

**Recast of the Council the Directive 2008/118/EC  
concerning the general arrangements for excise duty**

**CECCM Position paper**

CECCM<sup>1</sup> welcomes the Commission's proposal on the recast of the Council the Directive 2008/118/EC concerning the general arrangements for excise duty published by the Commission on 25 May 2018. Together with its members, CECCM would like to suggest some amendments, notably in view of the upcoming Council meeting (Working Party on Tax Questions) due to be held on 9 November that will focus, among other issues, on this Recast Directive.

In general, CECCM supports Commission's view that export followed by external transit should be allowed for excise goods, starting with the solutions put forward to further harmonize excise and customs procedures (both on the import and export sides). However, there's a need to ensure that the principles of internal market are properly reflected, notably in the case of refund procedures following the destruction of goods or tax markings under customs supervision. Furthermore, there's a need to clarify that tax stamps should not trigger excise liability if not used in production or if the goods are not made available to the consumer, as an excise tax is first and foremost a tax on consumption.

CECCM also calls on the introduction of a harmonised "Right to be heard" for economic operators, in accordance with the Union Customs Code. Currently, national jurisdictions provide some recourse when adverse decisions are made but the ease of challenging such decisions in the field of excise varies greatly across the EU. The "right to be heard", which is already established in the European Customs Code, states that a person or an economic operator has a right to be heard whenever customs authorities "intend to take a decision that would adversely affect the person to whom the decision is addressed". This suggestion would notably reflect the Impact Assessment for the revision of Directive 2008/118/EC which clearly demonstrated that harmonising the "right to be heard" would have significant benefits for both economic operators and national administrations, especially in terms of suspected shortages or excesses.

Regarding guarantees, CECCM believes some improvements should be made, particularly on the need to ensure a mutual recognition for guarantees in the EU. Too many Member States still requires operators to lodge the guarantee in a financial institution established on its own territory. This substantially increases the administrative burden and ignores the principles of the internal market and free movement of goods and capital. In light of this, from an internal market perspective, there should be an option to have a guarantee in one Member State that would apply to all other Member States.

On the new definitions introduced by the Commission with regard to a 'certified consignor' and 'certified consignee', these should be further clarified by adding "for commercial purpose" to avoid any potential interpretation inconsistencies in relation to other movement regulations applying to duty-paid goods.

Moreover, CECCM would suggest maintaining the original terminology "holding" used by the Commission, instead of the new wording "processing and storage", as this will restrict the scope of

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<sup>1</sup> CECCM represents the common views of major European-based cigarette manufacturers such as British American Tobacco (BAT), Imperial Brands (IMB), and Japan Tobacco International (JTI).

entities engaging in illegal activities that tax authorities will be able to pursue (as, most frequently the criminal activities are based on informal, non-legalized arrangements) by setting a “higher standard” for them – tax authorities would need to prove that the persons engaged in criminal activities were processing the goods or storing them not only holding them or transporting them.

On excise refund, CECCM considers that mutual recognition of tax stamps destruction by government officials should be promoted at EU level to reduce the administrative burden for economic operators. Refund procedure should exist for excise goods which are returned / withdrawn from the market after their release for consumption due to quality issues. Importantly, tax stamps that have not been used in production should not trigger excise liability given that the excise goods have not been released for consumption.

CECCM suggests enabling economic operators to correct common typing errors before the movement ends and after the unique administrative reference code has been assigned, thus allowing electronic documents to be amended under supervision of the customs authorities, before the movement give rise to irregularities and unjustified duties. Additionally, in the case the economic operator is able to provide sufficient evidence that goods under duty suspension subject to an irregularity during the movement are held in the tax warehouse, or have left the territory of the Union, excise duties should not be levied. Both suggestions will reduce the administrative burden of economic operators.

Last but not least on the interactions between excise and customs, movements of excise goods to and from special fiscal territories should be facilitated, as according to the Directive they should be considered “exports” for excise purposes and the provisions related to export should apply *mutatis mutandis*. In practice, using the export procedures for excise goods means that the electronic administrative document would be always closed or confirmed in the Member State of dispatch, based on the confirmation of exit for export purposes. The customs documents would also reflect the EMCS documents for excise goods enabling control during the movement within the territory of the Union.

In annex, you will find a list of detailed amendments, reflecting our above-mentioned comments, for your information.

We express our availability to fully cooperate with all the stakeholders involved in the process of the recast of the Council Directive 2008/118/EC and kindly invite you to contact us should you need any further information.