General arrangements for excise duty – Harmonisation and simplification (Revision of Directive 2008/118/EC)

This briefing is one in a series of 'Implementation appraisals', produced by the European Parliamentary Research Service (EPRS), on the operation of existing EU legislation in practice. Each briefing focuses on a specific EU law which is likely to be amended or reviewed, as planned in the European Commission's annual work programme. 'Implementation appraisals' aim at providing a succinct overview of publicly available material on the implementation, application and effectiveness to date of specific EU law, drawing on input from EU institutions and bodies, as well as external organisations. They are provided by the Ex-Post Evaluation Unit of EPRS, to assist parliamentary committees in their consideration of new European Commission proposals, once tabled.

Summary
To ensure proper functioning of the internal market, Directive 2008/118/EC and related pieces of EU law seek harmonisation of the general conditions for charging excise duty on alcohol, tobacco and energy products. Disparities in the application of these rules can result in tax-induced movements of goods, loss of revenue and fraud. The REFIT initiative on general arrangements for excise duty, announced in the Commission's work programme for 2018, intends to further harmonise and simplify provisions for the export, import and transit of excise goods, inter alia through automation of movement control procedures.

1. Background and content of the directive

Excise duties are taxes levied on the sale or use of specific goods in terms of their quantity (e.g. weight, volume, strength) or value, with the objective of generating income for the state and for pursuing objectives of public interest such as health or environmental protection. Different excise duty structures and rates on different types of goods in the EU Member States can distort competition, engender tax-driven movement of goods, lower state income and incite fraud. Harmonising the rules on excise duties is therefore a precondition for completing the single market, launched in 1993.¹ So far, EU legislation regulates Member States' excise duties for a defined number of types of alcohol, tobacco and energy products in terms of the structure of the duties and minimum rates. Furthermore, it creates the conditions for electronic control of the movements of these types of excise goods.

The rates levied still vary considerably between EU Member States. On certain other types of products (not covered by EU legislation) some Member States levy further excise duties. In addition to excise duties, Member States also impose their VAT rates on the products.

To facilitate the movement of excise goods, to increase transparency in the taxation of excise duty, and to combat excise duty fraud more effectively, Council Directive 2008/118/EC concerning the general

¹ This is reflected in Article 113 TFEU (former Article 93 TEC) which is the legal base for Directive 2008/118/EC.

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arrangements for excise duty and repealing Directive 92/12/EEC lays down rules in relation to excise duty levied on the consumption of:

(a) energy products and electricity (covered specifically by Directive 2003/96/EC);
(b) alcohol and alcoholic beverages (covered specifically by Directives 92/83/EEC and 92/84/EEC);
(c) manufactured tobacco (covered specifically by Directive 2011/64/EU).

The objectives of Directive 2008/118/EC and the manner in which they interact at different levels of policy are captured in the intervention logic diagram below (from COM(2017) 184 and SWD(2017) 131):

Figure 1 – Overall intervention logic of Directive 2008/118/EC

Source: COM(2017) 184, p.4

Directive 2008/118/EC is subdivided into five chapters^2^

Chapter I of the directive specifies which goods are subject to these provisions by referring to specific directives. This directive covers the structure of excise duty categories and minimum excise duty rates for alcohol and alcoholic beverages, manufactured tobacco, and energy products and electricity^4^.

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.

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2 Following the more detailed presentation in SWD(2017) 131, pp. 6-13.


4 Member States may apply other national taxes to excise goods under certain conditions and national indirect taxes to goods and to services not covered by the vertical and rates directives.

5 Economic operators that wish to hold and move goods under excise duty suspension must obtain an authorisation. The maximum number of active authorised economic operators within the EU amounted to 104 953 in March 2015. However, the real total number is likely to be smaller, as a single operator can hold multiple types of authorisation across different Member States and across different types of product (SWD(2017) 131, p. 21).
Chapters III and IV set out the major change introduced by Directive 2008/118/EC concerning the holding and movement of excise goods under duty suspension with the Excise Movement and Control System (EMCS). EMCS monitors movements of excise goods under excise duty suspension between authorised and registered locations electronically (see Figure 2).  

Chapter IV added two new types of economic operator associated with a location: the 'registered consignee', which can receive but not hold goods under excise duty suspension, and the 'registered consignor,' a type of economic operator that can transport goods under excise duty suspension from a place of importation.

Figure 2 – Excise Movement and Control System EMCS: How it works

![Excise Movement and Control System EMCS: How it works](image)

Source: Commission [website](#) 'EMCS: How it works'

Chapter V covers duty paid movements. These are still paper based and represent 1% to 3% of all intra-EU movements of excise duty goods.

Articles 33-38 of the directive establish the common rules for two types of intra-EU commercial movements of excise goods on which duty has already been paid before being dispatched: consignments between traders (B2B), and the distance selling of excise goods to a private individual in another Member State (B2C). The following diagram illustrates the intervention logic for Chapter V of the directive, showing the relationship between the objectives of the directive, its provisions, and the expected changes it was intended to achieve ([SWD(2017) 131](#), p. 12):

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6 Regulation (EC) No 684/2009 sets implementing provisions as regards computerised procedures. Regulation 389/2012 sets implementing provisions for administrative cooperation between Member States through the EMCS. The [Excise Contact Group](#), made up of representatives of the European Trade Federations, Member States and the Commission, provides a forum for consultations on the implementation of excise related issues, in particular EMCS.
The volume of movements in 2014 are estimated in the order of 1-3\%\textsuperscript{7} for 'duty paid movements', whereas the 3.5 million movements under duty suspension annually, dispatched via EMCS, are estimated at about 97-99\% of the total movements in terms of volume; intra-EU trade under duty suspension accounted for €240 billion of received energy products, whereas alcohol and tobacco accounted for €21 billion and €10 billion respectively.\textsuperscript{8} The associated excise duty amounted to €90 billion.\textsuperscript{9} \textsuperscript{10}

Compared to the former paper-based system, EMCS saved about 35 minutes of administrative cost per movement. The administrative time per movement varies between 1 to 15 minutes (in exceptional cases exceeding an hour; 0 minutes in cases of complete automatisation).\textsuperscript{11}

2. EU-level reports, evaluations and studies

2.1 European Commission implementation reports and studies

In Annex 2 of its work programme 2017 the European Commission announced the revision of Directive 2008/118/EC to align and ensure coherence between customs and excise legislations, improve legal certainty and ensure the uniform application of EU legislation (including impact assessment) as a REFIT initiative.

\textsuperscript{7} SWD(2017) 131, p. 36.

\textsuperscript{8} Evaluation of Directive 2008/118/EC (current arrangements for the holding and moving of excise goods under excise duty suspension), p. 49.

\textsuperscript{9} SWD(2017) 131, p. 22.

\textsuperscript{10} Eurostat indicates for 2014 Member States' income from 'Taxes on products, except VAT and import taxes': €523 billion, equivalent to an average of 3.7 \% of GDP and 9.4 \% of total tax income (retrieved 20 February 2018).

\textsuperscript{11} SWD(2017) 131, p. 25, showing data from 10 Member States (BG, CZ, FI, HU, LT, LV, PL, RO, SI, SK), from 2014.

Based on the Commission staff working document SWD(2017) 131 and two external evaluations from 2015, the Commission concludes in COM(2017) 184 that the arrangements for the holding and movement of excise goods under excise duty suspension (this refers mainly to Chapters III and IV of the directive) work effectively and efficiently 'in a way which could not be achieved without Union-wide action'. However, it finds that the coordination of excise and customs procedures is hampered by 'significant levels of legal uncertainty' and it sees 'considerable scope for improving the coordination of technical procedures'. Furthermore, whilst recognising that the introduction of EMCS for the supervision of movements of excise goods under duty suspension helps to improve the collection of excise duty, the Commission sees 'a number of possible legal and technical changes that would further reduce evasion and fraud'.

However, concerning the application of Chapter V of the directive, the current arrangements for moving goods already released for consumption to another Member State are considered 'inefficient, insufficient to provide for the free movement of excise goods and potentially open to tax evasion and fraud'.

As a follow-up, the Commission announced it would:
- examine possible legal and technical improvements to the treatment of irregularities and the handling of claims by Member States;
- explore 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';
- examine 'legal and technical changes to the arrangements used for the supervision of the import, export and transit of excise goods';
- 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';
- check how to improve the arrangements for the cross border distance selling of excise goods.

This announcement is in line with the conclusions of the 2013 Commission report on the functioning of the arrangements for the computerised supervision of excise movements under duty suspension and on the application of the administrative cooperation rules in the area of excise duties.12

Commission staff working document on the REFIT evaluation of Directive 2008/118/EC and on the implementation of the directive – April 2017

The Commission working document SWD(2017) 131 complements COM(2017)184 (see above) with more detail. It is itself based on two external evaluations from 2016 and 2015 (see below), and presents findings on the effectiveness, efficiency, coherence, relevance and EU added value of the implementation of Directive 2008/118/EC.


Through the inception impact assessment, the Commission informs stakeholders to enable them to provide feedback on the Commission's understanding of the problem, of the envisaged solutions and options identified. The consultations are intended to feed into the impact assessment which is to accompany the possible Commission legislative proposal.

In the description of the context, the Commission points to the fact that, in addition to this initiative, three other related initiatives concerning excise duty are being carried out:
- During 2017, Directive 2008/118/EC will be the subject of a technical update strictly limited to the alignment with Union customs and updating outdated references to EU agricultural legislation. This

technical revision is undertaken to ensure legal certainty for stakeholders; the initiative is described in its own inception impact assessment;
- For Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, a roadmap for a 'fitness check' evaluation was published on 6 February 2018; the related inception impact assessment of 16 June 2016 needs to be adapted accordingly;
- Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages has been evaluated and an impact assessment of policy options is ongoing; the initiative is described in its own inception impact assessment.\textsuperscript{13}

The inception impact assessment on general arrangements for excise duty, revision of Directive 2008/118/EC identifies five policy options:

1. No policy change;
2. Legislative changes to clarify and harmonise documentation requirements, no automation extension beyond minor technical changes;
3. Automation to replace current paper based procedures used by SMEs, further automation of connections between customs and excise procedures, and concomitant changes to legislation;
4. Simplification and harmonisation of rules for the assessment of excise duties arising due to irregularities;
5. Simplified procedures for the holding and movement of goods which represent little or no fiscal risk.

One policy option appears to be missing however: fully harmonising excise duties in all EU Member States. It is not far-fetched: In 2001, the Commission wrote in its communication 'Tax policy in the European Union – priorities for the years ahead\textsuperscript{14} that 'a high degree of harmonisation of indirect taxes is necessary, as provided for in the Treaty'. It is also worth mentioning in this context that the European Economic and Social Committee in its opinion of 16 July 2009\textsuperscript{15} concluded its recommendations as follows: 'The EESC suggests that in future, the Commission consider unifying tax law'.

\textbf{Commission evaluation of current arrangements for the holding and moving of excise goods under excise duty suspension – January 2016}

This study concentrates on Chapters III and IV of the directive, i.e. the provisions on tax warehousing and the electronic control system. Chapters III and IV concern duty suspended movements, which are monitored through EMCS and which represent about 99\% of all intra-EU movements of excise goods. Appendix 5 reports case studies from Belgium, France, Germany, Lithuania, Sweden, and the United Kingdom.

It also contains an Appendix 8 – Economic value of movements under suspension and estimates of the volume and value of fraud. This presents detailed figures of the movements (imports, exports) in the 28 Member States. Despite the wording of the title, an explicit estimate of the value of fraud is not included. However, Chapter 5 'The fight against fraud' within the study includes estimated figures, and an analysis of whether the introduction of the EMCS has proved useful for fighting fraud. In this respect, the study's conclusions are as follows:

1. The EMCS is protecting the financial interests of Member States.
- The main advantages of the EMCS are those relating to the access to information and the risk analysis/monitoring facilitated by the system.

\textsuperscript{14} COM(2001) 260; as main reasons for this position the Commission indicated that 'The proper functioning of the internal market requires VAT and excise systems that are efficient and fully reflect the needs of EU businesses and consumers. The continued existence of a variety of derogations in both the VAT and excise duty fields is unhelpful in this context. In addition, it is important to ensure full consistency between indirect tax systems and the customs union for the movement of goods, both in relation to the EU’s external border and to the abolition of internal borders.
\textsuperscript{15} ECO/252 ‘Recovery of tax claims’ and ECO/253 ‘Administrative cooperation in the field of taxation’.
- There is scope for improvement with respect to the type of data being recorded in the system and the inconsistencies in the reporting system.
- There is general agreement that the introduction of the EMCS has reduced the cost of audits.
- The EMCS has increased coordination between the Member States.
- Across the EU and among the Member States, there is still a need for the EMCS.
- Similar results relating to the combat of fraud could not have been achieved without EU action.

**Evaluation of current arrangements for the cross border movements of excise goods that have been released for consumption – March 2015**

This study concentrates on Chapter V of the directive (i.e. rules on commercial movements of excise goods on which duty has already been paid). Chapter V covers duty-paid movements, which are mostly paper based and which represent 1% to 3% of all intra-EU movements of excise duty goods. Annex 12 contains country reports covering Austria, Belgium, Czech Republic, Germany, Spain, France, Hungary, Ireland, Italy, Latvia, Poland, and Sweden.

The main findings are already indicated above under 'Commission report' (COM(2017) 184), under 'moving goods already released for consumption'.

**2.2 European Parliament analyses and studies**


This implementation appraisal sets out the current implementation of this directive and related reports, evaluations, consultations and positions of EU bodies and stakeholders, in view of the upcoming Commission legislative initiative in the area of alcohol related excise duty.

**Indirect taxation (November 2017)**

Chapter 2 of this EU fact sheet briefly presents the approach to excise duties on alcohol, tobacco and energy.

**EU-Mapping 2017 – Systematic overview of economic and financial legislation (July 2017)**

The study provides a graphic overview of core legislation in the area of economic and financial services. Chapter 11 maps EU legislation and ongoing consultations in the area of taxation.

**3. European Parliament positions/MEPs' questions**

**3.1 Resolutions of the European Parliament**


A section of this resolution is dedicated to the EMCS. The European Parliament noted that increased abuse of the EMCS by criminal groups had been observed by enforcement agencies; it believed that physical controls of goods being transported under the EMCS was lacking; that it underlined the benefits of increased inspections and demanded a higher degree of cooperation with tax authorities; Parliament also expressed concern that the Member States had implemented their own EMCS systems based on (too) broadly defined requirements.16

**European Parliament legislative resolution of 29 March 2012 on the proposal for a Council regulation on administrative cooperation in the field of excise duties**

The European Parliament underlined that the creation of a European fiscal union should include an extended, rapid, efficient, user friendly and, as far as possible, automatic exchange of information among Member

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16 The Commission's follow-up SP(2014)469 of 25 September 2014 replied in detail to this resolution.
States in order to improve the fight against tax evasion. The need to simplify bureaucratic procedures was also highlighted.\(^{17}\)

### 3.2 Written questions by MEPs

Numerous questions were addressed to the Commission on specific types of excise duties – or on the exemption from these. Some questions addressed the general arrangements for excise duty, which are the object of Directive 2008/118/EC:

**Written question by Anna Hedh (S&D, Sweden), 3 May 2017**

The Member pointed to the substantial differences in the prices of alcoholic beverages in countries such as Denmark, Estonia, Finland, Germany, and Sweden, which originate mainly from differences in the levels of excise duty and that the provisions of Council Directive 2008/118/EC set out minimum guide levels for how much alcohol individuals are allowed to buy and personally carry or drive across borders without paying excise duty in the country of entry. Hedh asked whether the indicative allowances are not very high, contribute to excise duty dumping between Member States, and therefore are worth focusing on more clearly in the revision of the current directive. Hedh also asked why the reduction in the allowances for cross-border private movements of alcoholic beverages is not already being considered as a policy option in the ongoing revision of the directive.

**Answer given by Pierre Moscovici on behalf of the Commission, 26 June 2017**

The Commissioner explained that the guide levels in Article 32 of Directive 2008/118/EC should help the authorities to assess whether the quantity of excisable goods being moved within the EU is for the use of the private individual transporting those goods. He added that Member States may carry out checks on their territory to see whether private individuals carrying goods falling under Directive 2008/118/EC from another Member State are doing so within acceptable limits.

Moscovici affirmed that the Commission is not aware of high levels of fraud with regard to the indicative limits of Article 32, i.e. private individuals moving large quantities of alcohol on the pretence it is for their personal use and then reselling it on the black market in a Member State with higher duties, and that the Commission has no evidence that the guide levels indicated in Article 32 have any impact on private consumption. He concluded that the Commission currently did not plan to replace these indicative limits with lower hard limits.

**Written question by Daniele Viotti and 18 other MEPs (all S&D, Italy), 15 December 2015**

First, the Members recalled that Directive 2008/118/EC establishes that excise duties on goods for consumption (such as wine) produced in one Member State and sold in another have to be paid to the authorities in the state of destination and that 'Article 36 of the directive — on business-to-consumer transactions — allows Member States to require distance sellers to pay excise duties through a tax representative, which has a cost'.

The Members complained that 'small winegrowers (often both producers and vendors) are negatively affected by the measure, 'as the cost of appointing a tax representative can hardly be covered through an increase in production' and that this was confirmed by the Commission evaluation study of 2015.

The Members asked whether the Commission considers the system of tax representatives to be an obstacle to the free circulation of goods and whether it considers it necessary to move towards the ‘one-stop-shop’ option as described in the study.

Answer given by Pierre Moscovici on behalf of the Commission, 12 February 2016
The Commissioner replied that the study on 'Evaluation of current arrangements for movements of excise goods released for consumption', published in 2015, showed that distance selling of excise goods within the EU is not facilitated by most Member States. Moscovici reported that the requirement to use a tax representative in many Member States had been the subject of discussions in a Fiscalis 2020 Project Group, and that it had been suggested that a **One Stop Shop (OSS)** could simplify and harmonise the procedures throughout the EU.

The Commissioner announced that the Commission will make legislative proposals in 2016 to reduce the administrative burden on businesses arising from different VAT regimes including extending the OSS to distance selling as planned in the Digital Single Market Strategy for Europe. Moscovici noted that the Commission preferred to wait for some further experience in VAT in this area before considering whether to extend the OSS to distance selling of excise goods.

Written question by Remo Sernagiotto and Elisabetta Gardini (both EPP, Italy), 11 May 2015
The Members referred to the fact that the duty suspension arrangements in Directive 2008/118/EC state that excise shall not be chargeable on goods that have been totally destroyed or irretrievably lost due to 'unforeseeable circumstances' or 'force majeure', but that it does not explicitly mention theft or robbery as falling under either of these categories. The Members point to the problem that distilleries, mostly small scale enterprises, must not only cope with the obvious financial loss in case of theft, but are also obliged to pay excise duties on the stolen goods.

They asked the Commission how it intends to redress the unfair penalties imposed on distilleries that fall victim to robbery or theft of spirits or alcohol stored under a duty suspension arrangement, and how it intends to remedy the lack of clarity in Article 7 (4) of the directive, so that robbery and theft of alcohol can be considered as 'unforeseeable circumstances' or 'force majeure', providing it can be established that the distiller is in no way involved in the crime.

Answer given by Pierre Moscovici on behalf of the Commission, 22 July 2015
The Commissioner replied that the directive does not contain provisions on penalties, which is a matter left to Member States. National courts would have to decide, based on the facts, whether a penalty has to be charged or not in a particular case. Moscovici added that 'In any event, a refusal by the national authorities to accept a claim of irretrievable loss and to charge the regular excise duty does not constitute a penalty'. According to the Commissioner, Article 7(4) of Directive 2008/118/EC covers only cases where total destruction or irretrievable loss of excise goods under a duty suspension arrangement can be ascertained; it does not cover cases where excise goods may be subject to subsequent use, such as e.g. in the case of theft. Moscovici repeated that it is for the national courts to decide whether national rules implementing Article 7(4) of Directive 2008/118/EC should apply in these specific circumstances.

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4. Council and European Council

At its meeting of 5 December 2017, the Council (ECOFIN) adopted its conclusions on the Commission report on the implementation of Directive 2008/118/EC and endorsed its report to the European Council on tax issues.

The Council conclusions dedicated to the Commission report are remarkable, as they were preceded by discussions in which some of the national delegations initially had reservations against the draft conclusions. The conclusions are also remarkable in showing the level of detail considered and the reasoning that led to these conclusions, e.g. consideration of the intertwined workings of customs and excise.

In its conclusions, the Council welcomed the Commission report and agreed that the current arrangements for the holding and movement of excise goods under Directive 2008/118/EC function effectively and efficiently, and in a way that could not be achieved without Union-wide action. However, concerning the arrangements for moving goods already released for consumption to another Member State, the Council noted that the Commission finds these arrangements inefficient, insufficient to provide for the free movement of excise goods, and potentially open to tax evasion and fraud. The Council therefore invited the Commission to further explore whether any improvements can be made in the area of the directive's efficiency and effectiveness. This notably concerned B2B duty paid arrangements, especially in cases where it can be determined that these arrangements impose a substantial burden on businesses, particularly in the case of SMEs, and are not compatible with the objectives of the free movement of goods and the single market (e.g. excessive use of paper-based documents, variations between national requirements and lack of clear information about national procedures). Furthermore, the Council agreed that EMCS could be adapted to cover movements of excise goods under duty-paid arrangements, but held the position that an extension of EMCS could only be justified after a careful costs and benefits analysis, taking into account the aim of maintaining reasonable costs for the Member States, and in regard to the benefit of such extension.

The Council further observed that lack of coherence between customs and excise procedures, with regard to terminology used and with regard to the use of export followed by transit and the single transport document, creates confusion and legal uncertainty and increases the risk of fraud and tax evasion. The Council supported legal steps to re-establish this coherence effectively and in a balanced manner, ensuring that this does not lead to an undue burden on businesses and promotes the free movement of excise goods, while keeping the objective of preventing tax fraud and tax evasion in mind. The Council observed that the missing link between customs and excise procedures with regard to export of excise goods leads to many unclosed movements, and supported the legal and technical steps proposed by the Commission to strengthen cross-border procedures, as well for import. The Council also emphasised that the guiding principle should be that arrangements for the holding and movement of excise goods should not distort competition, hinder the free movement of such goods within the EU, nor should such arrangements hinder tax collection or facilitate fiscal fraud. The Council finally requested that the Commission submit an appropriate legislative proposal in 2018 or, in case it chooses not to submit a proposal, informs the Council of the reasons.

The ECOFIN report of 5 December 2017 to the European Council on tax issues provides an overview of the state of play on the most important dossiers in the area of taxation. Its section on excise duties confirms the above-mentioned Council conclusions.

The European Council underlined on several occasions (e.g. on 28 June 2016) that the fight against tax fraud, evasion and avoidance remains a priority.²⁰

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²⁰ European Council Conclusions: A Rolling Check-List of Commitments to Date, European Parliament, EPRS, December 2017.
5. Court of Justice

On several occasions, the Court of Justice of the European Union (the Court) has decided on aspects of EU law on excise duties. Some of these decisions concerned the 'General arrangements for excise duty' in Directive 2008/118/EC, reacting to requests for a preliminary ruling:

**Judgment** of 8 September 2016, case C-409/14

The Court ruled, inter alia, that the concept of 'customs suspensive procedure or arrangement', laid down in Article 4(6) of Council Directive 2008/118/EC, must be interpreted as meaning that the placement of specific goods under a customs suspensive procedure or arrangement cannot be challenged if the chapter of the Common Customs Tariff, which covers those goods, is correctly mentioned in their accompanying documents, but the specific subheading is incorrectly indicated. In such cases, Article 2(b) and Article 4(8) of Directive 2008/118 must be interpreted as meaning that there has been no importation of those goods, and that they are not excise goods.

**Judgment** of 2 June 2016, case C-355/14.

The Court ruled, inter alia, that Article 7(2) of Council Directive 2008/118/EC must be interpreted as meaning that the sale of excise goods held by an authorised warehouse keeper in a tax warehouse does not bring about their release for consumption until the time at which those goods are physically removed from that tax warehouse.

**Judgement** of 28 January 2016, case C-64/15

The Commission report **COM(2017)184** (p.13-14) commented briefly on this judgement concerning inter alia Articles 10 and 20 of the directive which clarifies, among other things, when a movement has ended. '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.'

**Judgment** of 17 December 2015, case C-402/14

The Court ruled, inter alia, that Article 1(3) of Council Directive 2008/118/EC must be interpreted as fulfilling the conditions for producing direct effect, allowing individuals to rely on it before a national court in a dispute between them and a Member State.

**Judgment** of 12 February 2015, case C-349/13.

The Court ruled, inter alia, that Article 1(3) of Council Directive 2008/118/EC must be interpreted as not precluding products which do not fall within the scope of this directive, such as lubricating oils used for purposes other than as motor fuels or as heating fuels, from being made subject to a tax governed by rules identical to those relating to the harmonised excise duty arrangements set out in those directives, where the imposition of such a tax on those products does not, in trade between Member States, give rise to formalities connected with the crossing of frontiers.

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21 **41 cases** are documented in Eur-Lex (as of 5 February 2018).
6. Other sources of reference

Hayward, K., Campbell, M., Murphy, R., The Irish Border as a Customs Frontier after Brexit, CEPS commentary, July 2017 (with special consideration of the movements of excise goods).

Statistics on excise duties in OECD countries, November 2016.

7. Abbreviations

e-AAD  electronic Accompanying Administrative Document
B2B   Business to business
B2C   Business to consumer
EMCS  Excise Movement and Control System
GDP   gross domestic product
NCTS  New Computerised Transit System (supporting the transit of customs goods)
OSS   One Stop Shop
REFIT Regulatory Fitness and Performance (part of the Commission's better regulation agenda)
SAAD  Simplified Administrative Accompanying Document
TFEU  Treaty on the Functioning of the European Union


| EP committee responsible at time of adoption of the EU legislation: | Economic and Monetary Affairs (ECON) |
| Date of adoption of original legislation in plenary: | 18 November 2008 |
| Deadline for transposition of legislation: | 1 January 2010 |
| Planned dates for review of legislation: | Not provided for in the directive. However, Article 45(2) requires the Commission to report on its implementation by 1 April 2015. Following up, COM(2017) 184 announced examination of legal and technical changes to the arrangements. |

Other pieces of EU law potentially affected by the Commission initiative are referred to above, see Background.