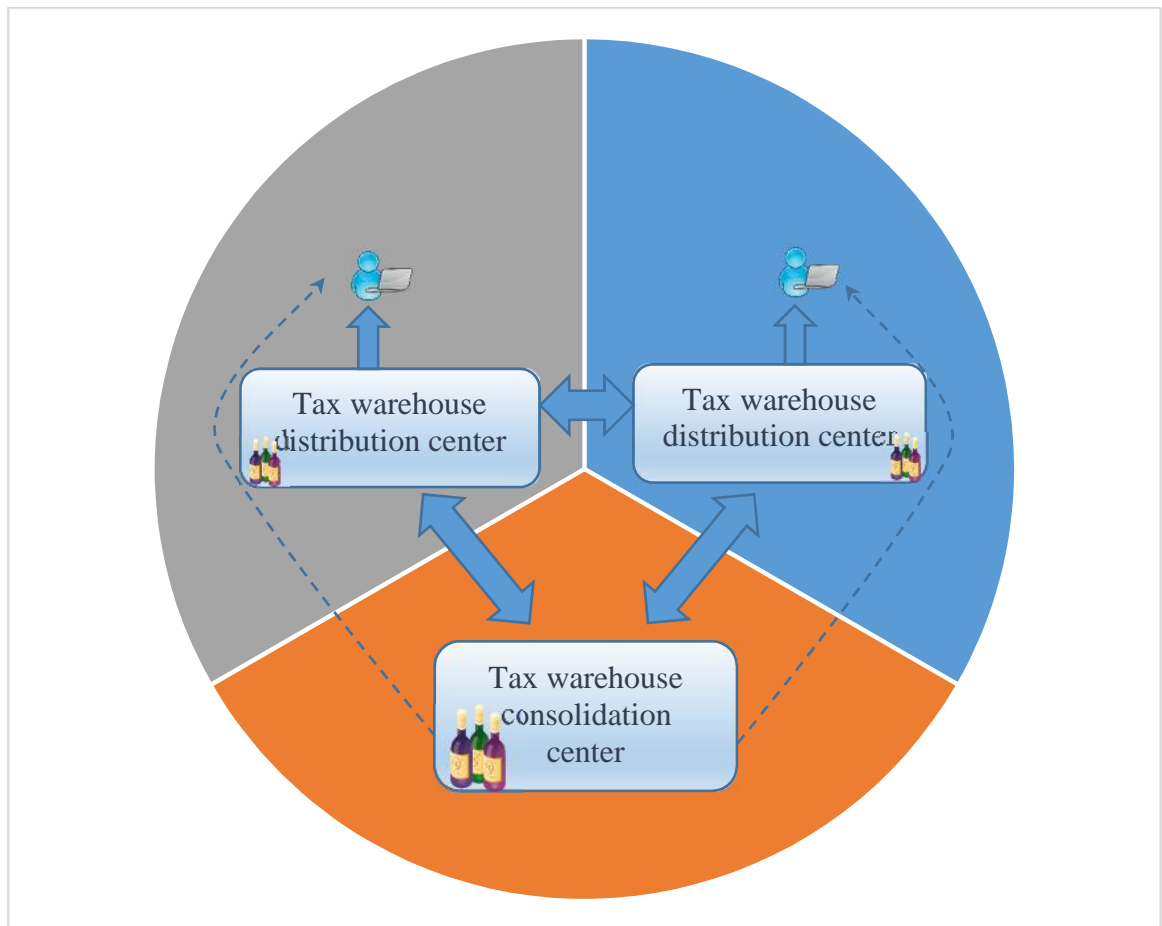
**This option is realistic but only for big sellers** working with large volumes. When the seller wants to register himself at destination, he will have to choose between the status of warehousekeeper (holder of a tax warehouse) or registered consignee. He could then “release the goods for consumption” only when needed (reserved for warehousekeepers at destination) or for consumption immediately. Of course this means that he would have to register in each country, have a VAT number and use EMCS. For big players, the use of EMCS can be fully automated and connected to their stocks accounts or with the use of barcodes on the boxes coupled to the use of electronic messages (xml) for the exchanges with the national authorities.

The choice between registered consignee and warehousekeeper will depend on the need to hold the goods under suspension and also the need to send goods to other Member states or back to the country of departure.

This is illustrated in the figures hereunder and will depend on the logistical needs of the company, more specifically the choice of using distribution centers, the movements between inventories and the reverse logistics.

The next figure illustrates the choice of registering as a tax warehouse at destination.

*Figure 6 : Movements from a tax warehouse to tax warehouses under suspension - an example with 3 Member states*



Please note that this organization is based on the theory exposed in chapter 7, §1, e), ii, about inbound logistics. It shows that a company could move the goods between its tax warehouses for cross border movements and then release the goods for consumption (at the exit from the tax warehouse) before handing the goods to the customer. The tax warehouse of destination has the possibility to hold the goods under suspension. **With this organization, it is also possible to move the goods back to the consolidation center or amongst different tax warehouses** as far as they were not released for consumption. This is an important element for the stock management.

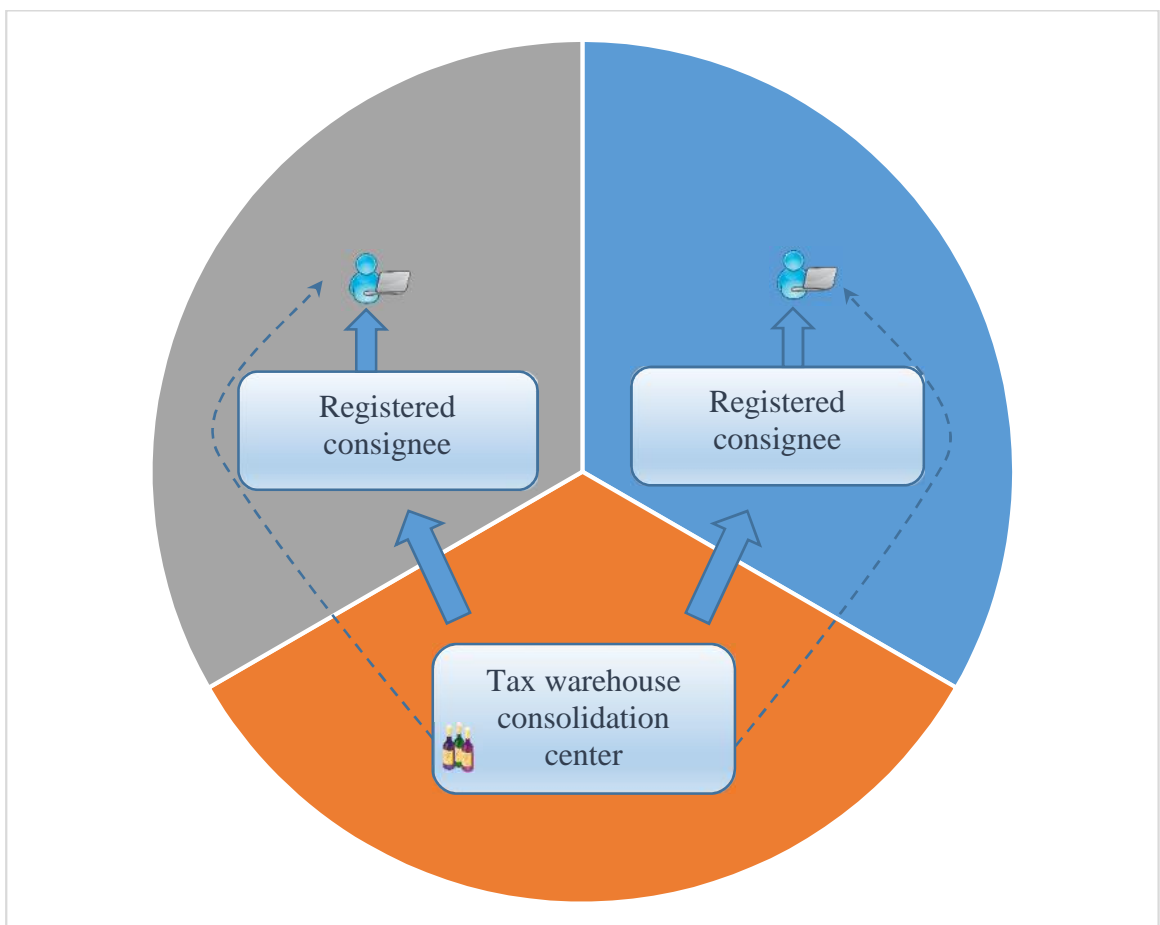
The dotted lines in figure 6 hereabove depict the possible use of a simplification referred to as “direct delivery”.

This simplification is optional for each member state of destination and is thus a national matter. It is foreseen by article 17, 2 of Directive 2008/118 which states that

“the Member State of destination may, **under the conditions which it lays down**, allow excise goods to be moved under a duty suspension arrangement 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 conditions will also vary amongst the Member states and, in this example, the tax warehouse at destination must apply for a specific authorization for direct delivery also eventually conditioned to specific accountings or pre-agreement of the places of direct delivery in the authorization.

The next figure illustrates the choice of registering as a registered consignee at destination.

*Figure 7 : Movements from a tax warehouse to registered consignees under suspension - - an exemple with 3 Member states*



In this figure, we see that the registered consignees can only receive the goods, thus not send them or hold them under suspension. This implies that no stock under



suspension is authorised for them and that they can't send the goods back when needed or when they want to move their stocks. Here, the direct delivery is also a possibility depending on the Member state of destination.

*ii. Provide twice the guarantee for the same goods when also registering as a registered consignee at destination*

It is quite disturbing to consider that when a company applies for a tax warehouse in country A and registered consignee in country B, the same person will provide twice the guarantee: once as warehousekeeper for “the risks inherent in the movements” that will “be valid throughout the Community”<sup>18</sup> and one as a registered consignee for the “payment of the excise duty” in the country of destination. This latter is deemed to cover situations where the consignee would discharge the movement by sending a report of receipt but would not pay the excise duty afterwards. Where the consignor and the consignee are the same person, one could question the pertinence of covering the same goods twice instead of allowing to extend the existing guarantee of the consignor. A legal adaptation could be foreseen to allow the use of an existing guarantee in this particular case. As mentioned before, when considering alcoholic beverages, where the value of the goods is minimal compared to the taxes, this double guarantee issue can seriously affect the cash flow of a company.

*iii. Direct delivery is not allowed in all Member states and the conditions differ among themselves*

In 2014, a report<sup>19</sup> of the Commission stated that among all Member states at that time, only Germany, Hungary, Italy, Poland and Slovak Republic didn't allow direct delivery at all. The report also pointed out that the conditions imposed by the Member states varied widely.

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<sup>18</sup> Art. 18, *ibid.*

<sup>19</sup> European Commission, TAXUD, Committee on excise duties, CED 691 rev9

Those conditions are fully available in Annex 44 and relate to the type of goods, the type of authorization, (pre/)notification, special account, case by case authorization, waiting time upon arrival, lists of delivery places or registration for VAT.

In the absence of direct delivery, all the goods will first have to physically go to a registered consignee or a tax warehouse before going to the client which will cause higher transport costs in some cases.

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c) The current legal framework for the movement of excise goods already released for consumption (duty paid) applied to the e-commerce of alcoholic beverages

*i. Introduction*

This section relates to the delivery of goods outside the suspension of excise duty. This means that the excise duty would be paid upfront in the country of departure and the goods are then sold to another Member state. Directive 2008/118 offers two possibilities for an e-shop to do this<sup>20</sup>. The first one is the “distance selling” (for the selling to private persons where transport is arranged by the seller) and the second one is the SAD (also referred to as the “holding for commercial purpose”). This definition is similar to the situation of article 33 of the VAT directive explained in chapter 7, subsection 2, b, regarding the (M)OSS.

*ii. Using the distance selling*

The distance selling is covered by article 36 of Directive 2008/118 which defines its application as “*Excise goods already released for consumption in one Member State, which are purchased by a person, other than an authorised warehousekeeper or a registered consignee, established in another Member State who does not carry out an independent economic activity, 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.*”

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<sup>20</sup> The private acquisitions of art. 32 of Directive 2008/118 without formalities are not considered here as the buyer has to transport the goods himself which is not the purpose of e-commerce

This means that this kind of sale is reserved to customers without a VAT registration at destination and (cumulative condition) where the vendor assumes the transport. This is typically applicable to B2C. The vendor is also entitled to designate a tax representative for the accomplishment of the formalities at destination.

What does the vendor of an e-shop have to accomplish when he wants to send alcoholic beverages in another Member state, pay the excise duty there and then receive the excise duty back in the country of departure? The detailed steps are the following:

- a) before dispatch:
  - a. register himself in the Member state of destination
  - b. guarantee payment of the excise duty at destination
- b) after reception: pay the excise duty at reception
- c) keep accounts of deliveries at destination
- d) Get a proof of payment of the excise duty at destination
- e) Apply for the refund of excise duty in the country of departure.

The important point is that each step of this procedure is very difficult to organize for the vendor. The difficulties have been summed up in the next table.

*Table 1: Administrative obstacles when using the distance selling procedure*

Timing	Step	Administrative obstacles
<b>Before dispatch</b>	Registration at destination/ tax representative	National procedure / language / the “tax representative possibility” is an option for the Member states and not mandatory <sup>21</sup>
	Guarantee at destination	National procedure / language / can be permanent or transactional depending on the M.S.
<b>After reception</b>	Pay the excise duty	National procedure / language / need to be registered for VAT at destination to access some national systems
	Keep and adapt	National specifications / language

<sup>21</sup> Art. 36, 3 of Directive 2008/118

accounts		
<b>After payment</b>	Get the proof of payment of the excise duty	National procedure / manual or electronic / need of authenticated document of the M.S. of destination
	Get refund	National procedure / manual or electronic file to submit.

To illustrate the practical cost of using a tax representative in the country of destination, the Commission made a table with practical examples as suggested by a recent report regarding the evaluation of directive 2008/118.

*Table 2: Reported example costs of tax representatives*

Country of dispatch – country of destination	Reported average cost of tax representative (excluding duties and cost of wine, except where indicated)
FR to NL	30-100 EUR per declaration, excluding transport
FR to BE	20-40 EUR per consignment (service company including and transport; minimum 12 bottles)
FR to BE	40-70 EUR per consignment
FR to UK	60 EUR per consignment (for an order of 12 bottles)
BE to UK	100 GBP per declaration (excluding transport)

Source: Ramboll Management Consulting A/S, Final evaluation report, 2015 and Commission Staff Working Document on the REFIT (2017)

As exposed in section 1, e) of this chapter, reverse logistics and returned goods are an important factor for the design of the supply chain. **Then, after the vendor has fulfilled all formalities, what if the client wants to send his goods back** according to his rights by application of article 14, of Directive 2011/83<sup>22</sup> about consumer protection? Well, nothing is said in Directive 2008/118 regarding returning goods when the excise duty has been paid. Therefore, the general rules apply which implies the use of the distance selling or the SAD procedure. It is not even clear which one of these two procedures has to be used in that case. This means that **the whole process has to be done the other way around, sometimes just for a small delivery.**

<sup>22</sup> Directive 2011/83/EU

Simplifications by the concerned Member states are allowed by way of bilateral agreements between concerned Member states.

*iii. Using the SAD*

The alternative, in the case of an e-shop, for the movements of excise goods between the Member states when those goods were already released for consumption in one Member state implies the use of the SAD. This procedure is applicable where the distance selling procedure is not applicable (thus in all other situations) and is intended for the holding for commercial purpose. Please note that here, the terminology “holding for commercial purpose” is much larger than the definition would mean and defined by article 33 of directive 2008/118 as “the holding of excise goods by a person other than a private individual or by a private individual for reasons other than his own use and transported by him, in accordance with Article 32”.

The Simplified Accompanying Document (SAD) is the document covering the transport. A commercial document containing the same data can also be used but, in this work, the term SAD will also cover this option. The procedure of the SAD is partially contained in directive 2008/118<sup>23</sup> and its use and format are set by Regulation 3649/92 which implies the following steps for our case of an e-shop selling alcoholic beverages and getting a refund:

- a) before dispatch:
  - a. submit a declaration in the Member state of destination
  - b. guarantee payment of the excise duty at destination
- b) Fill-in a SAD with the required data in 3 exemplars (1 stay at departure, 2 and 3 accompany the goods)
- c) after reception: pay the excise duty at reception
- d) consent to checks by the authorities of the Member state of destination
- e) Present exemplars 2 and 3 at destination for reception and ask for a stamp from the customs authorities
- f) Present exemplar 3 of the SAD to the customs authorities of the Member state of departure to get a refund of the excise duties.

Simplifications by the Member state of destination are allowed upon notification to the Commission.

The difficulties associated with this procedure are presented hereafter.

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<sup>23</sup> Articles 33 to 35

*Table 3 : Administrative obstacles when using the SAD procedure*

Timing	Step	Administrative obstacles
before dispatch	Submit a declaration in the Member state of destination	National procedure / language / no possibility to have a tax representative
	Guarantee at destination	National procedure / language / can be permanent or transactional depending on the M.S.
	Fill-in the SAD	-
During transport	SAD accompanies goods	Only a paper document is currently allowed / 1 set of documents for each consignee is a problem for hubbing
After reception	Pay the excise duty	National procedure / language / need to be registered for VAT at destination to access some national systems
After payment	Consent to checks at destination	National specifications / language
	Get the proof of payment of the excise duty on the exemplar 3 of the SAD	National procedure / manual or electronic / physical presence of the consignee required in some Member states
	Get refund	Language / National procedure / manual or electronic file to submit / requires the consignee to send back exemplar 3.

**Also, a major issue in those provisions is again the absence of procedure for returning back the goods.** In the absence of provisions, it means that when the goods have to be returned, after payment has occurred in the country of destination, a new SAD should be issued at the destination side to bring the goods back. This kind of formality could of course hardly be imposed on a client without seriously diminishing his satisfaction towards the sale.

- iv. *Conclusions on the current legal framework for the movement of excise goods already released for consumption applied to the e-commerce of alcoholic beverages*

The current provisions on this type of movements are clearly not suitable for a regular e-shop. Especially, **the use of paper documents, the freedom to allow the Member states the implementation of the different steps (registration, payment, refunding)** and the fact that **two different procedures exist, depending on the fact that the client is a private individual or not**, really complicate the ability for e-shops to sell alcoholic beverages to other Member states. Any proposed solution should solve those difficulties. It is also important to consider the future developments in the field of VAT where the (M)OSS and the proposed VAT package for e-commerce would abolish the need to be registered in the Member state of destination and overcome most issues stated here. **This will be covered in section 2, a°).**

#### d) [Current developments on the E.U. side](#)

The current developments on the E.U. side consist firstly of a recent evaluation of Directive 2008/118/EC and of its implementation for the E.U. Council and Parliament. This report generally supports the facts exposed in the previous sections and emphasizes the need for facilitation for the business and the need to harmonize national implementations of the directive.

Secondly, during the SWOT interview at TAXUD on 7/04/2017, we were informed that the technical excise duties committee and the Commission intend to propose an adaptation of Directive 2008/118 which will include the SAD in EMCS under the form of an e-SAD. According to the interviewees, the level 3 BPMN models for the exchange of messages were already designed and the level 4 models were under construction. Nevertheless, these models are mainly an electronic version of the current SAD with an adaptation of the status of the consignor who would have to be registered and authorized in order to be able to use EMCS.

This electronic document would already be a quick win and a step forward as compared to paper based documents. It would allow member states to gather information on the movements and to perform a better risk analysis for controls. It would also allow the Member states of destination to automate the payment of the excise duties at destination using the information contained in the e-SAD if the data is sufficient for this purpose. For example, in Belgium, due to national taxes, data would be needed regarding the packaging to calculate the amount to pay. This process would also give more certainty about the payment of the excise

duty at destination. Nevertheless, the registration on departure would add a new step in the process. It is also important to note that distance selling would not be impacted by these developments.

e) Specific logistics issues related to the excise duty legislation and implications for the legal considerations<sup>24</sup>

This section aims at combining the strong constraints coming from the current legislation with logistics best practices (general principles and e-commerce specificities) in order to **underline some concerns associated with the current legislation when trying to apply specific logistics concepts**. The current legislation has implications on the flow of goods (sub-section i), the way the inbound logistics have to be organized (sub-section ii) and the management of inventory (subsection iii). Besides, e-commerce cannot be discussed without considering its specificities regarding the transport cost (sub-section iv) and reverse logistics (subsection v). The nature of the goods also cause important security considerations (sub-section vi). **These considerations are important to keep in mind when designing the new legislation that would allow for this type of e-commerce.**

i. *Current legal constraints on the flow of the goods and their impact on the logistics*

Firstly, as previously expressed, one must realize that **large companies selling excise goods online will be indirectly forced by the legislation<sup>25</sup> to work under the suspension arrangement and to install a distribution center in each member state of dispatch and reception**. The first reason is that using the duty paid arrangement is not realistic, essentially because it requires to provide a guarantee in each member state of destination before each transport takes place (where each member state has its own way of collecting the guarantee and the payment, and its own registration and reimbursement procedure). The second reason is that direct delivery is not allowed everywhere and that in the absence of it, the goods have to be delivered to a specific place before they can be delivered to the end client. We can thus assume that, currently, the only way to begin a regular cross-country business for a large number of member states is to install an excise duty “tax warehouse” in each country.

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<sup>24</sup> This section is adapted from an essay from the same author: Logistics related to the e-commerce of tobacco and alcoholic beverages in Europe (2015)

<sup>25</sup> Directive 2008/118



Another concern of these companies relates to the guarantees needed under the excise duty suspension regime. A guarantee is required from all authorized warehousekeepers for the holding and the transport of all goods under suspension arrangement<sup>26</sup>. When the goods are subject to fiscal stamps or marks (as is optional for alcoholic beverages in some Member states), these are usually also covered by a specific guarantee. This point is essential for the inventory management.

## *ii. Inbound logistics*

Let's have a closer look at the way one should organize its inbound logistics in order to organize the selling of excise duty goods as alcoholic beverages. In this example, we will assume the seller is a big player working under the suspension arrangement.

As previously mentioned, an e-shop at European level would respond to different constraints due to the specificities of the excise duty goods:

- Maintain low quantities of goods in warehouses due to the security risks;
- Maintain low quantities of goods in the total supply chain in order to minimize the guarantees needed for the excise duties (guarantees needed for transport, inventory under suspension regime and for fiscal stamps).
- Maintain very low quantities for strong alcoholic beverages because of the high excise duties on these goods that have to be paid after exiting the tax warehouses.
- Obligation to provide a tax warehouse in each member state to work at a large scale with reasonable costs (here used as a distribution center).

As excise duty products can be supplied from various areas, it would be advantageous to consider using **consolidation centers in areas where many suppliers will be located** (for instance in France for wines).

In a second place, **distribution centers should be located in every member state** to benefit from the advantages of being a “tax warehouse”. Big suppliers could also deliver directly to the distribution centers. Movements between different distribution centers could also be useful to maintain a low global “EU” inventory level and to meet local demand but this is not depicted here.

As wine and alcohol are sometimes bought in dedicated stores, we could consider using local **retail stores** with very limited stocks to let the customers taste the different products or even

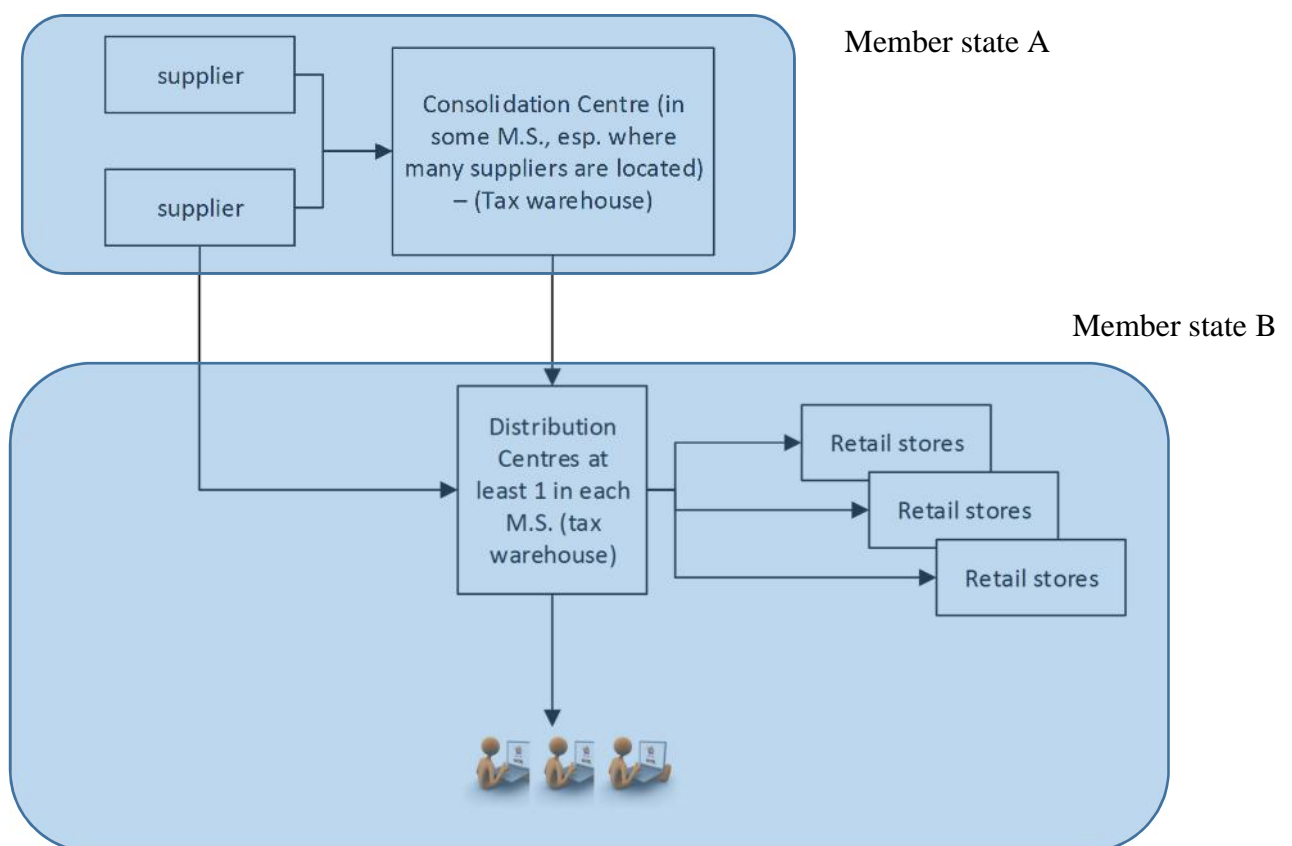
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<sup>26</sup> Directive 2008/118 art. 16, 2°

pick-up their orders in order to limit the delivery cost. Mixed models using online and physical shops are common nowadays. **These retail stores could be located in urban areas** where the last mile cost is particularly high. The use of retail shops and the logistics in general are of course also related to the marketing strategy of the company.

The next figure gives a representation of how the inbound logistics of this type of company could be organized.

*Figure 8 : Example of inbound logistics for an European seller of excise duty goods using e-commerce*



iii. *Inventory management*<sup>27</sup>

A fundamental concept of inventory management is the Economic Order Quantity (EOQ). It is the quantity of goods to order to fill the inventory that minimizes the costs.

It is interesting to notice that the current excise duty legislation has an impact on this basic concept of logistics.

<sup>27</sup> The theory of this section relies upon chapter 10 of Mangan & al., 2012

Firstly, as a guarantee (monetary or through a bank) has to be provided to the authorities by the “tax warehouses”, and given the fact that this guarantee is calculated on the average inventory, the average receptions and the average sending of goods, we can focus on what the impact of this guarantee on the inventory management would be using the EOQ theory.

The “reception” guarantee could be included in the purchase price. The price per item would then be  $p$  where  $p = \text{price per item} = (\text{price} + \text{guarantee per item})$ . Each product could be related to an excise duty rate and to a corresponding guarantee (calculated per item).

The “holding” guarantee could be used to compute the holding costs (H) (important part of the calculation – see further)

Secondly, under the suspension regimes, the use of EMCS also impacts the order processing cost as each reception or dispatch has to be reported in EMCS. The same applies to the duty-paid arrangements where a paper document and a guarantee have to be provided for each transportation (more specifically for each consignee). This workload will impact the order processing cost (S). The use or not of automated systems will obviously determine the impact of EMCS on the processing cost. Imagine how the processing costs could dramatically increase when human intervention is needed to report each reception of goods in EMCS. Many companies still use employees to fill-in these reports instead of RFID solutions.

Thirdly, legally, excise duty goods have to be separated by categories and the same goods have to be stored distinctively depending on their status (under suspension or released for consumption). Most companies work with two inventories for this reason. This impacts the holding costs (H)

**The EOQ is for sure impacted by the excise duty legislation but this impact is uncertain as  $EOQ = \sqrt{\frac{2DS}{H}}$  where S (processing cost) and H (holding cost) will both increase (H because of the guarantee and the specific procedures and S because of the use of EMCS).** This impact could also be positive for some products and negative for others, depending on the way guarantees are calculated by each M.S. (% of the volumes, of the final price, minimal amounts, maximal amounts) and the measure in which the company faces costs related to the use of EMCS.

Nevertheless, this type of company should include these costs when calculating EOQ, certainly for specific excise duty products where high duties apply as alcoholic beverages.

This specific point deserves more research to develop a model taking into account the EOQ based on those specific costs for excise duty goods as manufactured tobacco and ethylalcohol but it is remarkable to note that the current excise duty legislation deeply affects a basic notion as the EOQ which is broadly used in logistics. Furthermore, the effect is uncertain and different among the Member states.

*iv. The transportation cost and the last mile cost*

First, as stated in section *i.*, at least one distribution center has to be located in each member state to comply with the current legislation. It means that the goods will first have to be stored in them before going to the client<sup>28</sup>. This increases the total transport distance.

Then, the distance between the client and the distribution center will generally be relatively small which will increase the impact of the last mile cost on the total transport costs. Because pooling is almost mandatory in the case of excise goods under suspension, the last mile cost is of specific importance. In particular, the pooling of goods reduces the last mile cost (see next table). Calculating the transport costs based on the total distance is quite misleading as studies demonstrated that the “last mile cost” deeply affects the total cost of shipping. Therefore, when speaking of e-commerce, one should consider taking into account this specific cost, especially for excise duty goods where the taxation plays a role.

According Gevaers and al., the factors influencing the last mile cost are the following<sup>29</sup>.

**Table 4 : factors influencing the last mile cost**

Factors	Impact on shipping costs (positive=increasing the costs or negative)
Number of stops to deliver goods on a route, typically high when each driver can deliver multiple goods during the same trip.	-
Time window	-
First time hit rate : ability to deliver goods to the customer at the first attempt (high when there is always somebody to receive the goods)	-
Effect of using collecting points (more items per delivery and affects first time hit rate)	-

<sup>28</sup> Except for some countries of destination allowing for direct delivery see section 1, b

<sup>29</sup> Adapted from Gevaers and al. (2014)

Customer Density of the area (more deliveries on shorter distance but sometimes also positive impact due to traffic issues <sup>30</sup> )	+/-
Pooling	-
Vehicle type	+/-
Good packaging	-
Environmental awareness of the consumer	+

Especially, it is important to consider upfront working with pick-up points regarding all fiscal and non-fiscal obligations related to the selling of alcohol. It is also important to consider a very good packaging (also because the cost in case of damages to the goods would include the excise duties).

E-commerce companies usually offer different services to reduce this cost, going from collection points in affiliated shops, collection lockers, deliveries at workplace (enlarging time window) or offering own pick-up locations in order to let the consumer cover the last mile. The organisation of those collection point has an impact on the fiscal treatment of the goods depending on the authorisations of the premises where the goods are held (for more details, see section 1, b on the different excise duty authorizations under the suspension arrangement). This shows that logistics experts should work hand in hand with tax specialists to optimize the supply chain.

#### v. *Reverse logistics*<sup>31</sup>

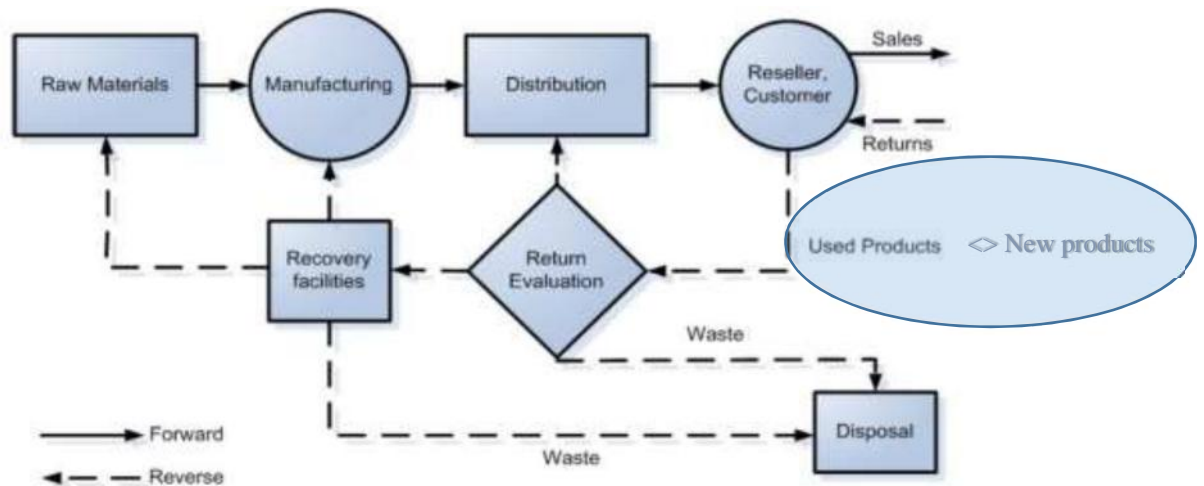
Reverse logistics can be defined as “*The process of planning, implementing, and controlling the efficient, cost effective flow of raw materials, in-process inventory, finished goods and related information from the point of consumption to the point of origin for the purpose of recapturing value or proper disposal*”<sup>32</sup>. It is generally opposed to forward logistics (flow from seller to customer) and both are reconciled in the close-loop supply chain model.

<sup>30</sup> According to Gevaers (2014), this impact is negative on the transport cost for a given area but since we consider here different types of areas in the same country, we have to consider that the impact can be positive because some urban areas will suffer from traffic jam.

<sup>31</sup> Introduction based on Govindan (2015)

<sup>32</sup> Rogers and Tibben-Lembke (1998)

*Figure 9 The closed loop supply chain, general model*



*Source: Adapted from Beamon, 1999*

One field of reverse logistics relates to the collection of used goods (end of life-cycle) for retreatment (think of used washing machine or computers) which is not relevant here because of the short life cycle of the products.

In the field of e-commerce, and especially in the food industry, the reverse logistics are mainly related to the return of goods for different reasons by the customer or the retreatment of perished/improper products from the inventory. As suggested by Qian Xiao Yan, Han Yong, Da Qinli, Stokes (2012), the traditional reverse logistics networks can apply to “new business environment in which **returned products mainly refer to new ones rather than end-of-life products**”. Also the main reasons for e-commerce customers to return goods are:

- mismatch with online description or client expectation;
- defect products (especially for wine where sellers generally replace bottles in case of perished wines);
- damaged packages;

In the field of e-commerce, **the client’s satisfaction will largely depend on the possibility to easily return goods at low costs**. Unfortunately, as explained before, **the current legal framework doesn’t facilitate or even allow for the return of goods by the customers**<sup>33</sup>. This is an essential concern to address which is not foreseen in the legislation. The correct application of the tax procedure for returned goods should be taken into account in the supply

<sup>33</sup> Except under the suspension arrangements which requires that the consignee must have an authorization

chain to ensure proper payment of the taxes in the eligible country and reimbursement from the other country.

Regarding excise related formalities for alcoholic beverages, **another aspect of reverse logistics that could be considered here is the availability of secondary markets for returned goods**. These secondary markets will minimize the cost of recycling the products and ensure compliance with environmental legislation regarding waste. Wine for instance can usually be sold to vinegar producers. The legal framework provides for specific exemptions of excise duties for this usage<sup>34</sup>.

Also, for alcoholic beverages, **fiscal stamps or marks** (optional for alcoholic beverages in some member states<sup>35</sup>) must be collected and destroyed in order to be eligible for a refund of the excise duties when they are taken out of the market.

Therefore, when designing the supply chain for this business, it is essential to closely associate tax specialists with the supply chain specialists to ensure compliance with the national legislations and the best tax efficiency, especially concerning returned goods.

#### *vi. Security*

When designing the logistics of this kind of e-shop, special attention should to be paid to the security issues. The risks of robbery, especially for tobacco and liquors, is huge because organised criminal organizations already have distribution networks for these products and regularly target them.

In case of robbery, the seller will endorse great losses as the margin on the sale of these products is minimal and considering that the seller will have to cover the excise duties which represent the most value of the price (not always insured). In the case of an expedition under the suspension arrangement, the consignor (who usually provides the guarantee) will generally be chargeable for the excise duties according to art. 8, 1, (a), (ii) of Directive 2008/118.

Security measures should include physical security of the warehouses and of the means of transport but also cover the packaging (indistinct) and the delivery. On the other hand, it could also impact the choice of using third party transport because these aren't usually equipped to transport these products at a reasonable cost. The use of dedicated retail stores

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<sup>34</sup> Article 27, c of Directive 92/83/CE

<sup>35</sup> Directive 2008/118, art. 39

with small inventory that could also play the role of pick-up points could be a solution to this issue.

## 2. TO-Be analysis and possible solutions

### a) Introduction

After examining the “as is” situation and the current issues for the business when working within this framework under the suspension arrangement or under the duty paid arrangement, we now could design new solutions. Two very recent developments in the field of VAT and customs could inspire potential solutions for these arrangements, namely the (Mini) One stop shop - (M)OSS for VAT and the Centralized clearance authorization in the field of customs. As will be shown, similar systems could be built in the field of excise duty, associated with the existing system for the movements of excise goods. Also, as the centralized clearance in the field of customs is closely associated with the AEO authorization, this topic will also be transposed to the field of excise duty. The two next sections will go into the details of these arrangements and propose two IT and regulatory/legal solutions: one for the duty paid arrangement and one for the suspension arrangement. These two solutions were designed based on the analysis of the “as is” situation of section 7.1 and rely also on the review of the research literature and body of knowledge. For the evaluation of this model and its refining, a SWOT analysis was conducted under the form of a workshop with stakeholders. The results of these workshop are also presented in the next sections.

### b) Proposed solution I for the duty paid arrangement: Using a (M)OSS – like solution<sup>36</sup>

Currently, the VAT rules for cross borders e-sales of alcoholic beverages are essentially based on the use of intra-community acquisitions (B2B) or distance sales under specific circumstances (B2C). For distance sales, the seller must pay the VAT:

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<sup>36</sup> Please note that the legal framework for VAT was here simplified on purpose to facilitate the reader's comprehension



➔ **at departure**<sup>37</sup> :

- when he arranges the transport and he sells to a non-taxable person or a public authority and he sells for an amount **below** a particular threshold depending of the country of destination. Nevertheless the **excise goods are excluded** from this procedure<sup>38</sup>.

➔ **at destination**<sup>39</sup>

- when he arranges the transport and he sells to a non-taxable person or a public authority and he sells for an amount **exceeding** a particular threshold depending of that country of destination. **Excise goods can only use this procedure**<sup>40</sup>.

A new VAT package has been proposed by the Commission in December 2016<sup>41</sup>. According to the current proposal, two possibilities will still exist in the future for e-commerce of goods:

- For B2C sales **below** a new common threshold, the VAT will be paid at departure and the seller will only be registered at departure. (this corresponds to the previous art. 34 of the Directive VAT situation);
- For B2C sales **exceeding** the threshold, the VAT will have to be paid via the **One stop shop for e-commerce of goods and services**. This electronic platform will allow the seller to register only in his country for all member states and to use his national portal to pay the VAT to all member states. **This should be applicable to excise duty goods where the threshold doesn't apply.**

The biggest benefits of this system are the **registration process in only one country** and the **payment and declaration in this same country**, using the national portal to pay the VAT chargeable in all Member states.

By analogy, a similar system could be created for the movement of goods already released for consumption.

If we regroup and sum up all identified difficulties described in chapter 7.1., related to each step of the process under the duty paid arrangement we can distinguish 4 types of problems:

- the language/national procedures of each Member state;
- the registration process in each Member state;

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<sup>37</sup> Article 34 of the VAT Directive

<sup>38</sup> *ibid.*

<sup>39</sup> Article 33 *ibid.*

<sup>40</sup> Article 34 *ibid.*

<sup>41</sup> European Commission, Brussels, 1.12.2016, COM(2016) 757 final

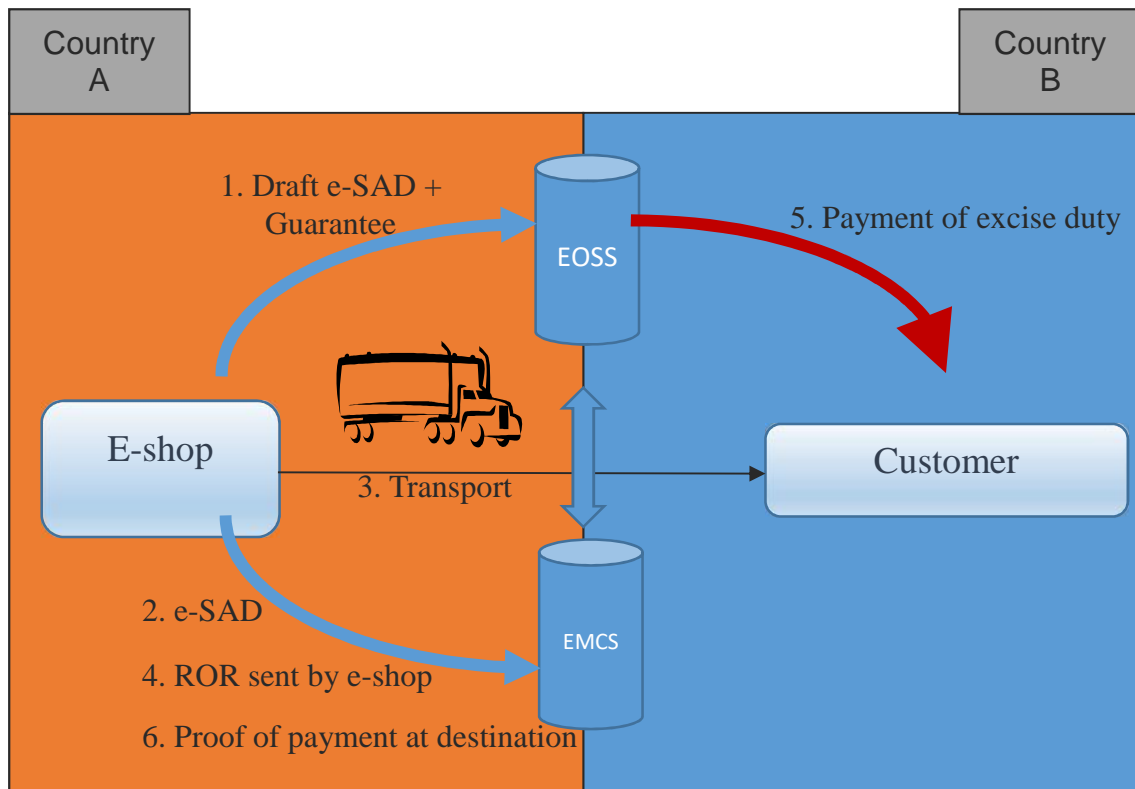
- the manual procedures (using paper and requiring physical presence);
- the refund process.

Based on this statement and the existing (M)OSS solution for VAT, why not **create an Excise One Stop Shop (EOSS) that would allow for the registration and payment of the excise duty in all Member states using a single national portal in the Member state of departure.**

Also, as previously stated, in the excise duty field, the distance selling procedure (B2C) and the commercial purpose procedure (SAD) should be merged. They are now distinct because of the historical VAT procedures but all information regarding the payment of VAT could be retrieved from the new SAD to allow for the distinction between B2B (where VAT is charged through intra-community acquisitions) and B2C (where VAT has to be charged together with the excise duty at destination). For the alcoholic beverages, in case of B2C, the VAT must always be paid in the Member state of destination, using the OSS in the future. For B2B, the intracommunity acquisitions must be applied. The link between the OSS and the proposed EOSS is explained further. **For the design of our model, we will suppose that it will cover both the B2B and the B2C situations using only one type of procedure.**

In this solution, we could also make use of the **future new (e-)SAD** currently under examination and its possible integration in **EMCS**. This will be called “e-SAD” in this work. By analogy to the current procedure and integrating EMCS, the e-SAD and the EOSS solution, we obtain the following procedure.

Figure 10 : The EOSS and e-SAD solution for the duty paid arrangement



i. Different steps :

Submit Draft e-SAD and check guarantee against EOSS :

Before departure, the seller submits a draft e-SAD in EMCS. This is currently not possible but the new regulation under examination concerning the e-SAD should foresee a structure compatible with EMCS and similar to the e-AD under the suspension arrangement. As for the e-AD, a timeframe could be foreseen for sending the e-SAD. For e-ADs, the draft is to be submitted no earlier than 7 days before the date of dispatch<sup>42</sup>. For the e-SAD, this timeframe could be maintained or shortened considering the eventual absence of authorization.

The member state of dispatch should then check the draft e-SAD and also check whether the provided **guarantee** is sufficient for the goods sent. The guarantee could consist of a **transactional guarantee** (an amount specifically provided to cover each transport) or a permanent guarantee. In case of a permanent guarantee, the amount needed to cover of the movement could be deducted from the available guarantee (as for NCTS where the amount is released when the movement is discharged) or not (like EMCS where it is only an option). Considering the eventual absence of authorization, it would be advisable to use the

<sup>42</sup> Article 3, 2) of regulation 684/2009

transactional guarantee or the permanent guarantee with a deduction from the available amount. Nevertheless, considering that the goal of this procedure is to pay the excise duties at destination, a transactional guarantee would offer the best and easiest way to cover the movement because, at the end of the movement, the guarantee would not be discharged but used as a payment.

Besides, it is important to note that in this case, the guarantee is provided at dispatch but is based on the excise duty rates of the country of destination. Therefore, the link with the proposed Excise One Stop Shop (EOSS) is essential. The EOSS would give the possibility to calculate the guarantee (which represents the future payment) needed. It would also allow the seller to send all information needed to calculate the excise duty when additional data are required in the country of destination due to additional national taxes. When the movement will be discharged, the amount would be used as payment for the excise duty at destination.

The validated e-SAD is sent back to the seller

This step should happen instantly. The check consists of a formal check on the data of the document and the guarantee. The e-SAD would then be sent to the Member state of destination and to the seller. A risk assessment could be performed at this stage for control:

- **at departure** by the Member state of dispatch: especially the risk of not really sending the goods to a pretended destination with a lower excise duty rate;
- **at destination** by the Member state of destination: especially for the risk of receiving multiple consignments under one same document when the goods are sent to a country with a higher excise duty rate.

The risk assessment possibility is a strong argument in favor of using the e-SAD and the (M)OSS because it would allow to refine the selections for control, especially using the spread of excise duty rates between the Member states.

Upon validation, a validation number would be assigned to the e-SAD, like the ARC in EMCS or the MRN for customs. We will here use the denomination ARC (administrative reference code).

#### Transport under cover of the e-SAD

By analogy to EMCS<sup>43</sup>, the transportation should be accompanied by a printed version of the e-SAD or a commercial document mentioning the ARC.

#### Report of receipt (ROR) sent by e-shop

Considering that in the case of an e-shop, the goods will be transported by the seller or on his behalf, he should be authorized to submit the draft report of receipt (ROR). It is not the case in EMCS where the consignee always reports the reception himself. Nevertheless, it would be very difficult to enforce this for the buyer. If the use of this option (submission by the seller) is submitted to an authorization (see subsection viii), the auditors could verify whether the seller is using a **reliable track and trace system**, accessible to the authorities upon request, before granting the authorization. This ROR would be sent by the member state of dispatch to the authorities of the member state of destination. It is important to note here that in the case of the current paper SAD or distance sale, it is perfectly possible that the seller fulfills all formalities. **Therefore, allowing the seller to send the ROR wouldn't really aggravate the situation as compared to the present situation.**

#### Excise duty is paid

After the movement has taken place, the EOSS system would convert the provided guarantee into a payment to the Member state of destination. This can be done periodically (for instance once a month) and a balance between the member states should occur before processing the effective payment. At this stage, the VAT could also be charged for B2C, using a link with the VAT OSS system.

#### A proof of payment is generated for the refund process

After the payment is done, a proof of payment would be generated and accessible in EOSS. This would replace the third exemplar of the current SAD that is required to apply for a refunding in the Member state of dispatch. The proof could be checked electronically by the reimbursing Member state and would be much more reliable than the

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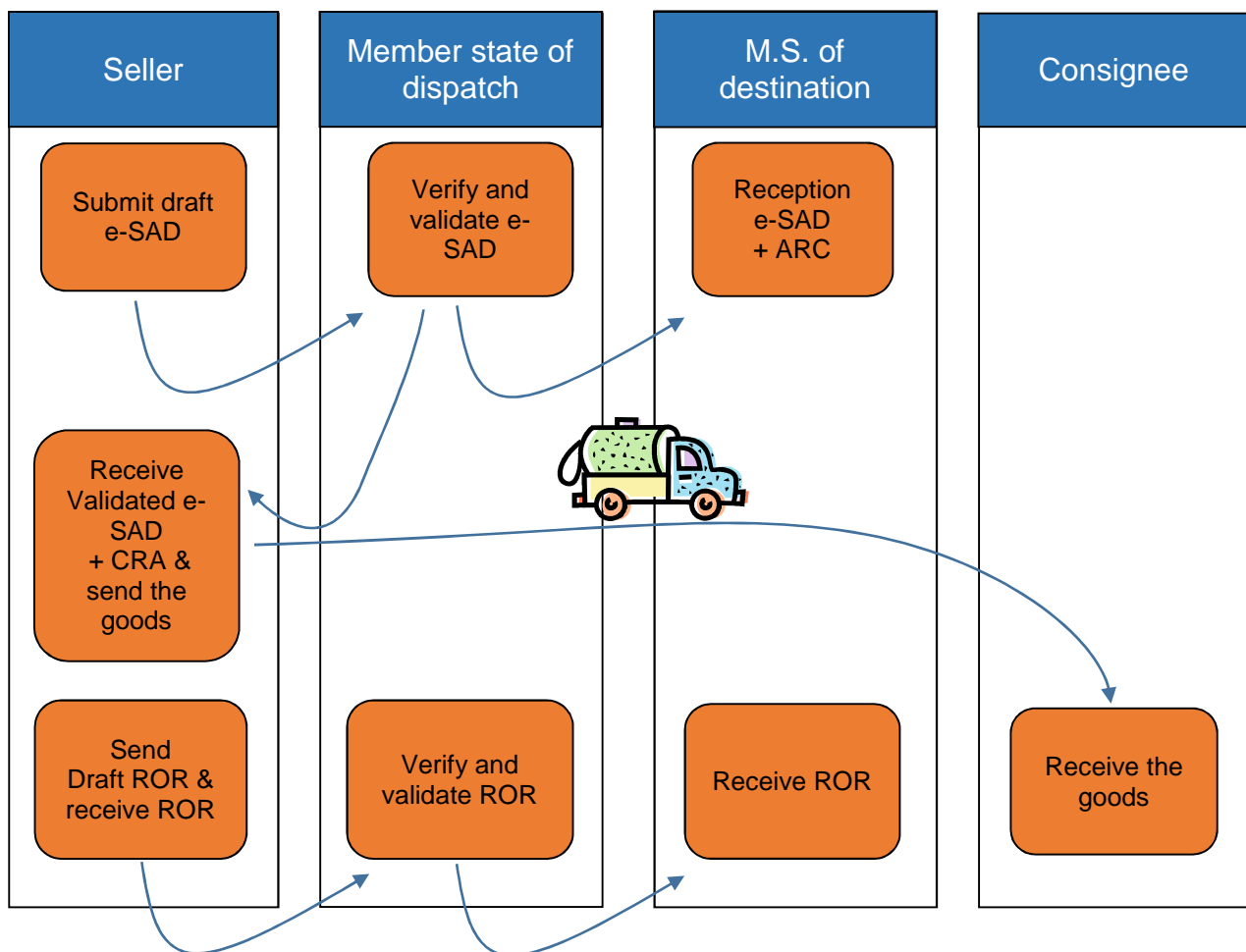
<sup>43</sup> article 21, 6 of directive 2008/118

current stamped paper SAD which allows for falsification of stamps. The current stamps force the Member states to consult and update a list of stamps of all Member states.

ii. *The functioning of EMCS*

As described above, the proposed functioning of EMCS regarding the e-SAD could be depicted as follows.

*Figure 11: Functioning of EMCS for the e-SAD in the proposed solution for e-commerce*



Two points of this figure would require connection to the EOSS system:

- The verification of the e-SAD for the verification of the guarantee requiring use of EOSS;
- The receipt of the ROR should trigger the payment of the excise duty at destination in EOSS.

It is also interesting to note that a **return process for customers** could also be implemented in this system and monitored to avoid frauds.

### *iii. Open questions*

What for movements where the buyer wants to arrange for transport and payment of the excise duty? Combining this procedure and the current paper procedure?

This is not the object of this study because in the case of e-commerce, the seller will arrange the transport and fulfill all formalities for the client according to the proposed procedure. Nevertheless, we can think of situations where another procedure should be foreseen. For instance, when the owner of a Belgian restaurant wants to go to France to visit vineyards and want to bring wines back from his trip outside the suspension arrangement and transport the goods himself, he will currently have to use the SAD. In that situation, there should be a possibility for him also to use the e-SAD or a paper based document. The problem is that he is not registered in France to use EMCS. Therefore, a solution could be to maintain the paper procedure for this kind of situation.

Should an authorization be foreseen for the seller?

Currently, no authorization is needed for the SAD or distance selling procedure.

The main argument against a new kind of authorization for the seller to use the proposed procedure is that it would complicate things in a situation where the excise duty was already paid in the country of dispatch and are also always guaranteed in the country of destination.

Nevertheless, the risk of fraud would still exist, mainly because of the spread in the excise duty between the Member states which could allow to fictively send goods to low rate countries or to fraudulently send goods to high rate countries.

Therefore, to avoid fraud and stop non-compliant companies, an authorization could be granted to give access to EMCS and EOSS and make use of the proposed procedure. This would allow for **screening** of the company and **register data concerning the company** to enhance the risk assessment for the selection of controls. Another benefit would be the exclusion of the company in case of fraud or past fraud records.

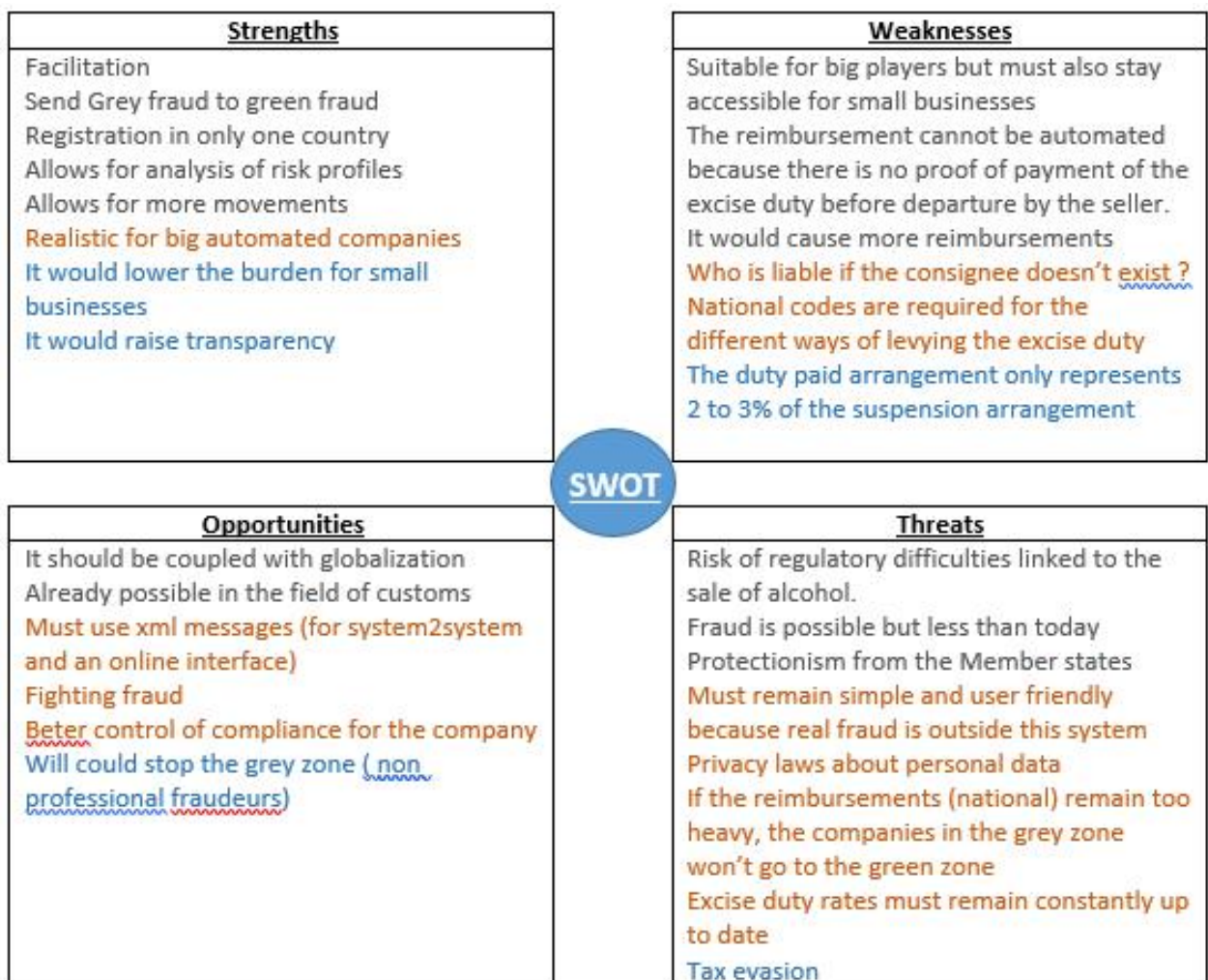
Link between the proposed EOSS and the future OSS system for VAT

For B2C, it could be possible to link the proposed EOSS with the OSS in the field of VAT to allow for easy fulfillment of VAT obligations.

iv. Assessment of the model through a SWOT analysis

To assess the model, a SWOT analysis was conducted with stakeholders and gave the following results.

Figure 12 : Results of the SWOT analysis of the model for the duty paid arrangement



- Lovens & Loeff
- Nedcarco
- E.U. officers



The comments given were generally positive but the stakeholders were aware of the long way to go before disposing of such an integrated system. It was underlined that some of the current fraud could be caused by the existing red tape and that **facilitation could take nonprofessional fraudsters out of the so-called grey zone**. Another major threat relates to the **non-fiscal regulatory framework** linked to the sale of alcohol. For example, how to prevent under age people to order alcohol given the age conditions laid down by the Member states. This should be further investigated for possible solutions. Another general comment was that it is essential **not to put too many obligations** on the compliant companies while most frauds probably occur outside the system.

c) [Proposed solution II applying to the suspension arrangement: an EOSS and Centralised clearance-like solution](#)

As explained in Chapter 7, many issues are associated with the current framework for the suspension arrangement. We highlighted the need to register in each member state of destination, according to the national procedures (to obtain an authorization, to provide the guarantee, to pay the excise duty), the national languages, the optional direct delivery and the fact that the same goods must sometimes be guaranteed twice (at dispatch and destination).

It is nevertheless remarkable to observe that, **in the field of customs, the UCC offers a legal solution for companies who want to declare goods for customs in one country whereas the goods are presented in other countries. This procedure is called centralized clearance**. Its implementation is not fully deployed but the possibility already exists legally and some member states already use it by way of multilateral agreement before the procedure becomes fully applicable in the EU. The additional feature as compared to the EOSS solution is that **a centralised authorisation is involved here**.

The definition of Centralised clearance is provided by article 179 UCC stating: *“The customs authorities may, upon application, authorise a person to lodge at a customs office responsible for the place where such person is established, a customs declaration for goods which are presented to customs at another customs office.”*

This authorization is only granted to Authorized economic operators for customs simplifications (AEO – C)<sup>44</sup>. The **AEO-C authorization is granted only to trusted traders** in order to facilitate trade.

For example, a Finnish company using this simplification can import goods coming from China by boat to Spain, U.K., Italy and Finland and submit a customs declaration from a central office in Finland for all these countries. **This is even possible for excise goods** (but not yet harmonised). The following example is given in the dedicated E.U. online UCC e-learning module and is reproduced here after.

*Figure 13 : CENTRALISED CLEARANCE IN THE FIELD OF CUSTOMS*

UCC – Customs Procedures and Customs Declarations  
Menu Glossary Library Print Help

5.4.3 Example—centralised clearance

AEOC

- Now that Vincent benefits from centralised clearance, the goods will be presented in the different customs offices in their respective Member States, while the customs declarations are all lodged at the customs office of Finland, which has the role of supervising customs office (SCO).
- Remember, without centralised clearance the declarations would have had to be lodged at the customs offices in the Member States where the goods entered the customs territory of the Union.

*Source : E.U. UCC e-learning Customs procedures and customs declarations*

Paradoxically, if the same company wants to deliver the same excise goods but as EU goods from France to the same countries, then centralized clearance wouldn't apply and the company would deal with the difficulties exposed previously, namely national procedures for registration and different declarations for the release for consumption in each Member state of destination. This means that **regarding the excise duty legislation, it will shortly be**

<sup>44</sup> Article 179, 2 UCC

easier to sell on distance alcohol beverages from a non EU territory using the centralized clearance then selling from within the E.U. using the excise duty suspension arrangement.

Therefore, **if we apply an analog procedure to the excise duty suspension arrangement, we could design a new procedure – an Excise Duty Centralised Clearance - for a dedicated new status** (like AEO but specific for excise duty operators) **which would allow an authorised warehouse keeper (holder of a tax warehouse) to send goods to his customers in different Member states while clearing all messages himself for EMCS** (for the transport under the suspensive arrangement) **and for the release for consumption in each Member state of destination** (using the proposed EOSS system exposed earlier).

Before detailing this proposed procedure, it is essential to underline that it could only be allowed for trusted traders in the field of excise duty. Therefore, a **common framework for this recognition should first be foreseen**, by analogy to the AEO-C authorization. According to article 39 UCC, the criteria for granting such an authorization are reproduced hereafter.

*Table 5: Criteria for granting an AEO-C authorization according to the UCC*

Type of criteria	Description
<b>Criminal records</b>	Absence of any serious infringement or repeated infringements of customs legislation and taxation rules, including no record of serious criminal offences relating to the economic activity of the applicant
<b>Control of operations</b>	Demonstration by the applicant of a high level of control of his or her operations and of the flow of goods, by means of a system of managing commercial and, where appropriate, transport records, which allows appropriate customs controls
<b>Financial</b>	Financial solvency, which shall be deemed to be proven where the applicant has good financial standing, which enables him or her to fulfil his or her commitments, with due regard to the characteristics of the type of business activity concerned

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<b>Qualification</b>	Practical standards of competence or professional qualifications directly related to the activity carried out
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These criteria are additional to the criteria required for specific customs authorizations (like customs warehouse).

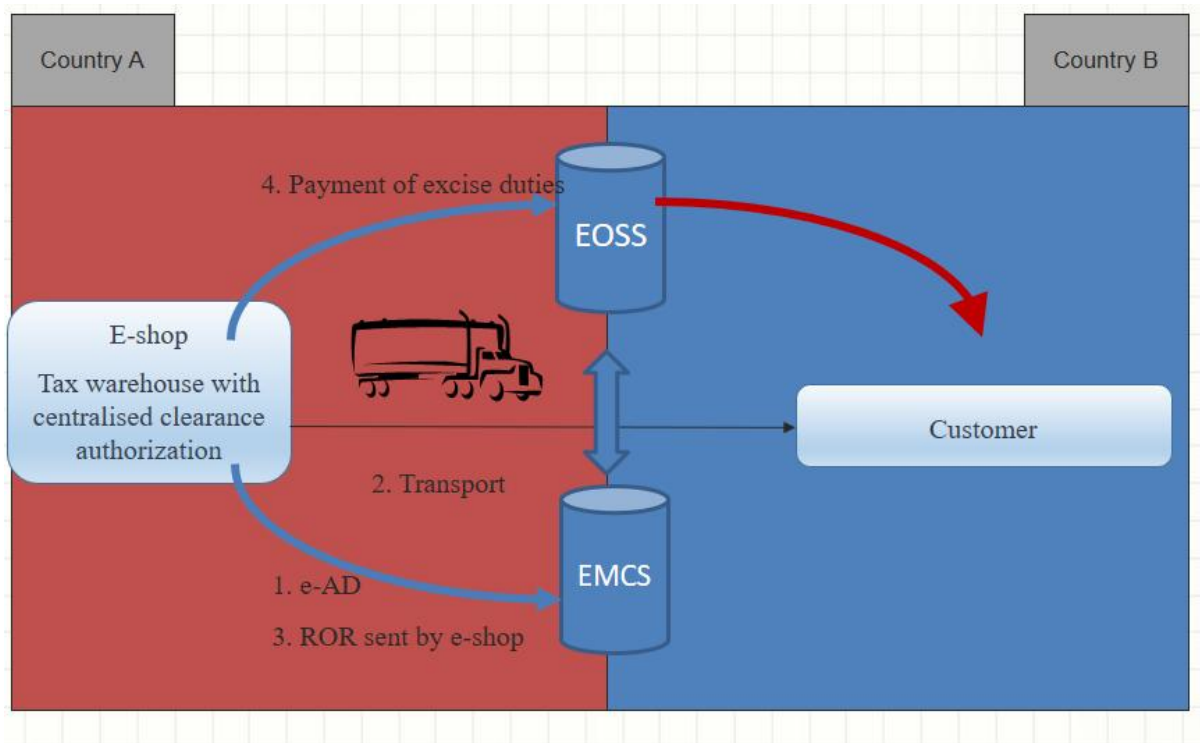
Using all these criteria could lead to the granting of a proposed specific authorization for trusted traders, analog to A.E.O., that we will call hereafter Authorised Excise Duty Operator – AEDO.

Additionally, the **Excise Duty Centralised Clearance** would be, as for customs, a centralised authorization. This means that all involved Member states should be consulted before granting the authorization (through a formal procedure), as is the case for the customs centralised clearance.

Furthermore, to allow Excise centralized clearance as proposed here for e-commerce, it could be perfectly possible to **add a criteria requiring the use of a tracking system** for the delivery of the goods so that the seller can clear himself all movements as in the proposed solution hereafter. It would seriously lower the risk of fraud whereas the requirement is a standard service provision in the case of e-commerce. Therefore, this wouldn't increase the cost factor for the applicant.

By combining this proposed Excise centralised clearance with the proposed EOSS and the proposed new status for Authorised Excise Duty Operator (AEDO), we could build a new original model for the suspension arrangement, depicted in the next figure.

*Figure 14: The EOSS and Centralised clearance proposed solution for the suspension arrangement*



*i. Different steps:*

Submit Draft e-AD and get a validated e-AD

Before departure, the seller submits a draft e-AD in EMCS. The member state of dispatch should then check the draft e-AD and send it back validated (with an administrative reference code – ARC). In this case, the e-AD wouldn't mention an authorized consignee but a person. This is different from the standard procedure and would only be allowed for holders of an Excise Centralised Clearance Authorization. The member state of destination also receives a copy of the messages as for any EMCS movement.

Transport under cover of the e-AD

As for any movement covered by EMCS<sup>45</sup>, the transport should be accompanied by a printed version of the e-AD or a commercial document mentioning the ARC.

<sup>45</sup> article 21, 6 of directive 2008/118

#### Report of receipt (ROR) sent by e-shop

Considering that in the case of an e-shop, the goods will be transported by the seller or on his behalf, he should be authorized to submit the draft report of receipt (ROR). It is not the case in EMCS where the consignee always reports the reception himself. Nevertheless, it would be very difficult to enforce this for the buyer. As previously stated, when granting the authorization, the auditors could verify whether the seller is using a reliable track and trace system, accessible to the authorities upon request, before granting the authorization. This ROR could be sent by the member state of dispatch to the authorities of the member state of destination.

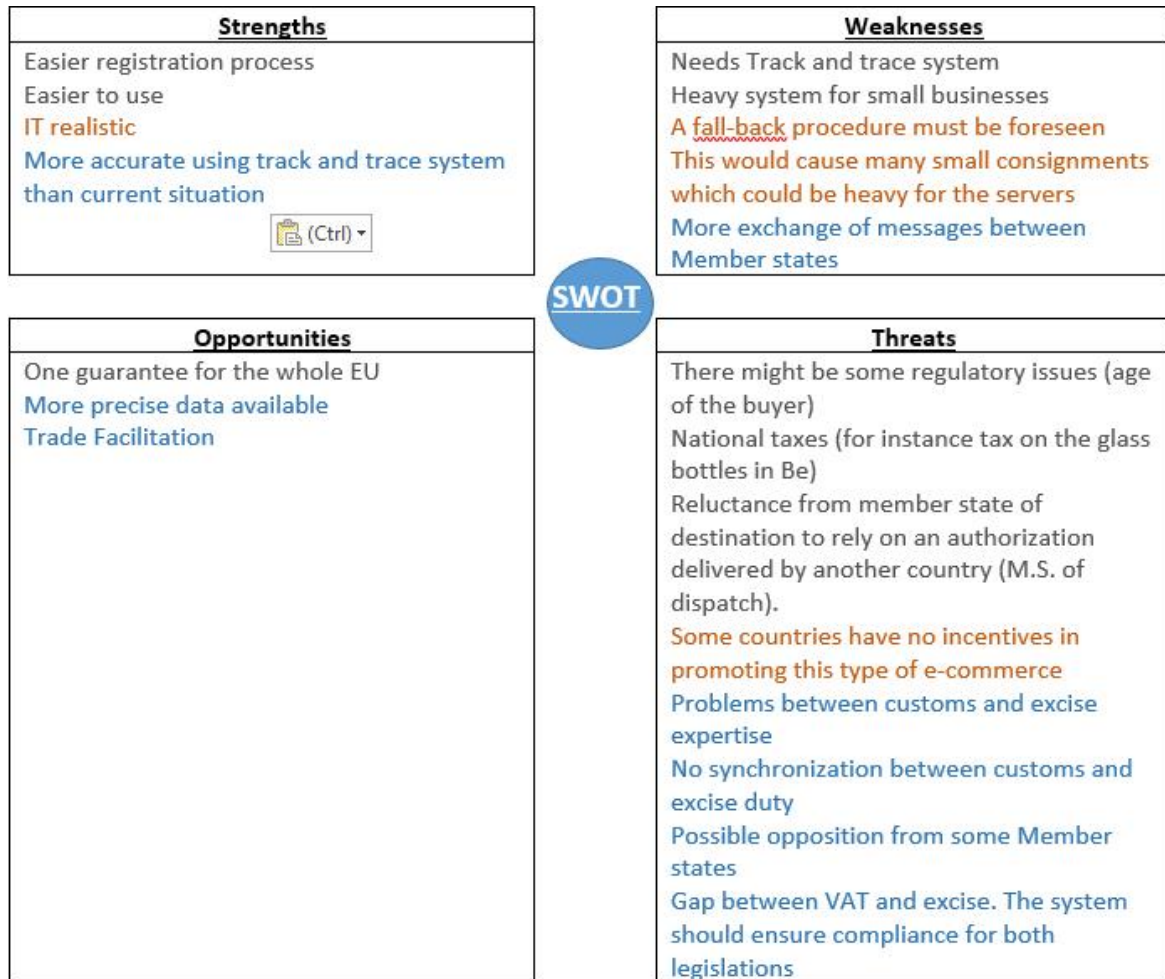
#### Excise duty is paid

After the movement has taken place, the clearance of the movement by the e-shop would trigger a declaration for the release for consumption in the EOSS system. This could be transactional (each clearance triggers a payment in EOSS) or periodic (weekly or monthly) depending on the guarantees provided and the conditions of the authorization. This step would require a communication between EMCS and EOSS in order for the seller to avoid having to enter all data again whereas these are almost all included in the e-AD.

To avoid discrepancies between the e-AD and the release for consumption information, additional data could be foreseen for the e-AD to include all required data for the payment from the start. This would allow to perform a relevant risk analysis based also on all details required for payment. For instance, the spread in the amount of excise duty potentially due in each country would lead to different controls depending on the positive or negative spread. Depending on the situation, one should research fictive movements or multiple movements. The link between the payment module could then add power to the risk analysis tools of the Member states.

ii. Assessment of the model through a SWOT analysis

Figure 15: Results of the SWOT analysis of the model for the suspension arrangement



For the suspension arrangement, the comments were also generally positive but the main concerns regarded the harmonization between countries (for authorizations, national taxes) and the gap between VAT, customs and excise duty which makes it difficult to apply existing system for VAT (OSS) and customs (centralized clearance) to the excise duty arrangement. On the IT side, the multiplication of messages passing through the servers must also be taken into account.

In general, the main benefit of the system would be to work with a **unique authorization** to send goods to all member states and to use **only national procedures from the country of**

**departure.** Also, it would then be possible to pay all excise duty from this same country for all clients in Europe.

d) *Main benefits of the two models*

i. *Facilitation of business and level playing field for E.U. companies*

The proposed models would facilitate the business and create a level playing field for E.U. companies. It would help avoiding much of the red tape mentioned hereabove, especially problems linked to national procedures/language, national registration process, manual procedures (using paper and requiring physical presence) and it would ease the refund process for the duty paid arrangement.

ii. *A better quality of data, a better risk analysis for controls*

As compared to the paper procedure for duty paid movements where no data are available, the introduction of electronic documents would immediately make new data available. These data could then be subject to risk analysis by the Member states to target most effective controls. Moreover, as the proposed EOSS system contains information about the excise duty rates, it would be possible to perform a risk assessment based on the spread of excise duty rates to choose between controls **at departure** (especially for the risk of not really sending the goods to a pretended destination with a lower excise duty rate) or **at destination** (especially for the risk of receiving multiple consignments under one same document when the goods are sent to a country with a higher excise duty rate) for instance. The proposed simplifications could also be linked to a track and trace system accessible to the control officers.

iii. *A better view on compliance for companies using the duty paid arrangement*

By putting in place an electronic system, the companies would be able to follow the movements of excise duty goods and to reconcile them with their accountings. For example, by linking EMCS and EOSS to sales to other member states, it would allow them to make sure the documents were cleared and the excise duty was paid when needed.

iv. *Getting e-sellers out of the grey zone*

By reconciling the business needs and possibilities with the legal provisions, it would **shift e-sellers from the so-called grey zone** (noncompliance), encouraged by unclear tax legislation and high administrative burden **to the green zone** (compliance).



v. *Make a clear procedure for returning goods under the duty paid arrangement*

As mentioned hereabove, there are currently no legal provisions for the return of the goods in the duty paid arrangement. Therefore, the whole procedure should be repeated the other way round by the consignee. By using EMCS, it would be possible to implement the possibility of changing the destination of the goods after departure like currently foreseen for the suspension arrangement.

e) *Main limitations and risks in the two models for the Member states administrations (M.S.A.)*

i. *Clearance at destination by the seller and not by the buyer or a local company*

This particular point could raise concerns for the M.S.A.s. It means that they couldn't enforce obligations or procedures upon the consignee established in their country. Nevertheless, this could perfectly be mitigated given the following statements:

- In the duty paid procedure, all goods would have paid the excise duty a departure and the payment at destination would systematically be guaranteed;
- In the suspension arrangement, the proposed AEDO status would ensure that only trusted traders would be allowed to use the centralised clearance. Besides, the guarantee of the seller could take the form of a bank guarantee valid throughout the E.U.;
- The current paper system in the duty paid procedure doesn't offer much control since no electronic data are available for the selection of controls and no one knows who pays the excise duty at destination in practice

ii. *The political will to promote this kind of business and non-fiscal barriers*

Of course, the consumption of alcoholic beverages raises **health concerns** and some member states could **fear to promote access to their market** in favor of other member states. On the other hand, as the centralised clearance is foreseen in the Union customs code, inaction from the member states could lead, in theory, to a relocation of E.U. businesses in third countries to sell to European customers.

On the other hand, the existing imperfect provisions cause a large **administrative burden** for the companies, as was illustrated in table 2 of chapter 7 about the costs of tax representatives. The same burden exists for the administrations.

Besides, as suggested by experts in the SWOT analysis, new arrangements could **drive companies from the grey zone to the green zone**. This is particularly true when the legislation is complicated and the administrative burden is high. It was also already mentioned hereabove that some benefits could be expected in terms of risk analysis, data collection and selection of controls.

Another attention point is that the system should prevent the sale to under age persons and comply with national regulations about the sales of alcohol.

## Chapter 8. Contribution for research:

Being a design science thesis in the legal field, the contribution for research must here be understood as the contribution of the thesis to the current European legal framework.

Firstly, this work provides **a proposal of two business models** for a modernized arrangement regarding the intra EU cross-border movements of excise duty goods. These models could be a basis for the Member states to develop a new framework for these types of movements. The analysis showed that **in the VAT and customs areas**, similar developments have taken place whereas they weren't implemented yet in the excise duty field. This work provides a new model taking into account **the latest developments in similar fields of indirect taxation**. This has not been done before because the current developments in the excise duty domain only aimed at digitalizing the current SAD document but not **reshaping the whole arrangement for the movements of excise goods**. For instance, two distinct procedures will still coexist for B2C and B2B in the duty paid arrangement. The models could be **translated into law** following discussions between the Member states and with respect to the legal process for the amendment of the current directive by the European commission and the Parliament.

Secondly, the SWOT analysis revealed that there was **no major obstacle** for the implementation of these models. This analysis was meant to refine the model and gather feedback from stakeholders and cannot be considered as a statistical analysis allowing to make definitive conclusions. Nevertheless, it revealed that the designed solutions were **realistic** in the eyes of the experts.

## Chapter 9. Contribution for practice:

Firstly, this work gives an in-depth analysis of the “as is” situation and how an e-seller of alcoholic beverages could organize his supply chain in order to comply with the current excise duty regulations. It is certainly not obvious because no literature exists on this particular subject. The analysis showed that some procedures are even unclear for experts (for example sending the goods back under the duty paid arrangement) and that actions had to be taken to improve the current provisions.

Secondly, it gives an insight on what the real difficulties are for practitioners and how they can be solved by adapting the current legal framework. Any amendment which would not enhance facilitation would be useless given that the current system is not suitable for this business in the current situation, except for big players.

Thirdly, it reconciles customs, VAT and excise duties. It explains the different solutions for similar problems amongst these different indirect taxation domains. The experts in those matters are not often aware of the developments in other indirect taxation domains and this model has the advantage of not blindly looking at only the excise duty side but to take into account other developments.

Finally, the proposed models could be beneficial to all stakeholders in different ways. The new models would allow small companies to develop their business in compliance with the regulations through a new arrangement for the duty paid movements. On the other hand, the work of larger companies would also be facilitated using the proposed centralised clearance for excise duty procedure. All companies and clients could have more certainty regarding the compliance than with paper based procedures. Lastly, the Member states would be able to get better data on the movement, to facilitate e-commerce and to perform a more accurate risk analysis and controls.

## Chapter 10. Conclusions and recommendations:

In the light of the current legal framework, essentially directive 2008/118 and its national transposition, **only big players are able to run a business in the e-commerce of alcoholic beverages**. Those companies are forced in practice to have an establishment in each member

state of dispatch and destination to comply with the legal provisions. Even doing so, these companies should make sure they **associate tax specialists to the design of their supply chain** to ensure compliance and reduce the costs associated with the tax procedures because the organization of their supply chain is deeply impacted by the legal framework. The national procedures related to those types of movements between the member states are so specific that **it would be very difficult, if not impossible, for a company to work globally in the whole E.U. in that specific business due to administrative barriers** (different procedures, languages, simplifications and obligations).

A **new European arrangement** for the movements of excise duty goods could solve the main issues relating to the e-commerce of alcoholic beverages. This arrangement could be adapted differently for the duty paid arrangement (more suitable for SME's) and the suspension arrangement (larger companies). It implies new authorizations, new IT systems and a new legal framework. Inspired by the recent VAT and customs developments, those systems could make use of an electronic SAD (**e-SAD**) coupled with an excise one stop shop (**EOSS**) for the payment of excise duty to all member states of destination from one single portal situated in the country of the e-seller. Specifically, for the suspension arrangement, a new status of authorized excise duty operator (**AEDO**) could be foreseen to allow for a centralised clearance in the field of excise duty as it already exists in the customs provisions. By not developing a solution for excise duty goods, **the risk exists that such e-shops would preferably be located in third countries to facilitate sales to E.U. customers** while being compliant.

On the other hand, the **benefits** for all stakeholders must not be underestimated. They imply an **increased facilitation** for the business, a **better quality of data**, a **better risk analysis** for controls by the Member states and a **better view on the compliance** for the companies. It is true that the facilitation and the simplifications benefit in the first place to the business and could create fear for a lack of control by the member states. Nevertheless, this would be counterbalanced by **horizontal supervision** (AEDO) and a **better risk analysis using new data** from the e-SAD **or new resources** from the EOSS system. These EOSS data combined with the EMCS data could, for example, trigger **specific controls** based on the spread of rates between the Member states. Besides, this system would also reduce the administrative burden for the tax administrations and offer solutions for returning goods.

Finally, by reconciling the business needs and possibilities with the legal provisions, it would **drive e-sellers from the so-called grey zone** (noncompliance) **to the green zone** (compliance) and also apply the concept horizontal supervision, commonly accepted in the customs world, to the excise duty world.

The challenges for the new legal arrangements would be to **harmonize the procedures amongst the Member states**, to gather a **political will** to advance in that specific domain, to take into account the **non-fiscal barriers** for the sale of alcohol and to **avoid putting too much obligations on compliant companies** whereas main contraband is organized outside the whole system.

The study also shows that there is still room for research on different related subjects. The first one could be the logistics applied to excise duty goods. One example of this is the **integration of the costs linked to the guarantees and excise duty formalities in the stock management**, especially for the concept of economic order quantity (E.O.Q.). Note that this latter analysis could also be conducted on **other excise duty goods**. One could also further study the **organization of returning goods in the field of excise duty** taking both the logistics and the legal framework into account. Furthermore, studies could be conducted on **more precise bpm representations of the proposed model and on the examination of a value network for these models**. Finally, research could be conducted on the integration of the proposed models with new **reimbursement procedures** for duty paid movements or on a **risk analysis model for the controls** of the proposed procedures.

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## ANNEXES

### **Table of annexes:**

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## Annex I : SWOT Analysis Loyens & Loeff

### SWOT Analysis EOSS solution for the duty paid arrangement

Meeting of 23/03 Loyens & Loeff



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## SWOT Analysis EOSS solution for the c. Centralised clearance/EOSS solution for the suspension arrangement?

Meeting of 23/03 Loyens & Loeff



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## Annex II : SWOT Analysis based on an interview of Nedcargo

### SWOT Analysis EOSS solution for the duty paid arrangement

Meeting of ... 25/09/17 Nedcargo Jörg

firmas in de pijpe  
zwee fase met naar  
pijpe.

templetaalig lijst  
prijnkoop.



p.1

SWOT Analysis EOSS solution for the c.  
Centralised clearance/EOSS solution for  
the suspension arrangement?

Meeting of ... 13/04/17 Jorg Nedlaup



p.2

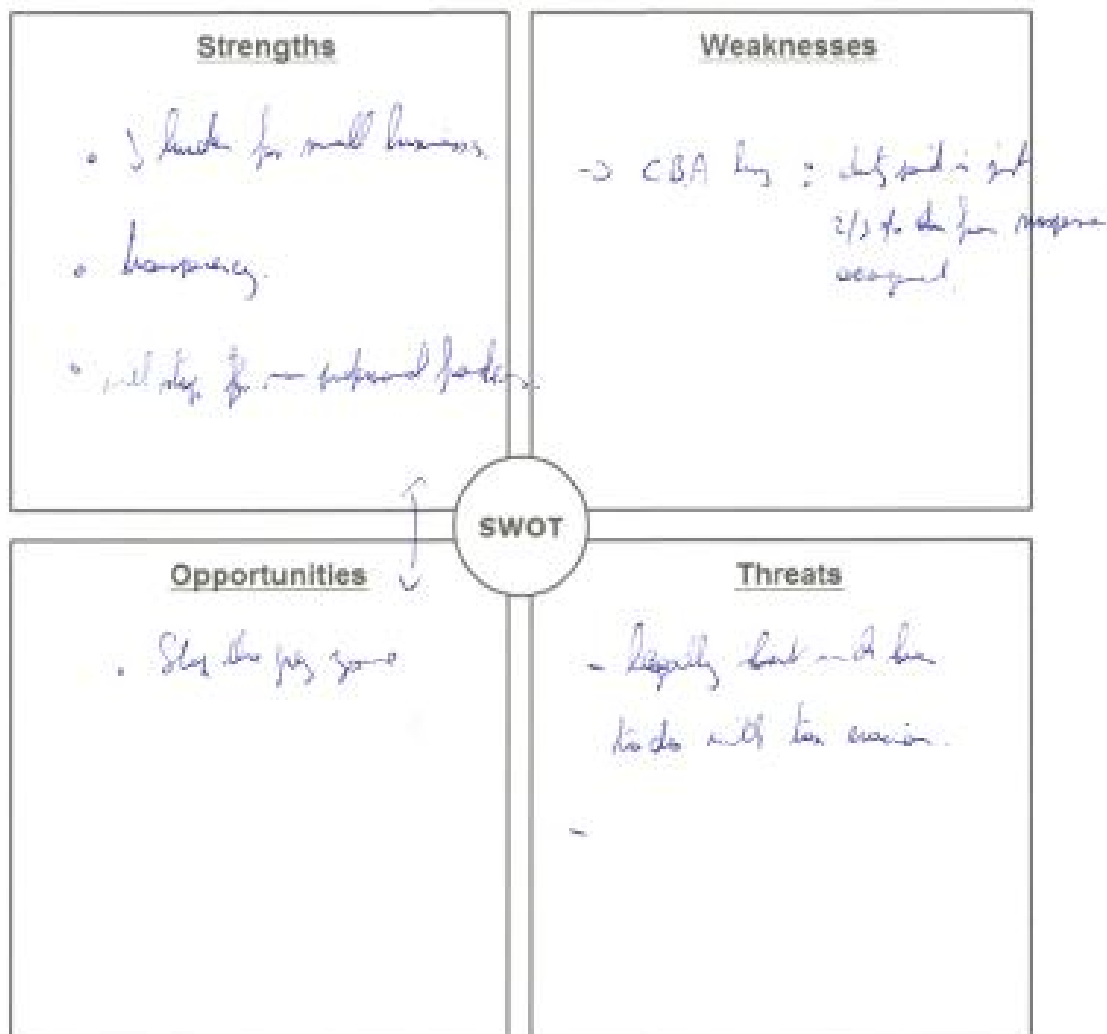




**ANNEX III: SWOT analysis based on interview at the European Commission**

**SWOT Analysis EOSS solution for the duty paid arrangement**

Meeting of ... 7/09/17 E.U.



p.1

Look without return  
 → not analysis for goods

## SWOT Analysis EOSS solution for the c. Centralised clearance/EOSS solution for the suspension arrangement?

Meeting of ...7/09/17 E.U.



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**Annex IV: European Commission, Directorate-general, Taxation and customs union, Indirect Taxation and Tax administration, Indirect taxes other than VAT, Unit C2, Brussels, 17 February 2014, CED 691 rev9, TAXUD/ 308253 /2009, working paper, Committee on excise duties, Use by the Member States of the optional provisions of Chapter IV of Directive 2008/118/EC concerning the movement of excise goods under suspension of excise duty and of the optional data in Annex I of its Implementing Regulation (EC) 684/2009, Annex 2**

**ANNEX 2**

**Member States' comments regarding the conditions of application of the optional provisions listed in ANNEX I and any other remarks made by them**

**Option 1: Article 17(2) –Direct delivery**

- AT:** Direct delivery will be allowed for registered consignees and for all excise product categories except tobacco products. The authorisation for direct delivery will be a general authorisation.
- BE:** As a general rule, direct delivery will only be allowed to places specified in the authorisation of the warehousekeepers or registered consignees. Additional conditions are determined in a royal decree.
- BG:** Direct delivery will be allowed for authorized warehouse keepers and only for energy products.
- CY:** The Director of Customs may allow, under certain conditions, the movement of excisable goods under suspension, to a place of direct delivery in the territory of the Republic, when this place has been designated by the authorised warehouse keeper or the registered consignee. However these conditions have not yet been defined.
- CZ:** Direct delivery is allowed to the places of direct delivery specified in the authorisation of the warehousekeepers or registered consignees.
- DK:** We grant a general authorisation.
- EE:** Excise goods can be received in the place of direct delivery upon permission of the Tax and Customs Board. Direct delivery is allowed only in exceptional cases taking account reasoning and possibility to measure quantity of product in the place of direct delivery.  
Activity licence of registered consignee grants the right to receive excise goods at the location accepted by the Tax and Customs Board. If a registered trader does not have a place of business, then this licence grants the right to receive goods under the excise suspension arrangement at a location of which the Tax and Customs Board is notified.
- EL:** Direct delivery has not been applied in our country yet. Specific conditions for its application have not been determined yet with the relevant ministry decree.
- ES:** Some of the conditions for authorising direct delivery:  
a) We will authorise it on a case-by-case basis except for very specific situations involving certain consignors and consignees.  
b) We will require a special account.  
c) The goods must remain in the place of direct delivery for at least 24 hours, so that any checks required can be carried out.
- FI:** We will grant the authorisation upon request. We will not ask the place of direct delivery to be specified in the authorisation.
- FR:** Only registered consignees can be authorized for direct delivery. A specific authorisation is given for each registered consignee who requests for it.

France does not apply the guideline of the Excise Committee of 15 January 2010 providing for the possibility to replace the address data in boxes 7c, 7e and 7f of the e-AD of the place of direct delivery with a code

- IE:** Direct delivery will be allowed only for individual consignments on a case by case basis. There will be no general authorisation, and the conditions will include prior notification to Revenue of each consignment.
- LT:** It is applied the requirement to grant specified authorisations. A specific place of direct delivery must be agreed with the local tax administrator.
- LU:** The following conditions will apply:
- a) At present, only for movements to a tax warehouse;
  - b) Only destined for a client listed in the authorisation for direct delivery (all possible destinations are known to the administration);
  - c) The warehousekeeper accepts that the quantity mentioned on the e-AD is the quantity that arrives at destination; this quantity is immediately entered in his accounts of stocks (entry + exit for release for consumption);
  - d) The administration is in principle informed half a day before of the arrival of the excise goods at destination (mineral oils).
- LV:** Direct delivery is only allowed to those authorised warehousekeepers and registered consignees whose rights to receive excise goods at such a place is determined in authorisation, upon request.
- MT:** We allow direct delivery to all traders on the basis that the delivery will take place at the place specified on the authorisation.
- NL:** Direct delivery will be allowed upon request of the authorised warehousekeeper or the registered consignee. The authorisation will not be specifying the places of direct delivery. The place of direct delivery must be the premises of a person who is a taxable person for VAT. For tobacco products direct delivery will only be allowed upon request of an authorised warehousekeeper.
- PT:** We will allow authorised warehouse keepers to receive movements in excise duty suspension regime in a place of direct delivery, in alternative to their tax warehouse.
- RO:** According to the present methodological norms, direct delivery is the place where the excisable products can be received - excepting manufacturing tobacco -, under an excise duties suspension arrangement from a tax warehouse or registered consignor from other member state and on condition that this place to be indicated by the consignee, respectively by the authorized warehouse keeper from Romania or by the registered consignee. The direct delivery of excisable products can take place if the following conditions are satisfied:
- a) the place of direct delivery shall be notified to the territorial customs authority by the authorised warehouse keeper or by the registered consignee before the dispatching of the excisable products from the member state of dispatch;
  - b) the authorised warehouse keeper or the registered consignee accepts the quantity of products inscribed in the e-AD as being the quantity arrived at destination;

- c) in the case of energy products, the territorial customs authority, as a rule, will be informed before 12 hours the products are arriving at the place of destination by the authorised warehouse keeper or by the registered consignee;
  - d) the excisable products must be kept at the place of direct delivery at least 24 hours for a possible inspection on behalf on the territorial customs authority.
- SE: Sweden will allow direct delivery to places the warehousekeeper or the registered consignee has reported in advance to the competent authority and which has been registered by the competent authority. It would be possible to report places for direct delivery to the competent authority either when the warehousekeeper or the registered consignee apply for an authorisation or later before the actor is to receive goods at such a place.
- SI: Authorised warehousekeepers and registered consignees will have to apply for practising direct delivery. In the application they will have to provide us with the list of places (addresses) and persons (identification of actual consignees) intended for direct delivery. As MS of destination Slovenia will use the possibility foreseen with guideline (CED 707) that codes will be attributed to the authorised places of direct delivery.
- SK: Slovakia permits direct delivery for mineral oil to authorized warehousekeepers and registered consignees. As of 1 January 2012 we suppose to permit direct delivery also for alcohol products and ethanol. The authorisation for direct delivery will be a general authorisation.
- UK: We will permit goods to be sent to a UK direct delivery address when consigned to a registered consignee, we do not require pre-notification of these addresses. In the case of supplies to a UK authorised warehousekeeper, we will only permit goods to be delivered to an approved tax warehouse address.

# **ANNEX V: COUNCIL DIRECTIVE 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC**

THE COUNCIL OF THE EUROPEAN UNION,

[...] 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'):

- (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.

2. Member States may levy other indirect taxes on 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, but not including the provisions on exemptions.

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.

### *Article 2*

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;
- (b) their importation into the territory of the Community.

### *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. By way of derogation from paragraphs 1 and 2, Finland shall be authorised, for movements of excise goods between its territory as defined in Article 4(2) and the territories referred to in Article 5(2)(c), to apply the same procedures as those applied for such movements on its territory as defined in Article 4(2).

4. Chapters III and IV shall not apply to excise goods covered by a customs suspensive procedure or arrangement.

#### *Article 4*

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

1. 'authorised warehousekeeper' means a natural or legal person authorised by the competent authorities of a Member State, in the course of his business, to produce, process, hold, receive or dispatch excise goods under a duty suspension arrangement in a tax warehouse;
2. '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 third territories;
3. 'Community' and 'territory of the Community' means the territories of the Member States as defined in point 2;
4. 'third territories' means the territories referred to in Article 5(2) and (3);
5. 'third country' means any State or territory to which the Treaty is not applicable;
6. '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;
7. '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;
8. '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 placed under a customs suspensive procedure or arrangement, as well as their release from a customs suspensive procedure or arrangement;
9. 'registered consignee' means a natural or legal person authorised by the competent authorities of the Member State of destination, in the course of his business and under the conditions fixed by those authorities, to receive excise goods moving under a duty suspension arrangement from another Member State;
10. 'registered consignor' means a natural or legal person authorised by the competent authorities of the Member State of importation, in the course of his business and under the conditions fixed by those authorities, to only dispatch excise goods under a duty suspension arrangement upon their release for free circulation in accordance with Article 79 of Regulation (EEC) No 2913/92;
11. 'tax warehouse' means a place where excise goods are produced, processed, held, received or dispatched under duty suspension arrangements by an authorised warehousekeeper in the course of his business, subject to certain conditions laid down by the competent authorities of the Member State where the tax warehouse is located.

#### *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 territories within the scope of Article 299(4) of the Treaty, nor to the following other 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.

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 adapt 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 such 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 adapt 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 such declaration.

6. The provisions of this Directive shall not prevent Greece from maintaining the specific status granted to Mount Athos as guaranteed by Article 105 of the Greek Constitution.

#### *Article 6*

1. In view of the conventions and treaties concluded with France, Italy, Cyprus and the United Kingdom respectively, the Principality of Monaco, San Marino, the United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia, and the Isle of Man shall not be regarded, for the purposes 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) San Marino are treated as movements originating in or intended for Italy;
- (c) United Kingdom Sovereign Base Areas of Akrotiri and Dhekelia are treated as movements originating in or intended for Cyprus;
- (d) the Isle of Man are treated as movements originating in or intended for the United Kingdom.

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**

### **CHARGEABILITY, REIMBURSEMENT, EXEMPTION**

#### **SECTION 1**

#### **Time and place of chargeability**

#### *Article 7*

1. Excise duty shall become chargeable at the time, and in the Member State, of release for consumption.
2. For the purposes of this Directive, 'release for consumption' shall mean any of the following:
  - (a) the departure of excise goods, including irregular departure, from a duty suspension arrangement;
  - (b) the holding of excise goods outside a duty suspension arrangement where 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. The time of release for consumption shall be:

(a) in the situations referred to in Article 17(1)(a)(ii), the time of receipt of the excise goods by the registered consignee;

(b) in the situations referred to in Article 17(1)(a)(iv), the time of receipt of the excise goods by the consignee;

(c) in the situations referred to in Article 17(2), the time of receipt of the excise goods at the place of direct delivery.

4. The total destruction or irretrievable loss of excise goods under a duty suspension arrangement, as a result of the actual nature of the goods, of unforeseeable circumstances or force majeure, or as a consequence of authorisation by the competent authorities of the Member State, shall not be considered a release for consumption.

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

The total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

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

#### *Article 8*

1. The person liable to pay the excise duty that has become chargeable shall be:

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

(i) the authorised warehousekeeper, the registered consignee or any other person releasing the excise goods or on whose behalf the excise goods are released from the duty suspension arrangement and, in the case of irregular departure from the tax warehouse, any other person involved in that departure;

(ii) in the case of an irregularity during a movement of excise goods under a duty suspension arrangement as defined in Article 10(1), (2) and (4): the authorised warehousekeeper, the registered consignor or any other person who guaranteed the payment in accordance with Article 18(1) and (2) and 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 Article 7(2)(b): the person holding the excise goods and any other person involved in the holding of the excise goods;

(c) in relation to the production of excise goods as referred to in Article 7(2)(c): the person producing the excise goods and, in the case of irregular production, any other person involved in their production;

(d) in relation to the importation of excise goods as referred to in Article 7(2)(d): the person who declares the excise goods or on whose behalf they are declared upon importation and, in the case of irregular importation, any other person involved in the importation.

2. Where several persons are liable for payment of one excise duty debt, they shall be jointly and severally liable for such debt.

#### *Article 9*

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 10*

1. Where an irregularity has occurred during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), the release for consumption shall take place in the Member State where the irregularity occurred.
2. Where an irregularity has been detected during a movement of excise goods under a duty suspension arrangement, giving rise to their release for consumption in accordance with Article 7(2)(a), and it is not possible to determine where the irregularity occurred, it shall be deemed to have occurred in the Member State in which and at the time when the irregularity was detected.
3. In the situations referred to in paragraphs 1 and 2, the competent authorities of the Member States where the goods have been or are deemed to have been released for consumption shall inform the competent authorities of the Member State of dispatch.
4. Where excise goods moving under a duty suspension arrangement have not arrived at their destination and no irregularity giving rise to their release for consumption in accordance with Article 7(2)(a) has been detected during the movement, an irregularity shall be deemed to have occurred in the Member State of dispatch and at the time when the movement began, unless, within a period of four months from the start of the movement in accordance with Article 20(1), evidence is provided to the satisfaction of the competent authorities of the Member State of dispatch of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

Where the person who guaranteed the payment in accordance with Article 18 has not been, or could not have been, informed that the goods have not arrived at their destination, a period of one month from the date of communication of this information by the competent authorities of the Member State of dispatch shall be granted to enable him to provide evidence of the end of the movement in accordance with Article 20(2), or of the place where the irregularity occurred.

5. However, in the situations referred to in paragraphs 2 and 4, if, before the expiry of a period of three years from the date on which the movement began, in accordance with Article 20(1), it is ascertained in which Member State the irregularity actually occurred, the provisions of paragraph 1 shall apply.

In these situations, the competent authorities of the Member State where the irregularity occurred shall inform the competent authorities of the Member State where the excise duty was levied, which shall reimburse or remit it as soon as evidence of the levying of the excise duty in the other Member State has been provided.

6. For the purposes of this Article, 'irregularity' shall mean a situation occurring during a movement of excise goods under a duty suspension arrangement, other than the one referred to in Article 7(4), due to which a movement, or a part of a movement of excise goods, has not ended in accordance with Article 20(2).

### **SECTION 2**

#### **Reimbursement and remission**

#### *Article 11*

In addition to the cases referred to in Article 33(6), Article 36(5), and Article 38(3), as well as those provided for by the Directives referred to in Article 1, excise duty on excise goods which have been released for consumption may, at the request of a person concerned, be reimbursed or remitted by the competent authorities of the Member State where those goods were released for consumption in the situations fixed by the Member States and in accordance with the conditions that Member States 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 12 or by one of the Directives referred to in Article 1.

### **SECTION 3**

## Exemptions

### *Article 12*

1. Excise goods shall be exempted from payment of excise duty where they are intended to be used:
  - (a) in the context of diplomatic or consular relations;
  - (b) by 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) by 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) by 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) for 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 13*

1. Without prejudice to Article 21(1), excise goods moving under a duty suspension arrangement to a consignee referred to in Article 12(1) shall be accompanied by an exemption certificate.
2. The Commission shall, in accordance with the procedure referred to in Article 43(2), lay down the form and content of the exemption certificate.
3. The procedure laid down in Articles 21 to 27 shall not apply to the movements of excise goods under a duty suspension arrangement to the armed forces referred to in Article 12(1)(c), if they are covered by a procedure which is directly based on the North Atlantic Treaty.

However, Member States may provide that the procedure laid down in Articles 21 to 27 shall be used for such movements taking place entirely on their territory or, by agreement between the Member States concerned, between their territories.

### *Article 14*

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 to a third territory or to a third country taking a flight or sea-crossing.
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. Member States which, at 1 July 2008, have tax-free shops situated elsewhere than within an airport or port may, until 1 January 2017, continue to exempt from excise duty excise goods supplied by such shops and carried away in the personal luggage of travellers to a third territory or to a third country.
5. 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 authorities of the Member States, 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.

**CHAPTER III**  
**PRODUCTION, PROCESSING AND HOLDING**

*Article 15*

1. Each Member State shall determine its rules concerning the production, processing and holding of excise goods, subject to this Directive.
2. The production, processing and holding of excise goods, where the excise duty has not been paid, shall take place in a tax warehouse.

*Article 16*

1. The opening and operation of a tax warehouse by an authorised warehousekeeper shall be subject to authorisation by the competent authorities of the Member State where the tax warehouse is situated.

Such authorisation shall be subject to the conditions that the authorities are entitled to lay down for the purposes of preventing any possible evasion or abuse.

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 and enter in his accounts at the end of their movement all excise goods moving under a duty suspension arrangement, except where Article 17(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.

**CHAPTER IV**  
**MOVEMENT OF EXCISE GOODS UNDER SUSPENSION OF EXCISE DUTY**

**SECTION 1**  
**General provisions**

*Article 17*

1. Excise goods may be moved under a duty suspension arrangement within the territory of the Community, including where the goods are moved via a third country or a third territory:

- (a) from a tax warehouse to:
  - (i) another tax warehouse;
  - (ii) a registered consignee;
  - (iii) a place where the excise goods leave the territory of the Community, as referred to in Article 25(1);
  - (iv) a consignee referred to in Article 12(1), where the goods are dispatched from another Member State;
- (b) from the place of importation to any of the destinations referred to in point (a), where the goods are dispatched by a registered consignor.

For the purposes of this Article, 'place of importation' means the place where the 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 paragraph 1(a)(i) and (ii) and (b) of this Article, and except in the situations referred to in Article 19(3), the Member State of destination may, under the conditions which it lays down, allow excise goods to be moved under a duty suspension arrangement 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.

That authorised warehousekeeper or that registered consignee shall remain responsible for submitting the report of receipt referred to in Article 24(1).

3. Paragraphs 1 and 2 shall also apply to movements of excise goods at a zero rate which have not been released for consumption.

#### *Article 18*

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 be covered by a guarantee provided by the authorised warehousekeeper of dispatch or the registered consignor.

2. By way of derogation from paragraph 1, the competent authorities of the Member State of dispatch, under the conditions fixed by them, may allow the guarantee referred to in paragraph 1 to be provided by the transporter or carrier, the owner of the excise goods, the consignee, or jointly by two or more of these persons and the persons mentioned in paragraph 1.

3. The guarantee shall be valid throughout the Community. Its detailed rules shall be laid down by the Member States.

4. The Member State of dispatch may waive the obligation to provide the guarantee in respect of the following movements of excise goods under a duty suspension arrangement:

(a) movements which take place entirely on its territory;

(b) where the other Member States concerned so agree, movements of energy products within the Community by sea or by fixed pipeline.

#### *Article 19*

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

2. A registered consignee 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) at the end of the movement, enter in his accounts excise goods received under a duty suspension arrangement;

(c) consent to any check enabling the competent authorities of the Member State of destination to satisfy themselves that the goods have actually been received.

3. For a registered consignee receiving excise goods only occasionally, the authorisation referred to in Article 4(9) shall be limited to a specified quantity of excise goods, a single consignor and a specified period of time. Member States may limit the authorisation to a single movement.

#### *Article 20*

1. The movement of excise goods under a duty suspension arrangement shall begin, in the cases referred to in Article 17(1)(a) of this Directive, when the excise goods leave the tax warehouse of dispatch, and in the cases referred to in its Article 17(1)(b) upon their release for free circulation in accordance with Article 79 of Regulation (EEC) No 2913/92.

2. The movement of excise goods under a duty suspension arrangement shall end, in the cases referred to in Article 17(1)(a)(i), (ii) and (iv) and Article 17(1)(b), when the consignee has taken delivery of the excise goods and, in the cases referred to in Article 17(1)(a)(iii), when the goods have left the territory of the Community.

## **SECTION 2**

## **Procedure to be followed on a movement of excise goods under suspension of excise duty**

### *Article 21*

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

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

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

4. In the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(2), the competent authorities of the Member State of dispatch shall forward the electronic administrative document without delay 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 Article 17(1)(a)(iii) of this Directive, 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 (EEC) 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 excise goods with a printed version of the electronic administrative document or any other commercial document mentioning, in a clearly identifiable manner, the unique administrative reference code. It must be possible for that document to be presented to the competent authorities upon request throughout the movement under an excise duty suspension arrangement.
7. The consignor may cancel the electronic administrative document as long as the movement has not begun under Article 20(1).
8. During the movement under a duty suspension arrangement, the consignor may, using the computerised system, amend the destination to show a new destination which must be one of the destinations referred to in Article 17(1)(a)(i), (ii) or (iii) or, where applicable, in Article 17(2).

### *Article 22*

1. In the case of movements of energy products under a duty suspension arrangement 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 21(2), the competent authorities of the Member State of dispatch may authorise the consignor to omit the data concerning the consignee in that document.
2. As soon as the data concerning the consignee are known, and at the latest at the end of the movement, the consignor shall, using the procedure referred to in Article 21(8), transmit them to the competent authorities of the Member State of dispatch.

### *Article 23*

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

1. the total quantity of excise goods does not change;
2. the splitting is carried out in the territory of a Member State which permits such a procedure;
3. the competent authorities of that Member State are informed of the place where the splitting is carried

out.

Member States shall inform the Commission if they allow movements to be split on their territory and under what conditions. The Commission shall transmit this information to the other Member States.

#### *Article 24*

1. On receipt of excise goods at any of the destinations referred to in Article 17(1)(a)(i), (ii) or (iv) or in Article 17(2), the consignee shall, without delay and no later than five working days after the end of the movement, except in cases duly justified to the satisfaction of the competent authorities, submit a report of their receipt (hereinafter the 'report of receipt'), using the computerised system.
2. The competent authorities of the Member State of destination shall determine the procedures for presentation of the report of receipt of the goods by the consignees referred to in Article 12(1).
3. The competent authorities of the Member State of destination shall carry out an electronic verification of the data in the report of receipt.

Where these data are not valid, the consignee shall be informed thereof without delay.

Where these data are valid, the competent authorities of the Member State of destination shall confirm to the consignee the registration of the report of receipt and send it to the competent authorities of the Member State of dispatch.

4. The competent authorities of the Member State of dispatch shall forward the report of receipt to the consignor. Where the places of dispatch and of destination are situated in the same Member State, the competent authorities of that Member State shall forward the report of receipt directly to the consignor.

#### *Article 25*

1. In the cases referred to in Article 17(1)(a)(iii) and, where applicable, Article 17(1)(b) of this Directive, a report of export shall be completed by the competent authorities of the Member State of export on the basis of the endorsement drawn up by the customs office of exit as referred to in Article 793(2) of Commission Regulation (EEC) No 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No 2913/92 establishing the Community Customs Code<sup>(13)</sup> or by the office where the formalities referred to 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 data resulting from the endorsement referred to in paragraph 1. Once these data have been verified, and where the Member State of dispatch is different from the Member State of export, the competent authorities of the Member State of export shall send the report of export to the competent authorities of the Member State of dispatch.
3. The competent authorities of the Member State of dispatch shall forward the report of export to the consignor.

#### *Article 26*

1. In derogation from Article 21(1), where the computerised system is unavailable in the Member State of dispatch, the consignor may start a movement of excise goods under a duty suspension arrangement provided that:
  - (a) the goods are accompanied by a paper document containing the same data as the draft electronic administrative document referred to in Article 21(2);
  - (b) he informs the competent authorities of the Member State of dispatch before the beginning of the movement.

The Member State of dispatch may also require a copy of the document referred to in point (a), the verification of the data contained in that copy and, if the consignor is responsible for the unavailability, appropriate information on the reasons for that unavailability before the beginning of the movement.

2. When the availability of the computerised system is restored, the consignor shall submit a draft electronic administrative document, in accordance with Article 21(2).



As soon as the data in the electronic administrative document have been validated, in accordance with Article 21(3), that document shall replace the paper document referred to in paragraph 1(a) of this Article. Article 21(4) and (5) and Articles 24 and 25 shall apply *mutatis mutandis*.

3. Until such time as the data in the electronic administrative document have been validated, the movement shall be regarded as taking place under a duty suspension arrangement under cover of the paper document referred to in paragraph 1(a).

4. A copy of the paper document referred to in paragraph 1(a) shall be kept by the consignor to back up his records.

5. Where the computerised system is unavailable in the Member State of dispatch, the consignor shall communicate the information referred to in Article 21(8) or Article 23 using alternative means of communication. To that end, he shall inform the competent authorities of the Member State of dispatch before the change of destination or splitting of the movement is initiated. Paragraphs 2 to 4 of this Article shall apply *mutatis mutandis*.

#### Article 27

1. When, in the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(2), the report of receipt provided for in Article 24(1) cannot be submitted at the end of a movement of excise goods within the deadline provided for in that Article, either because the computerised system is unavailable in the Member State of destination or because, in the situation referred to in Article 26(1), the procedures referred to in Article 26(2) have not yet been carried out, the consignee shall submit to the competent authorities of the Member State of destination, except in duly justified cases, a paper document containing the same data as the report of receipt and stating that the movement has ended.

Except where the report of receipt provided for in Article 24(1) can be submitted promptly by the consignee via the computerised system, or in duly justified cases, the competent authorities of the Member State of destination shall send a copy of the paper document mentioned in the first subparagraph to the competent authorities of the Member State of dispatch, which shall forward it to the consignor or keep it available for him.

As soon as availability of the computerised system is restored in the Member State of destination or the procedures referred to in Article 26(2) have been carried out, the consignee shall submit a report of receipt, in accordance with Article 24(1). Article 24(3) and (4) shall apply *mutatis mutandis*.

2. When, in the case referred to in Article 17(1)(a)(iii), the report of export provided for in Article 25(1) cannot be completed at the end of a movement of excise goods either because the computerised system is unavailable in the Member State of export or because, in the situation referred to in Article 26(1), the procedures referred to in Article 26(2) have not yet been carried out, the competent authorities of the Member State of export shall send to the competent authorities of the Member State of dispatch a paper document containing the same data as the report of export and certifying that the movement has ended, except where the report of export provided for in Article 25(1) can be completed promptly via the computerised system, or in duly justified cases.

The competent authorities of the Member State of dispatch shall forward a copy of the paper document referred to in the first subparagraph to the consignor or keep it available for him.

As soon as availability of the computerised system is restored in the Member State of export or the procedures referred to in Article 26(2) have been carried out, the competent authorities of the Member State of export shall send a report of export in accordance with Article 25(1). Article 25(2) and (3) shall apply *mutatis mutandis*.

#### Article 28

1. Notwithstanding Article 27, the report of receipt provided for in Article 24(1) or the report of export provided for in Article 25(1) shall constitute proof that a movement of excise goods has ended, in accordance with Article 20(2).

2. By way of derogation from paragraph 1, in the absence of the report of receipt or the report of export for reasons other than those mentioned in Article 27, alternative proof of the end of a movement of excise goods under a duty suspension arrangement may be provided, in the cases referred to in Article 17(1)(a)(i), (ii) and (iv), Article 17(1)(b) and Article 17(2), 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 Article 17(1)(a)(iii), 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 or the report of export shall constitute appropriate evidence for the purposes of the first subparagraph.

Where appropriate evidence has been accepted by the competent authorities of the Member State of dispatch, it shall end the movement in the computerised system.

#### *Article 29*

1. The Commission shall, in accordance with the procedure referred to in Article 43(2), adopt measures to determine:

(a) the structure and content of the messages to be exchanged for the purposes of Articles 21 to 25 between the persons and competent authorities concerned with a movement of excise goods under a duty suspension arrangement;

(b) the rules and procedures relating to the exchanges of the messages referred to in point (a);

(c) the structure of the paper documents referred to in Articles 26 and 27.

2. Each Member State shall determine the situations where the computerised system may be considered unavailable and the rules and procedures to be followed in these situations, for the purposes of and in accordance with Articles 26 and 27.

### **SECTION 3**

#### **Simplified procedures**

#### *Article 30*

Member States may establish simplified procedures in respect of movements of excise goods under a duty suspension arrangement which take place entirely on their territory, including the possibility to waive the requirement of electronic supervision of such movements.

#### *Article 31*

By agreement and under conditions fixed by all the Member States concerned, simplified procedures may be established for the purposes of frequent and regular movements of excise goods under a duty suspension arrangement which occur between the territories of two or more Member States.

This provision includes movements via fixed pipelines.

### **CHAPTER V**

#### **MOVEMENT AND TAXATION OF EXCISE GOODS AFTER RELEASE FOR CONSUMPTION**

#### **SECTION 1**

##### **Acquisition by private individuals**

#### *Article 32*

1. Excise duty on excise goods acquired by a private individual for his own use, and transported from one Member State to another by him, shall be charged only in the Member State in which the excise goods are acquired.

2. To determine whether the excise goods referred to in paragraph 1 are intended for the own use of a private individual, Member States shall take account at least of the following:

(a) the commercial status of the holder of the excise goods and 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 paragraph 2(e), Member States may lay down guide levels, solely as a form of evidence. These guide levels may not be lower than:
- (a) for tobacco products:
    - cigarettes: 800 items,
    - cigarillos (cigars weighing not more than 3 g each): 400 items,
    - cigars: 200 items,
    - smoking tobacco: 1,0 kg;
  - (b) for alcoholic beverages:
    - spirit drinks: 10 l,
    - intermediate products: 20 l,
    - wines: 90 l (including a maximum of 60 l of sparkling wines),
    - beers: 110 l.

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

For the purposes of this paragraph, 'atypical mode of 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.

## **SECTION 2**

### **Holding in another Member State**

#### *Article 33*

1. Without prejudice to Article 36(1), where excise goods which have already been released for consumption in one Member State are held for commercial purposes in another Member State in order to be delivered or used there, they shall be subject to excise duty and excise duty shall become chargeable in that other Member State.

For the purposes of this Article, 'holding for commercial purposes' shall mean the holding of excise goods by a person other than a private individual or by a private individual for reasons other than his own use and transported by him, in accordance with Article 32.

2. 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.

3. The person liable to pay the excise duty which has become chargeable shall be, depending on the cases referred to in paragraph 1, the person making the delivery or holding the goods intended for delivery, or to whom the goods are delivered in the other Member State.

4. Without prejudice to Article 38, where excise goods which have already been released for consumption in one Member State move within the Community for commercial purposes, they shall not be regarded as held for those purposes until they reach the Member State of destination, provided that they are moving under cover of the formalities set out in Article 34.

5. Excise goods which are held on board a boat or aircraft making sea-crossings or flights between two Member States but which are not available for sale when the boat or aircraft is in the territory of one of the Member States shall not be regarded as held for commercial purposes in that Member State.

6. The excise duty shall, upon request, be reimbursed or remitted in the Member State where the release for consumption took place where the competent authorities of the other Member State find that excise duty has become chargeable and has been collected in that Member State.

#### *Article 34*

1. In the situations referred to in Article 33(1), excise goods shall move between the territories of the various Member States under cover of an accompanying document listing the main data from the document referred to in Article 21(1).

The Commission shall, in accordance with the procedure referred to in Article 43(2), adopt measures establishing the form and content of the accompanying document.

2. The persons referred to in Article 33(3) shall comply with the following requirements:

- (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) pay the excise duty of the Member State of destination in accordance with the procedure laid down by that Member State;
- (c) consent to any checks enabling the competent authorities of the Member State of destination to satisfy themselves that the excise goods have actually been received and that the excise duty chargeable on them has been paid.

The Member State of destination may, in situations and under conditions which it lays down, simplify or grant a derogation from the requirements specified in point (a). In such cases, it shall notify the Commission, which shall inform the other Member States.

#### *Article 35*

1. Where excise goods already released for consumption in a Member State are moved to a place of destination in that Member State via the territory of another Member State, the following requirements shall apply:

- (a) such a movement shall take place under cover of the accompanying document referred to in Article 34(1) and use an appropriate itinerary;
- (b) the consignor shall, before the excise goods are dispatched, make a declaration to the competent authorities of the place of departure;
- (c) the consignee shall attest to having received the goods in accordance with the rules laid down by the competent authorities of the place 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, by agreement, under conditions determined by them, simplify the requirements specified in paragraph 1.

### **SECTION 3**

#### **Distance selling**

#### *Article 36*

1. Excise goods already released for consumption in one Member State, which are purchased by a person, other than an authorised warehousekeeper or a registered consignee, established in another Member State who does not carry out an independent economic activity, 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.

For the purposes of this Article, '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 person liable to pay the excise duty in the Member State of destination shall be the vendor.

However, the Member State of destination may provide that the liable person shall be a tax representative, established in the Member State of destination and approved by the competent authorities of that Member State, or, in cases where the vendor has not respected the provision of paragraph 4(a), the consignee of the excise goods.

4. The vendor or tax representative shall comply with the following requirements:

(a) before dispatching the excise goods, register his identity and guarantee payment of the excise duty with the competent office specifically designated and under the conditions laid down by the Member State of destination;

(b) pay the excise duty at the office referred to in point (a) after the excise goods arrive;

(c) keep accounts of deliveries of excise goods.

The Member States concerned may, under conditions determined by them, simplify these requirements on the basis of bilateral agreements.

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

6. Member States may lay down specific rules for applying paragraphs 1 to 5 to excise goods that are covered by special national distribution arrangements.

## **SECTION 4**

### **Destruction and losses**

#### *Article 37*

1. In the situations referred to in Article 33(1) and Article 36(1), in the event of the total destruction or irretrievable loss of the excise goods during their transport in a Member State other than the Member State in which they were released for consumption, as a result of the actual nature of the goods, or unforeseeable circumstances, or force majeure, or as a consequence of authorisation by the competent authorities of that Member State, the excise duty shall not be chargeable in that Member State.

The total destruction or irretrievable loss of the excise goods in question shall be proven to the satisfaction of the competent authorities of the Member State where the total destruction or irretrievable loss occurred or, when it is not possible to determine where the loss occurred, where it was detected.

The guarantee lodged pursuant to Article 34(2)(a) or Article 36(4)(a) shall be released.

2. Each Member State shall lay down its own rules and conditions under which the losses referred to in paragraph 1 are determined.

## **SECTION 5**

### **Irregularities during the movement of excise goods**

#### *Article 38*

1. Where an irregularity has occurred during a movement of excise goods under Article 33(1) or Article 36(1), in a Member State other than the Member State in which they were released for consumption, they shall be subject to excise duty and excise duty shall be chargeable in the Member State where the irregularity occurred.

2. Where an irregularity has been detected during a movement of excise goods under Article 33(1) or Article 36(1), in a Member State other than the Member State in which they were released for consumption, and it is not

possible to determine where the irregularity occurred, the irregularity shall be deemed to have occurred and the excise duty shall be chargeable in the Member State where the irregularity was detected.

However, if, before the expiry of a period of three years from the date on which the excise goods were acquired, it is ascertained in which Member State the irregularity actually occurred, the provisions of paragraph 1 shall apply.

3. The excise duty shall be due from the person who guaranteed payment thereof in accordance with Article 34(2)(a) or Article 36(4)(a) and from any person who participated in the irregularity.

The competent authorities of the Member State in which the excise goods were released for consumption shall, upon request, reimburse or remit the excise duty where it was levied in the Member State where the irregularity occurred or was detected. The competent authorities of the Member State of destination shall release the guarantee lodged pursuant to Article 34(2)(a) or Article 36(4)(a).

4. For the purposes of this Article, 'irregularity' shall mean a situation occurring during a movement of excise goods under Article 33(1) or Article 36(1), not covered by Article 37 due to which a movement, or a part of a movement, of excise goods has not duly ended.

## **CHAPTER VI MISCELLANEOUS**

### **SECTION 1 Marking**

#### *Article 39*

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 33(1), first subparagraph, and Article 36(1), when they enter their territory.

2. Any Member State which requires the use of tax markings 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. However, each Member State may require that these markings or marks be made available to a tax representative authorised by the competent authorities of that Member State.

3. Without prejudice to any provisions they may lay down in order to ensure that this Article is implemented properly and to prevent any evasion, avoidance or abuse, Member States shall ensure that tax markings or national identification marks as set out in paragraph 1 do not create obstacles to the free movement of excise goods.

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

The Member State which issued these markings or marks may nevertheless subject the reimbursement, remittance or release of the amount paid or guaranteed to the presentation of evidence, to the satisfaction of its competent authorities, that they have been removed or destroyed.

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

### **SECTION 2 Small wine producers**

#### *Article 40*

1. Member States may exempt small wine producers from the requirements of Chapters III and IV and from the other requirements relating to movement and monitoring. Where these small producers themselves carry out intra-Community transactions, they shall inform their relevant authorities and comply with the requirements laid down by Commission Regulation (EC) No 884/2001 of 24 April 2001 laying down detailed rules of application concerning the documents accompanying the carriage of wine products and the records to be kept in the wine sector <sup>(14)</sup>.
2. Where small wine producers are exempt from requirements 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 the wine deliveries received.
3. For the purposes of this Article, 'small wine producers' shall mean persons producing on average less than 1 000 hl of wine per year.

### **SECTION 3**

#### **Stores for boats and aircraft**

##### *Article 41*

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

### **SECTION 4**

#### **Special arrangements**

##### *Article 42*

Member States which have concluded an Agreement on the responsibility for the construction or maintenance of a trans-border bridge may adopt measures derogating from the provisions of this Directive in order to simplify the procedure for collecting excise duty on the excise goods used for the construction and the maintenance of that bridge.

For the purposes of those measures, the bridge and the construction sites referred to in the Agreement shall be deemed to be part of the territory of the Member State which is responsible for the construction or maintenance of the bridge in accordance with the Agreement.

The Member States concerned shall notify those measures to the Commission, which shall inform the other Member States.

### **CHAPTER VII**

#### **COMMITTEE ON EXCISE DUTY**

##### *Article 43*

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 44*

The Committee on Excise Duty shall, in addition to its tasks under Article 43, 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.

### **CHAPTER VIII**

## TRANSITIONAL AND FINAL PROVISIONS

### *Article 45*

1. By 1 April 2013, the Commission shall submit to the European Parliament and the Council a report on the implementation of the computerised system and, in particular, on the obligations referred to in Article 21(6) and on the procedures applicable should the system be unavailable.
2. By 1 April 2015, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Directive.
3. The reports set out in paragraphs 1 and 2 shall be based in particular on the information provided by the Member States.

### *Article 46*

1. Until 31 December 2010, Member States of dispatch may continue to allow movements of excise goods under a duty suspension arrangement which were initiated under cover of the formalities set out in Article 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 18(1) and (2) of this Directive.

Articles 21 to 27 of this Directive shall not apply to those movements.

2. Movements of excise goods which were initiated before 1 April 2010 shall be carried out and discharged in accordance with the provisions of Directive 92/12/EEC.

This Directive shall not apply to those movements.

### *Article 47*

1. Directive 92/12/EEC is repealed with effect from 1 April 2010.

However, it shall continue to apply within the limits and for the purposes defined in Article 46.

2. References to the repealed Directive shall be construed as references to this Directive.

### *Article 48*

1. Member States shall adopt and publish, not later than 1 January 2010, the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 April 2010. They shall forthwith communicate to the Commission the text of such laws, regulations and administrative provisions together with a table showing the correlation between them and this Directive.

When they are adopted by Member States, these measures shall contain a reference to this Directive or shall be accompanied by such 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 49*

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

### *Article 50*

This Directive is addressed to the Member States.  
Done at Brussels, 16 December 2008.

*For the Council*



*The President*  
R. BACHELOT-NARQUIN