



Brussels, 21.4.2017
COM(2017) 184 final

**REPORT FROM THE COMMISSION TO THE COUNCIL AND THE EUROPEAN
PARLIAMENT**

**on the implementation and evaluation of Council Directive 2008/118/EC of 16 December
2008 concerning the general arrangements for excise duty**

{SWD(2017) 131 final}

Table of Contents

1. INTRODUCTION.....	2
2. BACKGROUND.....	3
3. THE EVALUATION OF THE DIRECTIVE	4
3.1. Scope of the evaluation	4
3.2. Results	5
3.2.1. Effectiveness and efficiency of Directive 2008/118/EC	5
3.2.2. Coherence of excise and customs arrangements	9
3.2.3. Relevance	11
3.2.4. EU added value.....	12
4. ISSUES WARRANTING FURTHER ATTENTION	13
4.1. Authorisations.....	13
4.2. Handling of shortages, excesses, other exceptions and the fight against fraud.....	13
4.3. Coordination between customs and excise procedures	15
4.4. Duty paid procedures aimed at Small and Medium Enterprises	15
5. CONCLUSIONS AND FOLLOW UP.....	15

1. INTRODUCTION

Council Directive 2008/118/EC¹ Article 45(2) states: “By 1 April 2015, the Commission shall submit to the European Parliament and the Council a report on the implementation of this Directive.” To gather evidence for this report, the Commission requested two external evaluation studies. The first evaluation study, on Chapter V of the Directive (i.e. rules on commercial movements of excise goods on which duty has already been paid) was published in 2015². The second study, which concentrated on Chapters III and IV of the Directive (i.e. provisions on tax warehousing and electronic control system), was published in 2016³.

¹ Council Directive 2008/118/EC of 16.12.2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, OJ L 9 of 14.1.2009.

² <http://bookshop.europa.eu/en/evaluation-of-current-arrangements-for-the-cross-border-movements-of-excise-goods-that-have-been-released-for-consumption-pbKP0614146/>

³ <http://bookshop.europa.eu/en/evaluation-of-current-arrangements-for-the-holding-and-moving-of-excise-goods-under-excise-duty-suspension-pbKP0215865/>

Each of the above studies consisted of a question based survey to Member States and to traders, the results of which were compared to ensure a coherent and consistent view of the issues in question. For both studies a series of case studies, which went into greater depth, were carried out in approximately a third of Member States. The Member States selected are considered representative, based on size of the country, geographical location and whether the Member State is a producer or a consumer of excise goods.

The Commission decided to carry out an evaluation of this regulatory area in the framework of the Commission's REFIT⁴ programme. The detailed evaluation results are described in a Commission Staff Working Document (SWD (2017) xxxx) that accompanies this report. Following the five key evaluation questions, relevance, coherence, effectiveness, efficiency and EU added value, this evaluation assesses whether the intervention embodied in Directive 2008/118/EC has satisfied the intended objectives and to what extent it has achieved its expected effects.

Building on evidence gathered through the studies this report summarizes the evaluation conclusions of the Commission. For more detailed information, please consult the accompanying Staff Working Document.

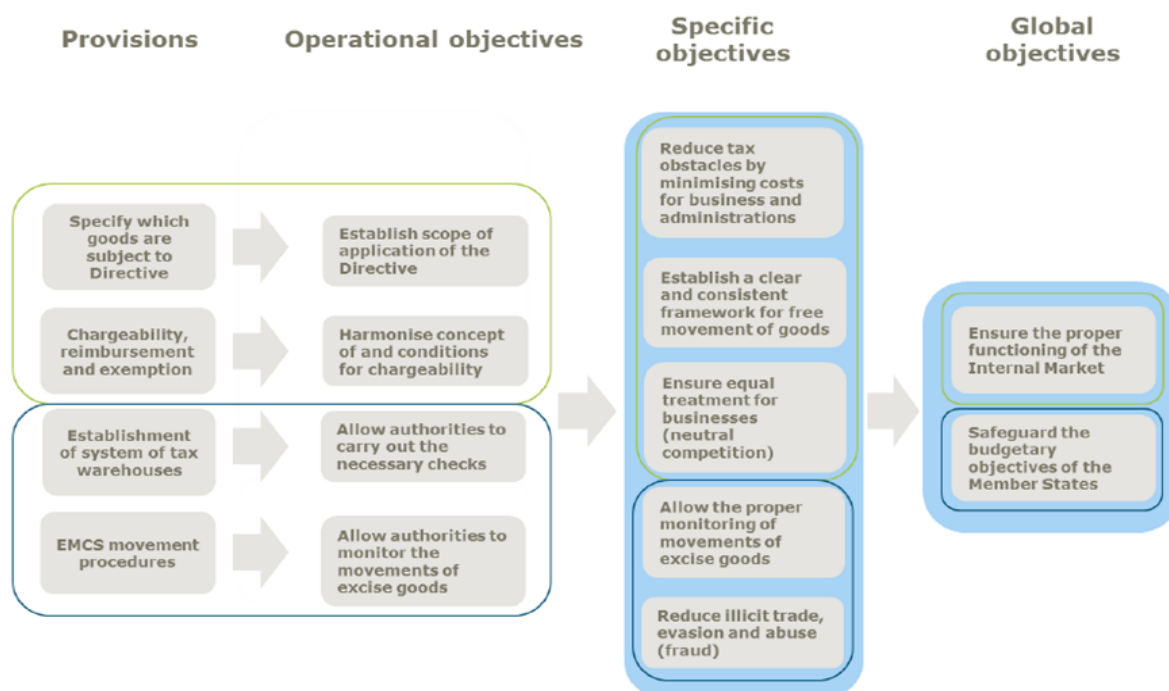
2. BACKGROUND

Council Directive 2008/118/EC has replaced Council Directive 92/12/EEC⁵. It defines the arrangements for the holding and movement of excise goods within the territory of the European Union, with the exception of a small number of territories, where its provisions do not apply. The Directive's objectives and the manner in which they interact at different levels of policy have been captured in the intervention logic diagram below:

⁴ REFIT is a programme to review the entire stock of EU legislation – to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

⁵ Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products, OJ L 076 of 23.3.1992

Figure 1: Intervention logic of Directive 2008/118/EC



3. THE EVALUATION OF THE DIRECTIVE

3.1. Scope of the evaluation

The evaluation covers the entire scope of the Directive, but concentrates on Chapters III – V. Chapters I and II were included in the evaluation to the extent that the provisions touched on matters that are relevant to the effects of the provisions in Chapters III – V.

Chapter I defines excise duty as a tax on consumption and provides common definitions for concepts such as “authorised warehousekeeper”, “tax warehouse”. Common definitions ensure that there is a common legal understanding of these terms and provide a clear and consistent framework.

Chapter II establishes the time and place of chargeability, who is liable, the effect of destruction and irretrievable loss, irregularities, refunds and remissions and exemptions.

Chapter III takes over the concept of ‘tax warehouse’ from Directive 92/12/EEC as one of the types of authorised locations where excise goods may be held and produced under excise duty suspension, facilitating checks of the production and storage facilities. The detailed rules for authorisation are decided nationally, but the system as a whole is set out in Chapter III of the Directive. Each tax warehouse is associated with an authorised warehouse keeper who is responsible for the management of the tax warehouse. The tax warehouse and the authorised warehousekeeper each receive a unique excise number.⁶

⁶ Council Regulation (EU) No 389/2012 and Commission Implementing Regulation (EU) No 612/2013 provide the legal base for the sharing of data between Member States concerning the authorisation and registration of economic operators and the authorisation of tax warehouses

The data provided by the SEED system (System for Exchange of Excise Data) permits validation of whether an authorisation for the excise number exists; and if it does, it states which excise products are authorised to be handled by the trader or tax warehouse. Both consignor and consignee are registered in the SEED database by their respective Member State administration.

Chapter IV includes the major change introduced by Directive 2008/118/EC: the automation of the supervision of movements under excise duty suspension through the Excise Movement and Control System (EMCS). EMCS has been developed and is operated jointly by the national administrations and by the Commission, with the latter playing a central coordinating role. EMCS provides real-time monitoring of movements of excise goods under excise duty suspension between authorised and registered locations, and ensures that goods can only be dispatched to such locations. Chapter IV has also added a new type of trader associated with a particular location, the ‘registered consignee,’ which can receive but cannot hold goods under excise duty suspension.. The Chapter also defines a new type of trader, the registered consignor, which can transport goods under excise duty suspension from a place of importation.

Chapter V of the Directive (Articles 33-38)⁷ establishes the common rules for two types of intra-European Union commercial movements of excise goods on which duty has already been paid (i.e. released for consumption): consignments between traders (B2B) and the distance selling of excise goods to a private individual in another Member State (B2C). These arrangements are of particular interest to SMEs that cannot meet the financial requirements of tax warehouse authorisations and of running EMCS.

Articles 33 and 34 of the Directive set out the requirements for movements between traders (B2B), and stipulate that movements are to be covered by a simplified administrative accompanying document (SAAD), the detail of which is set out in Regulation (EEC) No 3649/92.

Where goods have been released for consumption in one Member State and are then moved to another Member State excise duty is paid in the Member State of destination, at the rate imposed by that Member State, and if relevant, the trader may then apply for reimbursement of the excise duty already paid upon release for consumption.

3.2. Results

3.2.1. Effectiveness and efficiency of Directive 2008/118/EC

Duty suspended movements

EMCS replaces a paper-based system with a paperless (electronic) supervision system, thereby removing administrative obstacles to the movement of excise duty goods across borders by minimising costs both for traders and for tax administrations, whilst providing better tools for detecting and preventing fiscal fraud. Since its introduction between January 2010 and May 2015, over 13.6 million movements under duty suspension were

⁷ Article 32 of Chapter V governs the arrangements for the purchase of alcohol, tobacco and mineral oils by travellers travelling from one Member State to another. These arrangements replaced the transitional provisions for duty free allowances for intra-union travel in Article 28 of Directive 92/12/EEC, which expired in 1999. Between 1999 and 2008 there were no Union-wide guide levels. These arrangements were not included in the scope of the evaluation studies.

recorded, 98.1% of which were completed without incident or requiring further manual intervention.

Member States are convinced that EMCS has reduced costs by reducing the amount of time needed to administer documents, as evidenced below in Table 1.

Table 1: Time taken to process a typical movement before (paper based system) and after the introduction of EMCS during 2014 (computerised system)⁸

Member State	Time per movement (paper-based procedure)	Time per movement (EMCS)
BG	No data	5 min.
CZ	30 min.	10 min.
FI	6 min.	0 ⁹
HU	120 min	6 min.
LT	30 min.	9 min. (0.15 hrs)
LV	20 min.	No data
PL	3-5 hrs (for alcohol); 0.5 hr (for other goods)	3-5 hrs (for alcohol); 0.25 hrs (for other goods)
RO	No data	0
SI	3 min.	1 min.
SK	60 min	10 min.

Source: [Duty suspension evaluation 2015, Ramboll](#)

As a result of the reduction in time required to process movement information EMCS has reduced the overall administrative costs for many Member States.¹⁰

Extrapolating from the collected data and applying the EU Standard Cost Model, in 2014 alone, EMCS has resulted in annual savings of between EUR 27.5 million and EUR 37 million (depending of the job profiles of the persons involved).¹¹ Member States have also reported that the elimination of paper and the associated increase in efficiency have freed up resources to focus on higher-risk movements, and improve control of movements.

The main benefits for traders are a reduction of time needed to process excise documents, the ability to follow up movements (for both consignor and consignee), and the facilitation of auditing and control through more efficient and higher-quality movement documentation. The study did not quantify these benefits.

⁸ With the exception of Finland none of the Member States from before the 2004 enlargement were able to provide comparison data. The newer Member States set up the paper based system in the years immediately before 2004 and therefore have relatively recent estimates available. There is no reason to assume that the results would be significantly different for the pre-2004 Member States

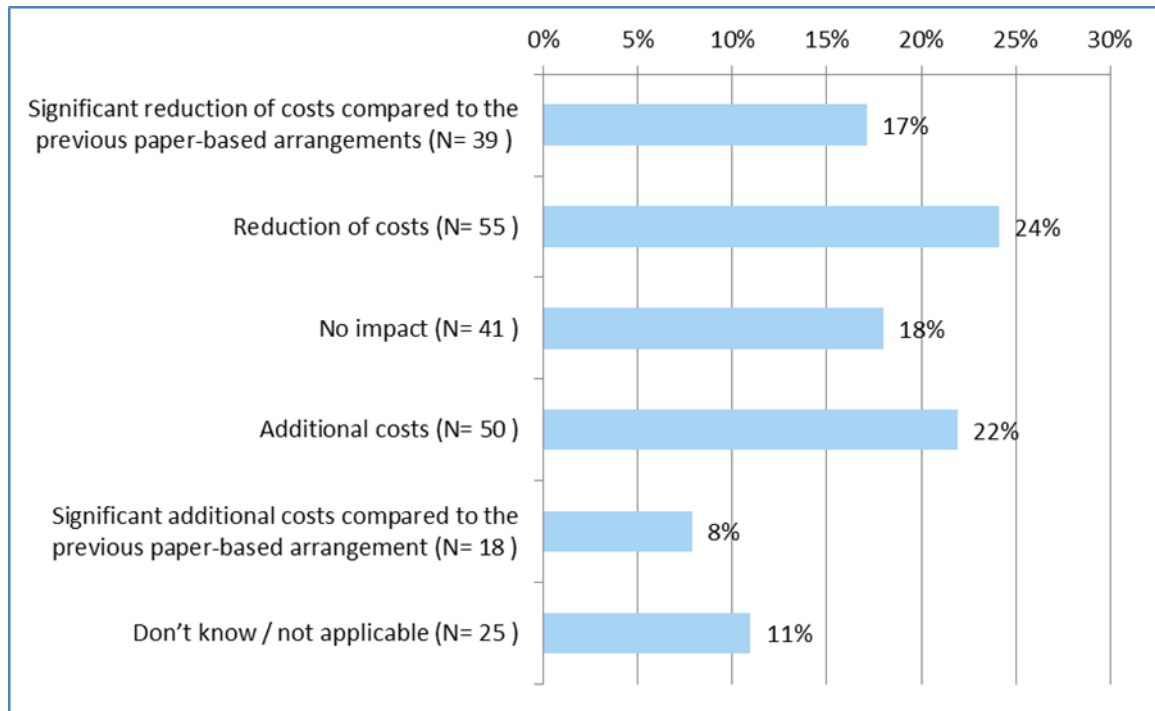
⁹ 0 here means that the process is normally completed automatically.

¹⁰ The average time saved in hours per movement was reported to be 35 minutes (0.59 hours). In 2014 alone, the EMCS is estimated to have saved more than 1 267 026 hours (about 720 full-time individuals, assuming 8 working hours per working day and 220 working days per year) for those administrations of the Member States which reported a positive change.

¹¹ For more details please see: Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension, p. 53, or the accompanying Staff Working Document

Both large and small businesses benefit from EMCS, although for large businesses the economies of scale associated with the electronic system were more advantageous. Traders were divided on whether EMCS reduced costs (41%), increased costs (30%), made no difference (18%), or did not know (11%). These results are very similar to the results of an earlier survey of traders reported to the European Parliament and the Council in 2013,¹² and may indicate that larger operators have benefitted more from automation.

Figure 2: The cost impact of EMCS compared to the previous paper-based arrangements (Number of respondents=228)



Source: [Duty suspension evaluation 2015, Ramboll](#)

Business to business duty paid movements

In contrast, evidence suggests that the current Chapter V 'duty paid' arrangements impose a substantial burden on businesses and are not compatible with the objective of encouraging the free movement of goods within the single market, due to the continued use of paper-based procedures, and variation in the approaches taken by Member States¹³. Traders who used the duty paid arrangements reported a mean time of 221 minutes per movement taken up by compliance formalities¹⁴

In the study on 'duty paid' arrangements administrations were asked to identify the most resource-consuming aspects of the administration of duty paid movements. 10 out of 12 Member State administrations perceived the paper-based system as being more burdensome and time-consuming than automated or electronic processes, the other 2 did

¹² COM (2013) 850 and SWD (2013) 490.

¹³ See point 4.4

¹⁴ Source: Table 19, Duty paid evaluation 2015, Ramboll. The majority of traders reported that dealing with formalities required less than 1 hour per movement. However, the data shows a number of extremely high figures for time, probably caused by a lack of common procedures.

not express an opinion. Three Member States were able to provide some approximate estimates on time spent to handle one average business-to-business (B2B) movement. Average processing time varied between 4 and 8 hours depending on the nature of the consignment. This compares with a few minutes on average for the administration of an EMCS movement.

Other practical problems reported were variations between national requirements (e.g. documentary requirements for reimbursement) as well as a lack of clear information about national procedures, leading to discriminatory situations for businesses.

Well over half of the B2B traders surveyed had already chosen not to move their products between Member States due to the current arrangements. The main reasons cited were high administrative burden and associated costs (36 traders out of 44 who replied) and unclear requirements leading to legal uncertainty (21 traders out of 44). The majority of traders considered the B2B duty paid arrangements to be more burdensome than using EMCS.

Duty paid distance selling (business to consumer)

For distance selling traders report that the costs associated with using a tax representative, required by most Member States, are a significant barrier to market access. The fees charged for such tax representation services can in some cases exceed the charges raised by postal and express courier services for customs clearance of packages from third countries. A number of traders reported that in some cases it was easier to sell products to third countries than to distance sell to consumers in other Member States.

It is almost impossible to distance sell alcohol into some Member States at a reasonable cost, comparable with the distance selling of other goods. Tax representative services were generally only offered by large shipping companies who were ill-equipped to deal with small consignments (typically 6 or 12 bottles), and would either refuse to offer a service, or charge an unfeasibly high fee, as indicated below in Table 2.

Table 2: Costs of tax representatives for distance selling

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: [Duty paid evaluation 2015, Ramboll](#)

3.2.2. Coherence of excise and customs arrangements

By value one third of all excise goods produced in the European Union are exported¹⁵. Nevertheless, the indirect exportation of excise goods is confronted with a number of technical and legal problems.

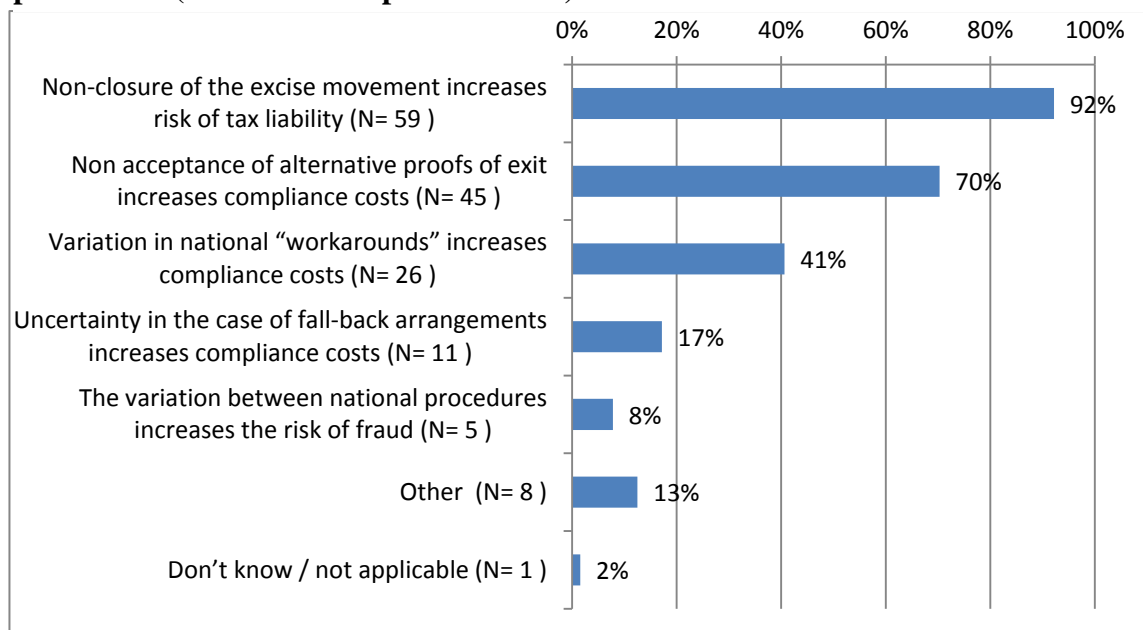
The evaluation assessed the coherence of the current arrangements for the movement of goods under excise duty suspension with the corresponding customs export arrangements. It can be concluded that there is scope to optimise the harmonisation of procedures. Overall, both Member State authorities and traders agreed that problems exist with the exportation of excise goods. The procedures for importing excise products were also a concern to Member States, but were shown to create less practical issues for traders. Despite this both traders and the Member State authorities stressed that the introduction of EMCS had facilitated coordination between excise and customs procedures. Compared with the previous paper based systems, EMCS had improved coordination.

Export:¹⁶ Member State authorities and traders recognise the absence of coherence between the excise and export procedures as being problematic. 22 of 27 Member States (80%) were of the opinion that the current arrangements for the movement of excise goods under suspension were not coherent with the arrangements, obligations and procedures applicable to customs operations and export. Firstly, export movements should be closed in EMCS based on an electronic exit message from the customs Export Control System (abbreviated as ECS). This message is often not received from customs and the movements has to be examined and closed manually. Secondly, even if the message is received, some exporters do not provide a reference in the export declaration to the Administrative Reference Code (ARC) of the matching e-AD, making it difficult or impossible for the system to apply the exit results to the correct e-AD. These weaknesses translate into increased administrative costs,. Consequently the advantages of process automation are lost, because movements have to be closed manually by matching exit results from ECS to e-ADs from EMCS. Where there is no match the consignor has to be asked to provide an alternative proof of exit, or risk losing the movement guarantee. In 2014 France reported that they had to close 12 000 export movements manually. 41% of traders recognise the absence of coherence between the excise and export procedures as being a problem. The respondents stated they were not satisfied with the coordination between excise and customs procedures.

¹⁵ The estimate above is based on Eurostat statistics on the export of excise goods. The statistics do not distinguish between direct (only involving one country) and indirect export (where goods travel over the territory of more than one Member State before exiting Union territory). The Directive is principally concerned with export supervision involving more than one Member State. For direct export the detailed arrangements are a national matter and the use of EMCS and ECS is not compulsory. Because there is no Union consignee, the indirect export of excise goods moving under Chapter V duty paid arrangements is not provided for.

¹⁶ For more details on how EMCS and the Export Control System are supposed to coordinate please see: [“Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension”](#) pp 116-117

Figure 3: Main issues with coordination between excise and customs export procedures (Number of respondents=64)



Source: [Duty suspension evaluation 2015, Ramboll](#)

Importation: Importation for excise purposes occurs when goods which have entered the European Union from a third country are not placed under a customs special procedure or external transit, or are released from customs supervision. This entails the payment of customs duty, but also the payment of excise duty and VAT, unless the goods are immediately put under an excise duty suspension arrangement (holding in a tax warehouse or dispatched from the place of importation under excise duty suspension). If the final consignee is in another Member State a movement under excise duty suspension must take place under the supervision of EMCS.

Traders expressed fewer concerns over the arrangements for importation, with 17% having some concerns, mainly due to national variations in reporting requirements causing increased costs. On the other hand, 19 out of 27 Member States expressed concerns about the lack of coherence between import procedures and the handover to EMCS, indicating that further harmonisation of procedures might help to alleviate administrative burden and compliance costs.

Customs transit after export¹⁷

Some operators prefer to avoid having excise and customs procedures for indirect exports running in parallel by using transit procedures to replace them before the goods leave. In such a case, the export procedure is closed by the transit procedure, which starts at the Office of Exit¹⁸, doubling as a transit Office of Departure, which is not located at or near

¹⁷ Transit is a customs special procedure which allows the computerised supervision of the movement of goods using NCTS from one place (departure) to another (destination) within the customs territory of the union. Transit is normally used to move non-union goods from a place where goods enter the European Union to a place where it is more convenient to clear the goods for free circulation. This possibility is covered by excise legislation. Additionally, in practice the export of goods is sometimes ended before the goods leave the EU and supervision is handed over to transit. Customs special procedures were previously called 'customs suspensive procedures or arrangements' in the Community Customs Code

¹⁸ The customs office of exit is normally the location of a customs authority at or near a frontier, seaport, or airport, which certifies that goods have left the customs territory of the European Union and that therefore the export of the goods has been completed. Article 329 of the UCC Implementing Act

the physical place where the goods leave the Union. The goods are then moved under the supervision of the NCTS transit system to the place of exit. The transit is discharged as a result of a transit results message set from the Office of Destination to the Office of Departure. This is considered to be a trade facilitation because it allows for the transport of goods to a central hub under the export procedure, the closure of this procedure and subsequent regrouping and export under the transit procedure.

However, the aggregated stakeholder perceptions show that this is not a satisfactory solution. Furthermore, there is no clear legal basis in excise legislation for the use of a transit procedure following an export procedure, and goods transported in such a way are from a legal point of view released for consumption irregularly if the corresponding export procedure is closed when the transit procedure starts, i.e. before the goods physically leave the European Union customs territory.

Of 27 Member States, 11 reported that the combination of an export procedure followed by a transit procedure caused problems. Such a procedure either requires manual closure of the EMCS movement or in some Member States the closure of the export procedure and subsequently EMCS is automatically triggered once the transit starts, even though the goods are still moving within the European Union under the transit procedure. The information in the EMCS is no longer accurate, as the goods only actually leave the European Union once the transit procedure is completed.

40% of the respondents who exported excise duty goods reported using this procedure (45% did not, and 15% did not know if this procedure was used). They listed advantages with regard to the time and costs saved, and to an improved ability to monitor movements. But they also noted that there were problems in terms of the coordination of information across the excise and transit procedures. Procedures that combined an export procedure with a transit procedure for the export of excise products caused problems for 26% of respondents that used them.

3.2.3. *Relevance*

Chapter III and IV of Directive 2008/118/EC:

19 Member States believed (agreeing or strongly agreeing) that there is still a need for EMCS in their country, despite the evolution in certain types of fraud. Only one Member State disagreed, while the rest of the respondents did not know, or neither agreed nor disagreed. The need for the EMCS is confirmed by Member States and traders that call for widening the scope of the EMCS to include lubricating oils and raw tobacco in order to avoid fraud. Member States expressed the need for analysing the functional specifications of EMCS and to continue its development which would include the automation of “duty-paid movements”. They noted that the evolution in the types of fraud does not reduce the need for the EMCS but that EMCS needs to be strengthened. It was recognised that whatever EMCS changes are proposed, they need to strike a balance between “fraud prevention and trade facilitation”, so as to maximise the benefits of the EMCS.

allows other locations within the territory to be treated as an office of exit, thereby completing the export before the goods physically exit the territory. This may or may not close EMCS automatically, depending on the Member State.

16 Member States out of 27 agreed that similar results relating to the fight against fraud could not have been achieved without EU action (i.e. through a national, bilateral or international initiative).

Chapter V of Directive 2008/118/EC

The Commission believes that there is a continuing need for a Union wide framework for the movement of goods between businesses under the duty paid procedure, in order to avoid double taxation. However, the Commission supports the conclusion of Member States and traders that the duty paid arrangements in Chapter V are not sufficiently effective and efficient,

3.2.4. EU added value

For the traders, the main benefits of a common EMCS system relate to a reduction of time needed to process excise documents the ability to follow up movements (for both consignor and consignee), and the facilitation of auditing and control through more efficient and higher-quality movement documentation.

Overall, the current arrangements provide a clear and consistent framework for the holding and movement of excise goods. There are a limited number of areas where differing interpretations by Member States lead to variations in national rules and create uncertainty for traders. For example, the rules on liability for excise duty in the event of shortages are currently a source of confusion and need to be clarified. The communication mechanisms available between traders and competent authorities when exceptional situations occur need to be improved, either through the use of an existing functionality or the development of new functionality.

Uniform rules for EMCS are essential for the proper functioning of the internal market. Harmonising the access to EMCS by providing common definitions for the operators authorised to hold and move goods under excise duty suspension further contributes to this. The arrangements have generally ensured that the scope for discriminatory conditions in different Member States has been limited. Even if the competence to authorise traders to hold and move excise goods remains a national one there is little evidence of any significant barriers to market access.

Traders reported that the main benefits of EMCS are related to the ability to follow up movements (for both consignor and consignee), thereby making it easier to audit their own activities, and to monitor the effectiveness and efficiency of their own arrangements in meeting fiscal obligations.

In general, administrations and traders felt that the advantages of common action at a European level concerning business to business transactions (B2B) were limited by a lack of legal and technical clarity and national variations. In the case of distance selling the current arrangements had little or no EU added value because of the lack of harmonisation. Some traders reported that the arrangements were as burdensome, or even more burdensome than arrangements for the export of goods to third countries.

Areas where further harmonisation might be useful are covered in Section 4

4. ISSUES WARRANTING FURTHER ATTENTION

The suggested improvements may be achieved by the planned amendment to Directive 2008/118/EC and its implementing regulations as foreseen in the Commission Work Programme.

4.1. Authorisations

Directive 2008/118/EC establishes common EU-level definitions of the different types of trader authorised to hold and move excise goods under duty suspension. These definitions contribute to a clear and consistent framework for the holding and movement of excise goods, and ensure an equal treatment of businesses.

The requirements for authorisations to hold and move excise goods and for simplifications vary between Member States. The requirements for authorisations are complex. This can create obstacles for traders and make the application process more time-consuming than necessary. For example, when traders were asked about the rules for calculating authorisation guarantees¹⁹, many operators said that they did not know what they were (24%). Analysed by Member State the data showed that operators from the same countries, operating in the same sector were sometimes given contradictory information. For example, operators active in Germany (the Member State with the highest participation in the survey) stated that their warehouse guarantees were calculated on the basis of annual turnover (34%), monthly turnover (3%), annual excise liability (16%) and monthly excise liability (21%). This suggests that some of the requirements and provisions are highly complex.

The complexity of accessing and understanding the provisions was also underlined in the case studies. Stakeholders from four Member States reported that traders often did not submit complete applications, which required additional unnecessary work for the competent authorities.

In most Member States, operators have to lodge both a movement guarantee in order to secure the excise debt for the movement and an authorisation guarantee to cover the activities of the tax warehouse or the registered consignors and consignees. Guarantees are handled nationally. Traders considered these to be significant burdens, despite the fact that reductions and waivers of guarantees are widely implemented in order to support smaller operators, particular products and tax-compliant operators. Waivers are only allowed in specific circumstances laid down in Directive 2008/118/EC.

4.2. Handling of shortages, excesses, other exceptions and the fight against fraud²⁰

Since the evaluation study was completed the European Court of Justice has rendered a judgement on Articles 10 and 20 of the Directive which clarifies, amongst other things,

¹⁹ Guarantees, if requested, have to cover the risk inherent in the production, processing and holding of the excise goods. They are handled nationally.

²⁰ For more details please see: Evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension, p. 75 – 87.

when a movement has ended.²¹ The provisions of Article 20(2) of the Directive, by stating when the movement of excise goods under a duty suspension arrangement ends, seeks to define the time at which those goods are deemed to have been released for consumption and to determine when duty on those goods becomes chargeable. This is even more important in cases of finding of shortages on delivery of excise goods. Nevertheless the procedure for making claims for shortages is unclear. Claims against traders are covered by the provisions of Directive 2010/24/EU²² (the Recovery Directive), but the use of the instruments provided by the Recovery Directive among Member States varies. In some cases they are not used at all. There is no clear basis for linking recovery instruments with a previous establishment of an excise duty liability. The EMCS specifications²³ provide a means of communication between Member States and traders to establish what liabilities there might be but this facility is little used. EMCS also provides a message for claiming duty that should be sent from claiming Member States to the Member State of Dispatch that is responsible for guarantee management, but this message is as well rarely if ever used.

Some traders complained that they cannot amend details of the electronic administrative document (e-AD) once it had been accepted by the Member State of Dispatch, leading to disputes about quantities and excise duty payable. The consignor can send an EMCS event report to the Member State of Dispatch indicating the mistake. The primary purpose of the event report, however, is to allow traders to report major incidents that occur during a movement and little use is currently made of this possibility. In 2014 only 1 160 event reports were sent between Member States, or in approximately 0.04% of the 2.95 million EMCS movements made in that year. However there is no legal reporting obligation.

Change of destination following the rejection or refusal²⁴ of a consignment: Member States have agreed in an expert group that, when goods are rejected or refused, the consignor should issue a change of destination to have the consignment returned to the place of dispatch or to a new consignee.. This should become a legal obligation. A further improvement would be if the consignor was obliged to take follow up action in the event that a rejection or refusal message is sent. Two suggestions were submitted for reducing these problems: firstly the specifications should be supported by a legal obligation to send rejection and refusal messages and secondly a legal base should be created so that a refusal or rejection message is automatically followed by a change of destination back to the consignor.

²¹ Judgment of the Court (Sixth Chamber) of 28 January 2016 (request for a preliminary ruling from the Bundesfinanzhof — Germany) — BP Europa SE v Hauptzollamt Hamburg-Stadt (Case C-64/15) OJ 2016/C 106/11.

²² Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, Official Journal of the European Union L 84/1, 31.3.2010

²³ EMCS specifications are documents which describe the requirements for the EMCS system centrally and nationally and how those requirements are met at a high level (the so called Functional Excise Systems Specifications or FESS) and more detailed description contained in a number of different documents.

²⁴ In this context ‘rejection’ of a consignment refers to a decision by the consignee to not accept a consignment of goods that are at the place of dispatch, or are moving from the place of dispatch. ‘Refusal’ refers to a decision not to accept goods that have arrived at a place of destination.

EMCS is generally believed to have reduced fraud. The major problems identified by Member States were the entry of excessively long journey times by traders and a lack of certain data in the e-AD, such as the ownership of the goods at dispatch and destination, which could assist in risk analysis

4.3. Coordination between customs and excise procedures

As mentioned above the large numbers of unclosed movements in the case of indirect export of excise goods continues to be a matter of concern. A clear legal base for transit and better harmonisation of the rules for the treatment of imported excise goods might also be useful

4.4. Duty paid procedures aimed at Small and Medium Enterprises

The arrangements for duty paid movements between companies, of particular interest to small and medium enterprises, do not function well, and are a source of administrative burden and high trader compliance cost as well as a potential source of fraud. Paper based documents have to be sent back to the Member State of dispatch. Only upon arrival of this document a refund in the Member State of dispatch may take place. Paper based documents may potentially be used fraudulently several times because there is no legal time limit to send them back.

The arrangements for the distance selling of excise goods are even worse, with the generalised use of tax representatives making legitimate commercial business unviable. However, the Commission proposes to solve the problem only when the VAT One stop shop for distance selling will be agreed upon. The abolition of the only tax representative would not reduce the burden for traders since they need as well to register for VAT in the Member State of consumption.

5. CONCLUSIONS AND FOLLOW UP

In the light of the findings of the two studies and of the evaluation SWD(2017)xxx, the Commission draws the following conclusions:

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

Overall, the current arrangements for the holding and movement of excise goods under excise duty suspension work in an effective and efficient way, and in a way which could not be achieved without Union-wide action. There are nevertheless some issues which still need to be resolved, particularly the coordination of excise and customs procedures, where there are significant levels of legal uncertainty and considerable scope for improving the coordination of technical procedures. Finally, while the introduction of EMCS for the supervision of movements of excise goods under duty suspension helps to improve the collection of excise duty, there are a number of possible legal and technical changes that would further reduce evasion and fraud.

The arrangements for moving goods already released for consumption to another Member State are much less satisfactory: current arrangements are inefficient, insufficient to provide for the free movement of excise goods and potentially open to tax evasion and fraud. This is a particular issue for Small and Medium Enterprises, who

make the most use of these arrangements. The use of EMCS for duty paid procedures would streamline this type of trade, render rules more transparent and clear and would enable traders to recover easily and quickly the duty paid in the Member State of dispatch.

Follow up:

- (1) The Commission will examine possible legal and technical improvements to the treatment of irregularities and the handling of claims by Member States
- (2) The Commission will explore whether it would be useful to propose a less burdensome regime than either EMCS or the SAAD system for the movement of excise goods of low fiscal risk, such as denatured alcohol, flavourings, perfumes and certain energy products
- (3) The Commission will examine legal and technical changes to the arrangements used for the supervision of the import, export and transit of excise goods
- (4) The Commission will analyse the partial or full automation of the duty paid B2B arrangements with a view to reducing administrative burden and compliance costs on traders and Member States
- (5) The Commission will look for a way forward for improving the arrangements for the cross border distance selling of excise goods.

The Commission will take these conclusions into account in its preparations to revise the Directive as set out in the Commission Work Programme 2017 (COM(2016) 710 final, ANNEX 2). Such a revision will involve carrying out an open public consultation and an Impact Assessment.