



Brussels, 11 March 2019

## GUIDANCE NOTE

### WITHDRAWAL OF THE UNITED KINGDOM AND ASPECTS OF EXCISE IN RELATION TO MOVEMENT OF GOODS ONGOING ON THE WITHDRAWAL DATE

The United Kingdom submitted on 29 March 2017 the notification of its intention to withdraw from the Union pursuant to Article 50 of the Treaty on European Union. This means that as from 30 March 2019, 00:00h (CET) ('the withdrawal date')<sup>1</sup> the United Kingdom will be a 'third country'.<sup>2</sup>

This guidance note addresses a situation where the UK becomes a third country on the withdrawal date without a withdrawal agreement and hence without a transition period provided for in the draft Withdrawal Agreement.<sup>3</sup>

As of the withdrawal date, the Union rules in the field of excise no longer apply to the UK. The UK will be treated as any other third country and the rules in the field of excise will apply as of that date. Furthermore, the UK will no longer have access to the EU excise IT systems.

This guidance note provides guidance on the consequences of this for the cross-border intra-EU movement of excise goods between the UK and EU27, which started before the withdrawal date and will end thereafter. This document covers as well as the related features (e.g. registration and authorisations of economic operators, administrative cooperation).

This document should be read in conjunction with the Guidance Note on customs issues.<sup>4</sup> Intra-EU cross-border movements of excise goods are subject to conditions and procedures specified in Directive 2008/118/EC and its related implementing regulations. Excise goods may be moved under duty suspension or while already released for consumption ("duty paid"). In the former case (duty suspension), registration and

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<sup>1</sup> In accordance with Article 50(3) of the Treaty on European Union, the European Council, in agreement with the United Kingdom, may unanimously decide that the Treaties cease to apply at a later date.

<sup>2</sup> A third country is a country not member of the EU.

<sup>3</sup> Cf. Part four of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (OJ, C 66 I, 19.2.2019, p. 1).

<sup>4</sup> See also the "Notices to stakeholders" published by the Commission services in the area of EU customs law ([https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#tradetaxud](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud)).

authorisation of Economic Operators are pre-requisite; moreover, the procedures are computer-based and supported by pan-European IT systems called EMCS<sup>5</sup> for movement control and SEED<sup>6</sup> for registering excise economic operators.

The withdrawal of the UK may have an impact for Economic Operators involved in the intra-EU cross-border movements of excise goods to, from, and via the UK. In particular, consignors, consignees, and guarantors should prepare for a withdrawal of the UK without a withdrawal agreement and examine their new obligations and liabilities as of the withdrawal date.

## **1. OVERVIEW OF THE EXCISE CONSEQUENCES OF A “NO DEAL” WITHDRAWAL OF THE UK**

### **1.1. General Principles**

Excise goods that enter the excise territory of the EU from the UK or are dispatched or transported from the excise territory of the EU to the UK will respectively be treated as importation or exportation of excise goods in accordance with Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty.<sup>7</sup> Goods in transit crossing the UK land bridge between Ireland and the rest of the European Union will also be subject to additional customs formalities.

### **1.2. Pan-European IT system EMCS**

The Excise Movement and Control System (EMCS) on its own will no longer be applicable to excise duty suspended movements of excise goods from the EU into the UK, but those movements will be treated as exports, where excise supervision ends at the place of exit from the EU. Movements of excise goods to the UK will therefore require an export declaration as well as an electronic administrative document (e-AD). In case of movements of excise goods from the UK to the EU customs formalities will have to be completed before a movement under EMCS can begin.

### **1.3. Customs Formalities**

**If economic operators wish to continue moving excise goods to the UK or receiving goods from the UK they will need to familiarise themselves with customs formalities** and should be prepared to register with the customs authorities in the Member State where they are established, in order to be assigned an EORI number, if they do not already have one. Nothing prevents those economic operators submitting the required data for the registration (Annex 12-01 UCC-DA)<sup>8</sup> before the withdrawal date. Further details can be

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<sup>5</sup> Excise Movement and Control System

<sup>6</sup> System for Exchange of Excise Data

<sup>7</sup> OJ L9, 14.1.2009, p. 12

<sup>8</sup> Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 supplementing Regulation (EU) No 925/2013 of the European Parliament and of the Council as regards detailed rules concerning certain provisions of the Union Customs Code (OJ L343, 29.12.2015, p. 1)

found in the “Notices to stakeholders” published by the Commission services.<sup>9</sup>

Stakeholders of excise movements should also consult the “Guidance note – Withdrawal of the United Kingdom and customs-related matters in case of no deal”<sup>10</sup>, in particular for further details about Union status, import, export and transit.

## 2. ONGOING INTRA-UNION CROSS-BORDER MOVEMENTS

An “**ongoing movement**” is an intra-Union cross-border movement of excise goods that began but did not end before the withdrawal date.

### 2.1. General Principles

As of the withdrawal date:

- Unless explicitly stated otherwise in this document, UK authorisations and decisions are no longer valid in EU27. Consequently, any e-AD<sup>11</sup>, SAAD<sup>12</sup> or fallback excise document approved by the UK competent authority before the withdrawal date is no longer a valid proof of Union status for the goods.
- No electronic messages can be exchanged between the UK and EU27 Member States via EU-managed communication platforms such as CCN; consequently, no EMCS message and no CCN Mail message may be exchanged between the UK and EU27 Member States.
- No new intra-EU movement of excise goods to or from the UK may start; a corollary is that no new e-AD or SAAD may be assigned for such movements.
- Unless explicitly stated otherwise in this document, all ongoing movements of excise goods from or to the UK will be considered as movements from or to a third country with all applicable consequences (e.g. status of non-Union goods, applicable customs procedures, excise duty claims, or seizing of the goods in case of non-compliance).

Attention is drawn to the fact that Economic Operators, who start intra-Union cross-border movement of excise goods to/from the UK just before the withdrawal date, run a significant risk as that they can no longer be ended appropriately as mentioned in the following sections. This will generate a significant administrative burden for all stakeholders, with a risk of irregularities. Moreover, if the excise goods arrive at destination before the

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<sup>9</sup> [https://ec.europa.eu/taxation\\_customs/uk\\_withdrawal\\_en](https://ec.europa.eu/taxation_customs/uk_withdrawal_en); and [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#tradetaxud](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud)

<sup>10</sup> [https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices\\_en#tradetaxud](https://ec.europa.eu/info/brexit/brexit-preparedness/preparedness-notices_en#tradetaxud)

<sup>11</sup> electronic Administrative Document

<sup>12</sup> Simplified Accompanying Administrative Document

withdrawal date, Economic Operators should submit the report of receipt or SAAD Copy 3 (where applicable) as soon as possible to ensure the excise movement is also completed before the withdrawal date.

Moreover, stakeholders involved in an excise movement to or from the UK that is at risk not to be completed before the withdrawal date should take contingency measures (e.g. contact exporters or importers where appropriate) in due time, taking into account the distance between the UK and the EU27 Member States.<sup>13</sup>

## 2.2. Excise goods under Duty Suspension

For ongoing movements of excise goods under duty suspension to, from or through the UK:

- Unless explicitly stated otherwise in this document,
  - Reports of Receipt or of Export cannot be electronically exchanged and fallback documents are no longer automatically mutually recognised between EU27 and the UK;
  - Ongoing EMCS movements will have to be closed by ad-hoc means (e.g. Manual Closure); alternate evidence of exit of the EU27 territory may be used to this purpose. See “Annex I – Recommended alternate evidence of exit”
  - The data in fallback Administrative Documents related to excise movements from or to the UK may not be inserted into EMCS as of the withdrawal date as the UK will no longer be a valid Member State in this IT system. This exceptional case can cause an excise movement to remain partly or totally outside of EMCS.
- As of the withdrawal date, the consignor authorisation required under Council Directive 2008/118/EC issued by the UK is no longer valid. However, if excise goods from the UK are in the EU27 territory on the withdrawal date, Member States should consider such movements as valid and they should be allowed to be closed normally<sup>14</sup>.
- If excise goods from the UK have not entered the EU27 before the withdrawal date, then the excise movement cannot be completed normally. The excise goods would be subject to customs formalities applicable to imports and subject to excise duty at importation, or would need to be placed in a tax warehouse or a new EMCS movement started for the place of importation under the responsibility of a registered consignor authorised in the Member State of importation. Alternatively an external transit movement, as provided

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<sup>13</sup> For instance, a movement between the UK and Malta can take more than one month.

<sup>14</sup> E.g. via a Report of Receipt from the EU27 consignee or via a Report of Export from the EU27 Member State of Export; this report of receipt/export cannot however be forwarded to the UK, which was still the Member State of Dispatch at the beginning of the excise movement.

under the Union transit procedure, to the Member State of Destination can be started, which might reduce delays and formalities. Note: in any case, the EU27 Member State of Destination will have to close in an exceptional way (e.g. interruption) the excise movement in EMCS that began in the UK before the withdrawal date.

- If excise goods moving to the UK are still in the EU27 territory on the withdrawal date, the excise movements will no longer have a valid consignee. The consignor would have to issue a change of destination to report that the goods would be
  - returned to the consignor, or
  - sent to a new consignee in EU27 authorised to receive the goods, or
  - exported; this of course would require the lodging of an export declaration
- If excise goods moving to the UK from the EU27 have entered the UK but the excise movement has not been closed before the withdrawal date then the latter cannot be closed normally in EMCS, since there is no longer a valid consignee for an intra-EU movement. However, Member States should treat such movements as valid and to allow to close them manually based on alternate evidence of exit of the EU27 (see above).
- Excise goods moving through the UK between two EU27 Member States (e.g. from Belgium to Ireland) on the withdrawal date will be subject to customs formalities, if and where applicable, but the excise movement can still be completed normally.<sup>15</sup> The excise movement's eAD or fallback document will be a sufficient proof of Union status to avoid payment of import duty in the EU27. Other customs formalities will be the same as for other goods.

**Note:** as the UK will have acceded to the Convention on a Common Transit Procedure<sup>16</sup> by the withdrawal date, this should facilitate crossing the land bridge by allowing EMCS to be used in parallel with NCTS<sup>17</sup>, which should reduce delays and formalities.

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<sup>15</sup> Council Directive 2008/118/EC article 17(1)

<sup>16</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3A111025>

<sup>17</sup> New Computerised Transit System

The table below summarises the possibilities for ongoing excise movements under duty suspension:

Movement	Goods location on withdrawal date	
	in UK	in EU27
From UK to EU27	Customs formalities; closure (e.g. interruption) of the EMCS movement by EU27 MS of Destination + possible new e-AD from place of importation	Consider excise movement as valid and to be closed normally
From EU27 to UK	alternate evidence of exit (evidence that goods are in the UK) to close the movement at EU27 MS of Dispatch	Change of destination
Through UK	Customs formalities to enter EU27 MS of Destination and eAD/FAD is proof of Union status	in MS of Destination: normal completion in other EU27 MS: Customs formalities to go through UK if applicable and eAD/FAD is proof of Union status

### 2.3. Excise goods already released for consumption (Duty Paid)

#### Business-to-Business

For intra-EU business-to-business movement of excise goods already released for consumption to or from the UK started before but still ongoing on or after the withdrawal date:

- EU excise procedures no longer apply; in particular, SAAD paper documents are no longer mutually recognised between EU27 and the UK;
- If excise goods from the UK are in the territory of the EU27 on the withdrawal date, Member States should treat such movements as valid and to allow the consignee to close them.

Where the consignee of a duty paid business-to-business movement can prove that the goods entered the territory of the EU27 before the withdrawal date but has not submitted the SAAD to the Member State of destination before this date to close the movement, the competent authority of the EU27 Member State of Destination should accept the SAAD.

- If excise goods from the UK are still in the UK on the withdrawal date then they will be subject to import formalities on arrival in the EU27, including payment of excise duty at the border, unless the goods are placed under excise duty suspension within the EU27. A new excise movement would then have to be started from the Member State of importation to the Member State of Destination; alternatively an

external transit movement, as provided under the Union transit procedure, to the Member State of Destination can be started, which might reduce delays and formalities.

- If excise goods moving to the UK are in the territory of the EU27, other than the Member State of dispatch on the withdrawal date, Member States should apply the same approach to such movements as they apply to the exceptional export of goods released for consumption to other third countries. In particular, where goods under cover of an SAAD cross the territory of a Member State other than the Member State of dispatch, that Member State is recommended to continue to accept the SAAD as a proof of a valid excise movement and not to charge excise duty if export formalities are fulfilled and where the goods exit for the UK. This requires an export declaration to be lodged. The Commission also recommends that the Member State of dispatch refunds or remits the already paid excise duty if the consignor provides a proof of exit.

The goods can also be returned to the location of Dispatch under cover of the SAAD.

- If excise goods moving to the UK are in the territory of the UK on the withdrawal date then proof of the end of the movement and payment of duty in the UK would have to be obtained that met the needs of the MS of Dispatch. **There is no legal obligation for a Member State to refund excise duty in the case of exported duty paid goods.** However, if the certified copy 3 of the SAAD was issued by the UK<sup>18</sup> before the withdrawal date this should be treated as a normal excise movement and requests for refund of excise duty in the Member State of dispatch should be treated normally. Other refunds would be at the discretion of the MS of Dispatch.
- Excise goods moving through the UK between two EU27 Member States (e.g. from Belgium to Ireland) may be subject to Customs formalities, although import duty should not be charged, since the SAAD is a valid proof of Union status.

**Note:** as the UK will have acceded the Convention on a Common Transit Procedure by the withdrawal date, this should facilitate crossing the land bridge by allowing the use of NCTS<sup>19</sup>, which should reduce delays and formalities.

**Note:** Refunds of excise duty may not be available due to lack of legally acceptable evidence and the absence of a common legal base for refunds of excise duty on the export of duty paid goods. Any remission or reimbursement of excise duty in these circumstances is a national matter.

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<sup>18</sup> Or other document issued by the UK and accepted by the Member State of Dispatch, certifying that the goods have been delivered and the chargeable excise duty has been paid in the UK

<sup>19</sup> New Computerised Transit System

### **Business-to-Consumer (Distance Selling)**

The same principles as business-to-business apply mutatis mutandis to distance selling procedures for intra-EU cross-border distance sales of excise goods to or from the UK started before but still ongoing on or after the withdrawal date.

No distance sales of excise goods from or to the UK may start as of the withdrawal date.

#### **2.4. EMCS ARC Follow Up**

The "EMCS ARC Follow Up<sup>20</sup>" feature on the europa.eu website (to enter production in February 2019) will remain available for EMCS movements to/from the UK that started before the withdrawal date. However, as described above, no new information exchange to/from the UK can be received via trans-European IT systems for the movements that were not completed before the withdrawal date. Consequently, the status of such movements will not be updated in "EMCS ARC Follow Up" as of the withdrawal date.

For instance, if an ongoing movement to the UK is closed manually after the withdrawal date by the EU27 Member State of Dispatch then the manual closure will be visible only in the National Excise Application of this Member State and not in the common domain of EMCS. Therefore, the manual closure and the related status update of the movement will not be visible in EMCS ARC Follow Up. Member States are recommended to inform economic operators of this limitation and the unreliability of this information around the period of the withdrawal of the UK.

### **3. EXCISE DEBT, EXEMPTIONS AND GUARANTEE**

As of the withdrawal date

- no guarantee will be automatically mutually recognised between the UK and EU27 Member States;
- no exemption will be automatically mutually recognised between the UK and EU27 Member States;
- no excise debts will be managed between the UK and EU27 Member States; and
- there will be no legal basis for calling upon guarantees held by UK consignors and/or consignees.

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<sup>20</sup> EMCS ARC Follow Up is a feature that allows a user to enter an Administrative Reference Code and get limited information on the related EMCS movement (e.g. status, MS of Dispatch, MS of destination, list of main messages exchanged); it is a publicly available feature that requires neither identification nor authentication.



## 4. ECONOMIC OPERATORS REGISTRATION AND AUTHORISATION

### 4.1. Overview

This section applies only to the Economic Operators registered in SEED, i.e. authorised to perform intra-EU cross-border movements of excise goods under duty suspension.

### 4.2. Expiration of UK registrations and authorisations

As of the withdrawal date, the registration of Economic Operators established in the UK and their authorisation will be invalid. Consequently, they will not be able to send or receive new e-ADs (see also section **Error! Reference source not found.**). Member States are also recommended to check that e-ADs have not been accepted before Brexit, but with a dispatch date recorded in the future after the withdrawal date.<sup>21</sup> Member States should request that economic operators do not submit e-ADs with dispatch dates to after the withdrawal date.

No creation, update or new invalidations of registrations and authorisations of Economic Operators established in the UK will be possible after the withdrawal date.

The records of such Economic Operators and authorisations will be kept in SEED for 4 years so that ongoing movements can be closed manually and EU27 Member States' auditors and other staff can access UK Economic Operators data.

### 4.3. "Orphan" EU27 Tax Warehouses



As illustrated in the schema hereafter, it may happen that Tax Warehouses in the territory of EU27 are related only to Tax Warehouse Keepers established in the UK. In this case, such Tax Warehouses will be left "orphan" (i.e. with no authorised warehouse keepers established in EU27<sup>22</sup>) after the withdrawal date. This implies that such Tax Warehouses will actually not be able to operate intra-EU27 cross-border movements of excise goods under duty suspension.

Member States Administrations and Economic Operators are advised to take all necessary measures before the withdrawal date in order to avoid such situations. A measure can be to assign a valid warehouse keeper established in a EU27 Member State.

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<sup>21</sup> An e-AD can be submitted up to 7 days before the planned date of dispatch.

<sup>22</sup> After the withdrawal date, the record of the UK tax warehouse keepers will still be present in SEED but their authorisation will be invalid.

Before withdrawal date		After withdrawal date	
			
EU27 warehouse	UK authorised keepers only	EU27 warehouse	No EU27 authorised keeper

#### 4.4. Access of the UK to SEED

As of the withdrawal date, no SEED data will be shared with the UK. In particular:

- SEED data will not be synchronised any longer with UK national IT systems,
- the officials of the UK administration will have no access to SEED on WEB (SEED's human user interface, which allows reading and modifying SEED data).

This implies that as of the withdrawal date, EU27's and the UK's view of each other's Economic Operators data will be the "snapshot" at the time of the withdrawal date, when the latest data synchronisation will have occurred.

### 5. REFERENCE DATA

#### 5.1. Customs Office List and Excise Role

As of the withdrawal date all excise roles will be removed from all UK customs offices in the Customs Office List.

#### 5.2. Code Lists

As of the withdrawal date, excise IT systems' code lists will not be shared with the UK.

### 6. STATISTICS

As of the withdrawal date, the officials of the UK administration will have no access to excise trans-European IT systems' operational statistics provided by the central IT component CS/MISE, neither via its user interface nor via consolidated reports.

### 7. AVAILABILITY MANAGEMENT

As of the withdrawal date, no excise IT system's unavailability will be shared between the UK and EU27.

## 8. ADMINISTRATIVE COOPERATION

As of withdrawal date, the Administrative Cooperation Regulation<sup>23</sup> and the Naples II Convention, no longer apply to the UK.

All pending administrative cooperation procedures on the withdrawal date on the basis of EU law between the EU27 Member States and the UK will be discontinued on the withdrawal date.

As of the withdrawal date, no information exchange will be possible between the UK and EU27 Member States via excise trans-European IT systems such as EMCS or CCN Mail. It will no longer be possible to make new administrative cooperation requests or to receive or to send replies to open administrative cooperation requests.

However, mutual assistance requests concerning excise issues may be possible between certain Member States and the UK using the OECD-Council of Europe Convention of 25.1.1988 on mutual administrative assistance in tax matters.<sup>24</sup>

European Commission  
Directorate-General Taxation and Customs Union

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<sup>23</sup> Council Regulation (EU) No 389/2012

<sup>24</sup>Administrative cooperation in the field of excise duties: OECD-Council of Europe Convention of 25.1.1988 on mutual administrative assistance in tax matters between the UK (not including Gibraltar) and the following MS of the EU27: BE, BG, CZ, DK, EE, ES, FR, EL, HU, LV, NL, PL, PT, RO, FI, SI, and SE. Member States are advised to examine the detail content of their act of accession to check for potential reservations.

## **ANNEX I – RECOMMENDED ALTERNATE EVIDENCE OF EXIT**

A document in which the competent authority of the UK certify the delivery<sup>25</sup> or the entry into the UK territory in accordance with the rules and procedures applicable to that certification may be considered an appropriate alternate evidence of exit by EU27 Member States.

Moreover, EU27 Member States may also take into account anyone of the following pieces of evidence or a combination of them:

- (i) a delivery note;
- (ii) a document signed or authenticated by the economic operator who has taken the excise goods out of the customs territory of the Union certifying the exit of the goods;
- (iii) a document in which the customs authority of a Member State or a third country certify the delivery in accordance with the rules and procedures applicable to that certification in that State or country;
- (iv) records of goods supplied to ships, aircraft or offshore installations kept by economic operators;
- (v) other alternative pieces of evidence acceptable to the authorities of the Member State of dispatch.

Competent authorities in each EU27 Member State perform their own assessment of the validity of such evidence.

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<sup>25</sup>Even though fallback documents are no longer automatically mutually recognised between the UK and EU27, a fallback report of receipt certified by a UK competent authority may be considered an appropriate evidence of delivery by the competent authority of a EU27 Member State.