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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

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, in accordance with Article 8(3) of Decision No 1152/2003/EC, Article 45(1) of Directive 2008/118/EC, Article 35(1) of Council Regulation (EC) No 2073/2004 and Council Regulation (EU) No 389/2012

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1. INTRODUCTION

In the European Union, the most commonly applied excise duties are those on alcoholic beverages, manufactured tobacco products and energy products (motor fuels and heating fuels, such as diesel and gasoline, electricity, natural gas, coal and coke). All EU Member States apply excise duties to these three product categories and the basic rules, notably the structure of the taxes and minimum rates, are harmonized at EU level so as to prevent distortions of competition within the Internal Market in which controls of a fiscal nature at internal borders between Member States no longer exist.

In order for the excise system in the internal market to function, general provisions that apply across the product categories, are necessary. These provisions concern in particular the production, storage and movement between Member States of excise products. Also, a well-functioning administrative cooperation between Member States on all these excise duties is imperative if distortions are to be minimised and excises be correctly applied in cross-border situations. The product-specific excise legislation mentioned above is therefore integrated in a set of horizontal rules, laid down in various pieces of EU legislation on these aspects. The present report aims at assessing the functioning of these horizontal rules, in line with respective reporting obligations in the legislation, as regards two main aspects:

the functioning of the arrangements for the computerised supervision of excise movements under duty suspension and

the application of the administrative cooperation rules in the area of excise duties.

It is thus a first 'building-block' of a formal economic evaluation planned by the Commission in the years to come which will also cover the whole set of other substantive legal rules laid down in Council Directive 2008/118/EC concerning the general arrangements for excise duty and review the functioning of the EU Excise Movement and Control System (EMCS), the computerised system for monitoring movements of excise goods under suspension of excise duty within the EU.

It should be noted that the technicality of the matter makes it impossible to re-explain all underlying concepts and terms in this report. In this respect reference is made to the annexed Commission Staff Working Document and the explanations on the Commission's dedicated websites[1].The annexed Staff Working document elaborates on the issues presented in this report in all detail.

2. SUMMARY

In line with the legal obligations put on the Commission via the relevant legislation this report comprises three sections devoted to the implementation of determined horizontal aspects of EU excise legislation. Each section is based on a comprehensive survey of the relevant stakeholders, as well as other input from interested parties and the Commission's reflections on the issues raised. The annexed Commission Staff Working Document provides a comprehensive overview of the input received through three rounds of consultations of stakeholders, as well as the key findings and the methodology applied.

[1] http://ec.europa.eu/taxation_customs/taxation/excise_duties/circulation_control/index_en.htm

Chapter 3 reports on the implementation of Decision 1152/2003/EC of the European Parliament and Council on the computerisation of the movement and surveillance of excisable products. This Decision established the governance arrangements and the central development funding for the Excise Movement and Control System (EMCS.

The overwhelming majority of all stakeholders report that the governance arrangements under the Decision work well and consider that EMCS represents a major improvement over the previous paper based system. Nevertheless, the stakeholders have made numerous useful suggestions for improvements, particularly in the linkage of EMCS with customs applications. The Commission will take these suggestions into account for future legal and technical work

Chapter 4 addresses the requirement under Article 45(1) of Directive 2008/118/EC for the Commission to provide a report concerning EMCS Fallback Procedures, and the print-out of the electronic administrative document. The stakeholders were generally satisfied with the arrangements set up under Directive 2008/118/EC, but called for standard templates for fallback documents to ensure that they are easily recognisable as such by all interested parties. The Commission will look at incorporating these suggestions into a future revision of Commission Regulation (EC) 684/2009.

Chapter 5 summarises the consultation of Member States concerning their first experiences with Council Regulation (EU) No. 389/2012 on administrative cooperation in the field of excise duties and repealing Regulation (EC) No 2073/2004. Member States feel that the new arrangements are an improvement over the previous systems based on e-forms, giving better control of workflow and a readily available archive of administrative cooperation information. Various suggestions for improvements to EMCS functionality were made, which the Commission will take up for inclusion in the future evolution of EMCS and where necessary the corresponding implementing acts.

3. THE COMPUTERISATION OF THE MOVEMENT AND SURVEILLANCE OF EXCISABLE PRODUCTS

In 2003 the European Parliament and the Council adopted a Decision 1152/2003/EC mandating the computerisation of the movement and surveillance of excise products. The Decision requires the Commission to report to the Parliament and the Council on its implementation.

On the basis of this Decision EMCS was to be specified and developed by the Commission and the Member States in the period from 2004 to 2009. It was envisaged to start EMCS Core Business on 1st April 2009 (all operators in all Member States were to be able to discharge electronic administration documents by sending electronic reports of receipt, whilst the paper based system continued in operation.) The full application of EMCS was planned for 1st January 2010 (all movements of goods under suspension of excise duty were to be carried out using EMCS).

On the basis of discussions held between the Commission and all Member States and taking account of discussions at the Committee on Excise Duty, it was found out that the original planning was no longer realistic. Several Member States confirmed that there were technical problems with the deployment of the EMCS. There were also legal constraints, as the discussions in the Council on the proposal for the Directive,

which would provide the legal basis for EMCS, were taking more time than originally expected.

Therefore, the Commission proposed to review the planning for the implementation of EMCS and suggested 2 options:

(1) Postponement of the implementation and the roll-out of EMCS by one year (until 1 April 2010) without changing the strategy laid down in the Phasing and Scope Specifications;

(2) Allowing those Member States who would be ready to start the implementation and the use of EMCS among themselves before April 2010 (e.g. on 1 September 2009) to go ahead.

At the 25th meeting of the Customs Policy Group (2nd July 2008) the Directors General responsible for excise decided by a large majority to support scenario no 1.

The first operational phase of EMCS was put into operation in April 2010, running in parallel with the paper based system that had been in use since 1993. EMCS completely replaced the previous paper based system from 1st January 2011 onwards.

On 1st January 2012 the second operational phase of EMCS was put into operation. This incorporated the recording of control actions, the report of events during movements and the exchange of information for administrative cooperation between Member States.

The Commission has conducted three surveys of economic operators and Member State Administrations involving various aspects of EMCS. This section deals with the results of the survey conducted on aspects of the implementation of the Decision. The results of the other surveys are discussed in subsequent chapters of this report.

131 replies were received to this survey, consisting of 104 individual economic operators and European trade federations, and 27 replies from 23 Member States. The overwhelming majority of stakeholders consider that in general the aims of the Decision have been implemented satisfactorily.

Stakeholders report that the governance arrangements set out in the Decision work well: the EMCS Project has given sufficient input to all stakeholders and the decision making process generally meets expectations. Therefore the Commission will not be proposing a revision of the Decision.

Economic operators are on the whole satisfied with the current consultation arrangements for the EMCS project, based around the Excise Contact Group (ECG). However, some economic operators would like to see more meetings of the ECG with more discussions on practicalities. They would also like to see the Commission running more frequent surveys targeted at traders concerning EMCS. The Commission will investigate how best to meet these requests.

The overwhelming majority of all stakeholders also believe that EMCS represents a major improvement over the previous paper based system. This is also evidenced by the extremely low technical error rates (technical errors occur in less than 1% of movements) and the very short times needed to discharge excise movements (on average 6.8 days between validation of the electronic administration document and the sending of a report of receipt at destination.)

However, there are still some aspects of EMCS that require attention:

The links between EMCS and customs applications do not work satisfactorily, requiring manual interventions by economic operators and the Member State Administrations. This is particularly the case for the link with export where the export procedure begins in a Member State other than the Member State where the excise economic operator is based, or where the goods exit the European Union from another Member State;

The arrangements for the handling of exceptions to normal sequence of events during a movement are not always well defined, leading to legal uncertainty and additional burdens on economic operators and Member States;

Economic operators still sometimes suffer delays due to delayed distribution of information about the authorisations of economic operators in other Member States;

Some consignees and some Member States acting as Member States of Destination still experience problems with the quality of data received from consignors.

To solve the problems associated with links to customs systems a future release of EMCS will be specified, which will include improved links to customs systems. The Commission will also endeavour to incorporate the special requirements for excise goods into the new customs applications that will be developed for the full implementation of the Union Customs Code. This will also involve a revision of the provisions in Directive 2008/118/EC relating to customs procedures.

The Commission is investigating how to improve the handling of exceptions, for incorporation of new functionality into a future release of EMCS. This may involve revising Directive 2008/118/EC in order to clarify and expand the existing provisions in this area.

The Commission has adopted a new Implementing Regulation (Commission Implementing Regulation (EU) No. 612/2013) which provides for the real-time distribution of economic operator authorisations between Member States. Real time distribution will be operational by 1st January 2015 at the latest.

The Commission is working with Member States on improving the conformance testing of EMCS applications in order to reduce the likelihood of problems due to incorrect data.

Finally, stakeholders were asked to suggest means for measuring the performance of EMCS in the future. There is a large level of agreement between stakeholders on future measurements:

Time taken to close movements;

Time taken to respond to requests for administrative cooperation;

Percentage of movements with errors;

Percentage of export movements that need to be closed manually;

Measurable reduction in administrative burden / improvement in revenue collection.

The measurements described in points 1 to 3 above can in principle be obtained automatically. Points 4 and 5 will require further investigation to establish the best means to collect this information.

The Commission is preparing an Implementing Regulation concerning statistics on the basis of Article 34 of Council Regulation (EU) No. 389/2012 and will take these recommendations into account, in drawing up the Implementing Regulation and in revising the functioning of the EMCS CS/MISE component.[2]

4. THE PRINTED VERSION OF THE ELECTRONIC ADMINISTRATIVE DOCUMENT OR OTHER COMMERCIAL DOCUMENT AND ARRANGEMENTS FOR FALLBACK (ARTICLE 45(1) OF COUNCIL DIRECTIVE 2008/118/EC)

This chapter of the report has been prepared on the basis of Article 45(1) of Council Directive 2008/118/EC, which requires the Commission to provide a report to the European Parliament and the Council concerning EMCS FallBack Procedures, which are covered by Articles 26 and 27 of the Directive, and the print-out of the accompanying document provided for under Article 21(6) of the Directive. In order to build this report the Commission ran a survey addressed to Member States and to representatives of traders in order to help evaluate the effectiveness and usefulness of these arrangements. Also some questions were asked about EMCS in general to provide orientation for further research. The questionnaire received a total of 104 replies and two different samples could be identified; the Member States' sample and the traders' sample.

The replies to the questionnaire give valuable insights into the current fallback procedure and possible issues with the print-out of the accompanying document. A large majority of the Member States' sample and the traders' sample were satisfied with the fallback procedure as it is now. However, the majority of both samples expressed the need for a standardised fallback document across all Member States with a fixed lay-out. The majority of Member States felt that a standard template that only included the essential data would reduce the need to change the fallback documents every time there was a new version of EMCS. Reducing the need to resort to the fallback procedure by investigating ways to improve the availability of national EMCS access is also a priority for some trader respondents.

Concerning the print-out of the electronic accompanying document (e-AD) 50% of Member States thought that the addition of a bar code containing the document's administrative reference code would be useful. Almost 40% of the Member States' sample and the traders' sample express the need for a standardised document. A standardised template, which should include a barcode, could be designed. This would aid recognition of the print-out and help resolve the linguistic problems of having print-outs in all official languages. Nevertheless, respondents put a higher priority on work on fallback as a large majority of both samples indicated a need for a standardised fallback document.

In response to the general questions concerning EMCS a large majority of both the Member States' sample and the traders' sample state that their operational experience with EMCS is good to excellent. To improve the system respondents suggest such actions as making it possible to correct data in the (e-AD) after validation and the faster updating of the SEED database (a distributed register of traders authorized to move goods under EMCS), to keep it up to date. Investigation into the problems with EMCS in the export procedure is also of great importance. Further research will be performed on the feedback received via the questionnaire to fine-tune the

[2] This EMCS component is responsible for extracting operational data and generating statistical reports and will therefore provide the majority of information for reporting on performance.

forthcoming surveys on the methods and criteria for future evaluation of EMCS and on the implementation of Directive 2008/118/EC in general.

The Commission recommends:

- The development of standardised templates for fallback documents across all Member States with a fixed lay-out.
- Investigating improvements in the availability of national EMCS systems in order to avoid having to use the fallback procedure.
- For the print-out of the e-AD a standardised template could be proposed. This would help reduce linguistic difficulties. The template could be based on standard commercial documents, such as the CMR Consignment Note for Road Transport. This should be introduced on a voluntary basis in a pilot project.
- The ARC[3] number, identifying each movement uniquely, should be reproduced as a barcode on the print-out, in order to aid road controls, and to assist traders in identifying consignments.

The Commission will, where applicable, incorporate the above recommendations in the next amendment to Commission Regulation (EC) No. 684/2009, which specifies the content of the EMCS electronic messages and the structure of the fallback documents.

5. RESULTS OF THE CONSULTATION CONCERNING ARRANGEMENTS FOR ADMINISTRATIVE COOPERATION IN THE FIELD OF EXCISE DUTY

Council Regulation (EU) No. 389/2012 came into force in July 2012, replacing Council Regulation (EC) No. 2073/2004. The new Regulation clarifies and harmonises arrangements for the registration of economic operators, exchange of information, the production of operational statistics and the duty of the Commission and the Member States to maintain and develop EMCS.

The first report on functioning of the Regulation is due in 2017, but it was considered useful to gather the first reactions of Member States to the use of the Regulation, particularly in the context of EMCS, since the Regulation mandates the use of EMCS under all normal circumstances.

So far, the new Regulation has not led to big changes in the way that Member States cooperate with each other. This is despite the increase in the responsibilities of the role of the Central Excise Liaison Office.

The replacement of e-forms by EMCS Phase 3 (as of January 2012) has been very successful and is seen as an improvement by the vast majority of Member States. Nevertheless, the existing content and workflow should be reviewed to see if further improvements to meet expressed business needs are possible.

Member States would like to see the development of a feedback message in EMCS, together with a provision in the appropriate Implementing Regulation, which would allow requesting Member States to inform, requested Member States about subsequent actions that they have taken on the basis of information received.

[3] Administrative reference code – see also : http://ec.europa.eu/taxation_customs/common/faq/faq_2898_en.htm for further details and explanations

Some Member States criticised the current EMCS fallback arrangements. The document flow does not necessarily involve the Member States and is considered to provide opportunities for fraud. These Member States would like to see the flow of documents pass via the concerned Member States, corresponding to the flow of the e-AD.

Some Member States would like to see a new message to allow for the transfer of information where the economic operator that is being checked is unable to produce documentation for the excise goods present.

Some Member States report that a proportion of requests for administrative cooperation are not answered within the one month or three month time-limits, or are not answered at all. A contributory factor may be that EMCS does not support the possibility allowed by Regulation (EU) 389/2012 of refusing a request for administrative cooperation, or of providing a justification for such a refusal, although it is possible to refuse a request for the history of an EMCS movement. Some Member States also suggested that the system might be enhanced to support partial replies to requests.

SEED is perceived as working well and is mostly reliable and up to date. Further improvements can be expected with the bringing into force of the service level requirements in Commission Implementing Regulation (EC) No. 612/2013.

Better support for risk analysis should be incorporated into EMCS in the future.

These considerations will be taken into account by the Commission in its future legal and technical work.

6. GENERAL CONCLUSION AND WAY FORWARD

The surveys launched by the Commission on the functioning of the main horizontal rules concerning the functioning of the arrangements for the computerised supervision of excise movements under duty suspension and the application of the administrative cooperation rules in the area of excise duties clearly demonstrate that the current rules are working satisfactorily. Nevertheless, numerous useful suggestions for improvements, particularly in the linkage of EMCS with customs applications, more standardisation of the fallback documents, and specific suggestions for some EMCS functionalities, have been received. The Commission intends to take these up, together with Member States in the relevant technical work, where appropriate including implementing acts.

On this basis a more comprehensive evaluation of the EU excise system and notably of the whole of EMCS and the implementation of Directive 2008/118/EC in its entirety will be carried out with a view to a possible legislative reform initiative as of 2015.