



Council of the European Union
General Secretariat

Brussels, 11 February 2019

WK 695/2019 ADD 2

LIMITE

BXT

WORKING PAPER

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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Technical expert seminar (EU 27) on Excise legislation and Excise administrative cooperation matters in relation to the UK withdrawal agreement (8 February 2019)

Delegations will find attached the slides that were presented at the above-mentioned seminar organised by the Commission DG TAXUD on 8 February 2018.



Brexit No Deal Excise

Technical seminar on excise-related matters of the withdrawal of the United Kingdom from the EU without a withdrawal agreement

8th February 2019

Brussels

DG TAXUD, units C2 and B4

Abbreviations

ACO	Administrative Cooperation
B2B	Business-to-Business
CET	Central European Time
CL	Code List
CT	Conformance Tests
e-AD	electronic Administrative Document
EO	Economic Operator
EU	European Union
IS	Information System
IT	Information Technology
MS	Member State
mvt	movement
NEA	National Excise Application
SAAD	Simplified Accompanying Administrative Document
WA	Withdrawal Agreement
WD	Withdrawal Date <u>without</u> withdrawal agreement

Agenda

- 1. Adoption of the agenda**
- 2. Introduction**
- 3. Update on the preparedness activities coordinated by the Commission**
- 4. Overview and update on Brexit without a withdrawal agreement scenario and its impact on Excise national administrations for movement control, administrative cooperation and registration & authorisation**
- 5. Discussion on possible ways to address the issues identified by the EU27 Member States**
- 6. Any other business**

INTRODUCTION

Context, Agreement, Principles



UK's withdrawal from the EU

- Withdrawal agreement ("Article 50 agreement")
- "Transition period" (part of the "Article 50 agreement")
- "Preparedness"
- "Future relationship"

Bottom-line: UK will be a "third country" on 30/3/19

WHAT IS THE WITHDRAWAL AGREEMENT?

The UK will leave the EU at midnight on 29 March 2019.

The Withdrawal Agreement ensures that this will happen in an **orderly manner**.



Article 50.2 of the Treaty on European Union:

"A Member State which decides to withdraw shall notify the European Council of its intention.

In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude **an agreement** with that State, setting out the arrangements for its withdrawal, taking account of the **framework for its future relationship** with the Union. [...]"



Withdrawal agreement

- Winding down of EU membership
- Agreed at negotiator's level (and endorsed by European Council – EU27)
- Ongoing movements: 'grandfathering of EU rules'

available here:

https://ec.europa.eu/commission/brexit-negotiations_en

What happens during the transition period – until the end of 2020?

EU law continues to apply

to and in the UK as if it were a Member State

UK remains in the EU Customs Union and the Single Market

with all four freedoms, and all EU policies.

UK remains bound by obligations stemming from all EU international agreements.

In the area of trade, this means that third countries keep the same level of access to the UK market. The UK cannot apply new agreements in areas of EU exclusive competence, unless authorised to do so by the EU.

UK is no longer represented in EU institutions, agencies and bodies



Transition period

- Full acquis applies to the UK
- Dynamic reference, i.e. including acquis that starts applying in the transition period
- No UK participation in EU institutions or EU bodies
- No UK participation in Member State meetings (subject to exceptions)
- Full role of Court of Justice, Commission, Court of Auditors, etc.
- UK remains subject to obligations of international agreements concluded by the EU
- Financial settlement = rights and obligations of the MFF



Transition period

- No participation in EU decisions-making nor EU decision-shaping
- No attendance of meetings of institutions
- No participation in decision-making and governance of any EU body
- No attendance of Member State meetings (subject to exceptions, cf. in particular Article 128(5) of the draft Withdrawal agreement)



Transition period

Duration: until 31 December 2020 (incl.)

Possibility of renewal once

(to be decided before 1 July 2020)

Withdrawal Agreement still needs to be ratified



Brexit preparedness and contingency

Preparedness

Communication of 19 July 2018 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019';

Contingency

Communication of 13 November 2018 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: a Contingency Action Plan';

Communication of 19 December 2018 'Preparing for the withdrawal of the United Kingdom from the European Union on 30 March 2019: Implementing the Commission's Contingency Action Plan.'

6 Principles of contingency

1. "Contingency measures should **not replicate the benefits of membership of the Union**, nor the terms of any transition period, as provided for in the draft Withdrawal Agreement;
2. Contingency measures will in general be **temporary in nature**, and should in principle not go beyond the end of 2019;
3. Contingency measures will be adopted **unilaterally** by the EU in pursuit of its interests and can therefore, in principle, be revoked by the EU at any time;
4. Contingency measures must be adopted respecting the **division of competences** provided for by the Treaties as well as the principle of subsidiarity within the EU;
5. National contingency measures must be **compatible** with EU law, including the international obligations of the Union; and
6. Contingency measures **will not remedy delays** that could have been avoided by preparedness measures and timely action by the relevant stakeholders."



What has been done by the Commission

- *3 Communications;*
- *88 Brexit preparedness notices and Q&As;*
- *Council Working Party (Article 50) Brexit preparedness seminars;*
- *Brexit preparedness technical expert seminars;*
- *Legislative initiatives and legal acts on Brexit preparedness and contingency;*
- *Tour of EU27 capitals.*

More information:

https://ec.europa.eu/info/brexit/brexit-preparedness_en



Future relationship

Political declaration setting out the framework for the future relationship between the European Union and the United Kingdom"

available here:

https://ec.europa.eu/commission/brexit-negotiations_en

To be negotiated once the United Kingdom is a third country

PREPAREDNESS ACTIVITIES COORDINATED BY COM

Excise and Brexit “No Deal”

Volumetrics and Guidance Note

Key dates

- 23/06/2016 *UK Referendum*
- 29/03/2017 *Activation of article 50 by the UK*
- 29/04/2017 *COM mandated by EU27 MS for Brexit negotiations*
- 25/11/2018 *withdrawal agreement signed*
still to be ratified
- 15/01/2019 *WA rejected by UK parliament*
- *Withdrawal date:* *29/03/2019 midnight CET*
UK is a Third Country

Volumetrics – ongoing movements

		Nb mvt/y	Duration to close mvt (day)	Nb open mvt on withdrawal date
Duty suspension	To UK	275 000 ⁽¹⁾	15 ⁽¹⁾	11 000⁽⁴⁾
	From UK	150 000 ⁽¹⁾		6 000⁽⁴⁾
Duty paid B2B	To UK	8 250 ⁽²⁾	30 ⁽³⁾	650⁽⁴⁾
	From UK	4 500 ⁽²⁾		350⁽⁴⁾

(1) EMCS operational statistics (see Annexes)

(2) 2015 evaluation of Directive 2018/118/EC: 3% of duty suspension movements

(3) Best guess, as no figures available to TAXUD

(4) Pro-rata of the duration to close a movement

Volumetrics – UK authorisations

About 11 400 existing valid UK authorisations in SEED

	Nb UK authorisations
Active	8 600
Inactive	2 800
Total	11 400

Excise guidance note – governance

- *COM document*
- *Governance body: ITEG
Indirect Taxation Expert Group*
- *Discussion at EU 27*
- *Endorsement by consensus at EU 28*

Excise guidance note – status & plan

- *Sep 2018 – Jan 2019: COM internal review*
- *Feb 2019: submission to EU27 MS*
- ***Feb-Mar 2019: endorsement and publication***
 - Via written procedure

PREPAREDNESS ACTIVITIES COORDINATED BY COM

Excise & Brexit “No Deal”

IT SYSTEMS

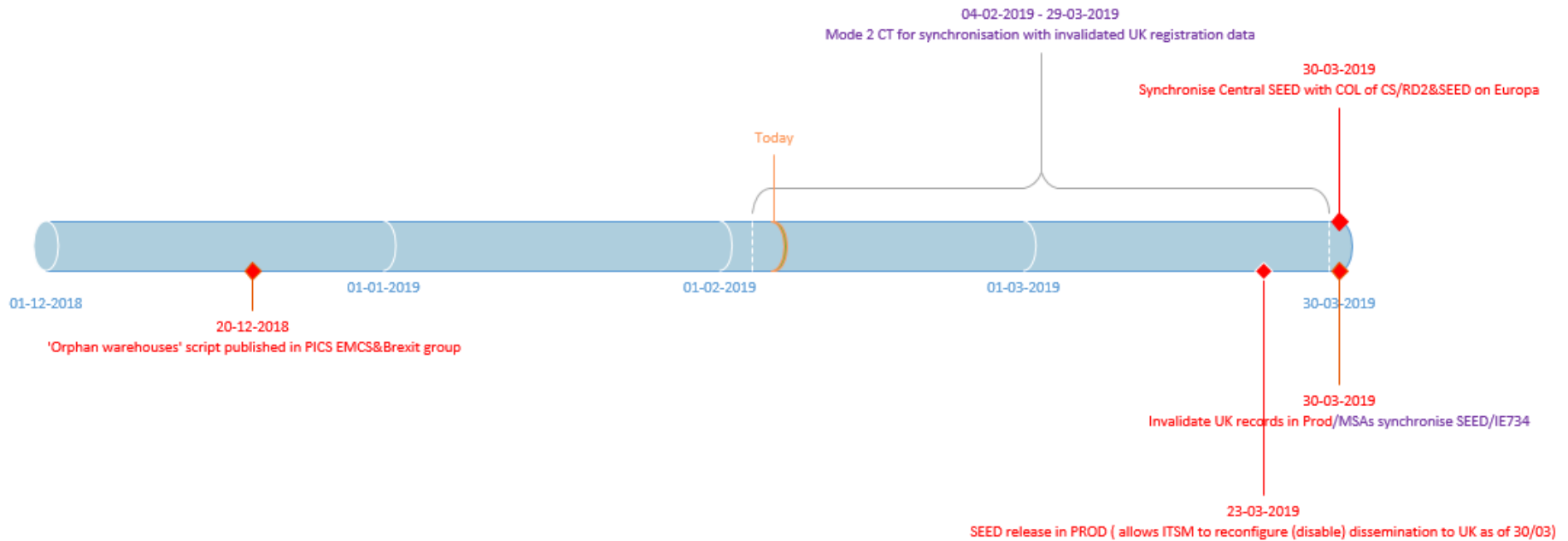
History


- *IT preparation started in Q1/2018 for both scenarios:*
 - Withdrawal agreement
 - No deal
- *First workshop with EU27 MS in April 2018*
- *Several webinars with EU27 MS in Q2-Q4 2018*


General Principles

- *MSA-UK is expected to invalidate traders in SEED and the excise role in the Customs Office List in CS/RD2 by 30/03/2019. If MSA-UK will not perform these actions, COM will ensure the appropriate invalidations in both applications (SEED and CS/RD2)*
- *All UK records must be invalid after 30/03/2019 in National SEED applications and UK will be removed from the MSAs code list*
- *Access rights to CCN, CCN Mail3, CS/MISE, CTA, Synergia, SMT, PICS, CIRCABC will be ceased*
- *EMCS will not be used for automated exchanges with MSA-UK and any open movements (i.e. not in a final state) after the withdrawal date will not be handled normally within EMCS*
- *The Commission will ensure the readiness of the central applications to conform with the 'BREXIT – No Deal' scenario*

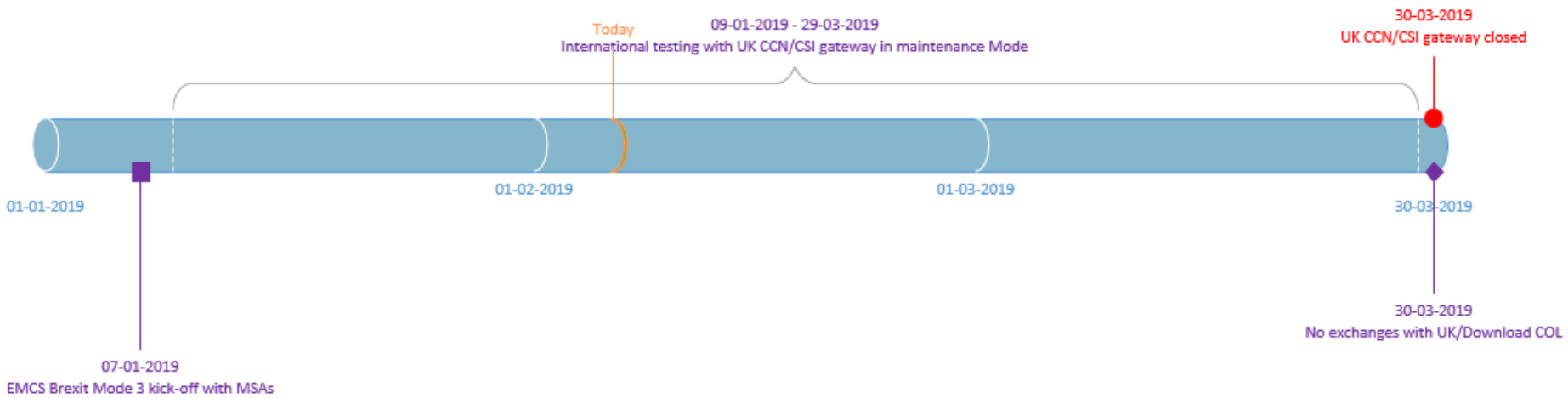
System for Exchange of Excise Data - SEED





 Actions with MSAs involved

 Actions for TAXUD

Excise Movement and Control System



 Actions with MSAs involved

 Actions for TAXUD

Communication

- *EMCS&Brexit group has been created in PICS where National Project Managers from EU27 receive information and launch discussions*
- *Regular Brexit related technical meetings take place in Webex platform*
- *Individual conformance testing coordination calls during CT*

Impact of the UK withdrawal without a withdrawal agreement

MOVEMENT CONTROL - DUTY SUSPENSION

Main recommendation

Communicate to Economic Operators on the extra burden and negative consequences of ongoing excise movements on withdrawal date:

*« unless you have no choice, **do not start an intra-EU cross-border movement of excise goods to/from the UK if there is a risk it is not completed before the withdrawal date** »*

Open movements: to UK



Issue:

- no longer valid consignee
- excise movement cannot be closed normally

Possible solution:

- change of destination
- if changed to "export" then move goods to a Customs office and export declaration

Open movements: to UK



Goods location on
withdrawal date

Issue:

- no longer valid consignee
- excise movement cannot be closed normally

Possible solution:

- evidence that goods were delivered in UK
- manual closure in EMCS at EU27 MS of Dispatch

Open movements: from UK



Goods location on
withdrawal date

Issue:

- excise movement cannot be closed normally
- third country goods

Possible solution:

- import to EU27
- excise ad-hoc completion (e.g. interruption) in EMCS at EU27 MS of Destination

Open movements: from UK



Goods location on
withdrawal date

Issue:

- consignor and movement invalid (irregularity)
- goods keep Union status

Possible solution:

- allow normal excise movement completion
- normal closure in EMCS at EU27 MS of Destination [except no RoR sent to UK or consignor]

Open movements: through UK



Goods location on
withdrawal date

Issue:
- none

Notes:
- normal movement
completion

Open movements: through UK



Goods location on
withdrawal date

Issue:

- goods travel through a third country

Note:

- Customs procedures apply (e.g. entry into EU27)
- eAD, FAD valid proof of Union status
- No excise issue*

* Directive 2008/118/EC art. 17(1)

After withdrawal date

- *No new excise movement under duty suspension between UK and EU27 may start*
- *No new e-AD between UK and EU27 may be submitted*

Point for attention – e-AD validated before movement starts

- *e-AD may be submitted up to 7 days before the actual start of the physical movement of excise goods ((EC) 684/2009 article 3(2))*
- ⇒ *Risk of excise movement to/from UK*
- *e-AD validated before withdrawal date, and*
 - *start of physical move after withdrawal date*

Impact of the UK withdrawal without a withdrawal agreement

MOVEMENT CONTROL

-

DUTY PAID



Open Duty Paid movements: to UK



Goods location on withdrawal date

Issue:

- no longer valid consignee
- excise duty liable
- guarantee lodged in UK

Possible solutions:

- SAAD proof of a valid excise movement
 - change of destination: return to dispatch location
- or
- export formalities + goods have exited for the UK
- => no charge of excise duty

Open Duty Paid movements: to UK



Goods location on
withdrawal date

Issue:

- no longer valid consignee
- MS of Destination no longer a MS

Possible solution:

- evidence that goods were delivered in UK
- refund excise duty at MS of Dispatch

Open Duty Paid movements: from UK



Goods location on withdrawal date

Issue:

- MS of Dispatch no longer a MS
- excise movement cannot be completed normally

Possible solutions:

- import to EU27
 - start new excise movement from EU27
- MS of Importation to MS of Destination



Open Duty Paid movements: from UK



Goods location on
withdrawal date

Issue:

- consignor invalid

Possible solutions:

- SAAD proof of a valid excise movement
- Allow movement to carry on and to be closed normally

Open Duty Paid movements: through UK



Goods location on
withdrawal date

Issue:
- none



Notes:
- normal movement
completion

Open Duty Paid movements: through UK



Issue:

- goods travel through a third country

Note:

- Customs procedures apply (e.g. entry into EU27)
- SAAD valid proof of Union status
- No excise issue

After withdrawal date

- *No new excise duty paid movement may start between UK and EU27 for goods already released for consumption*
- *No new SAAD between UK and EU27 may be submitted*

Main recommendation - reminder

Communicate to Economic Operators on the extra burden and negative consequences of ongoing excise movements on withdrawal date

*“unless you have no choice, **do not start an intra-EU cross-border movement of excise goods to/from the UK** if there is a risk it is not completed before the withdrawal date”*

Main recommendation - complement

Communicate to Consignees on the interest of closing the excise movement asap if they have taken delivery of the goods before the withdrawal date

"if you have taken delivery of excise goods before the withdrawal date, submit the report of receipt or SAAD (where applicable) to the competent authority of the Member State of Destination as soon as possible"

Impact of the UK withdrawal without a withdrawal agreement

GUARANTEE MANAGEMENT

Excise Guarantee and Debt after withdrawal date

- *Guarantee not valid between UK and EU27*
- *Exemptions not applicable between UK and EU27*

Impact of the UK withdrawal without a withdrawal agreement

REGISTRATION & AUTHORISATION

UK EO records after withdrawal date

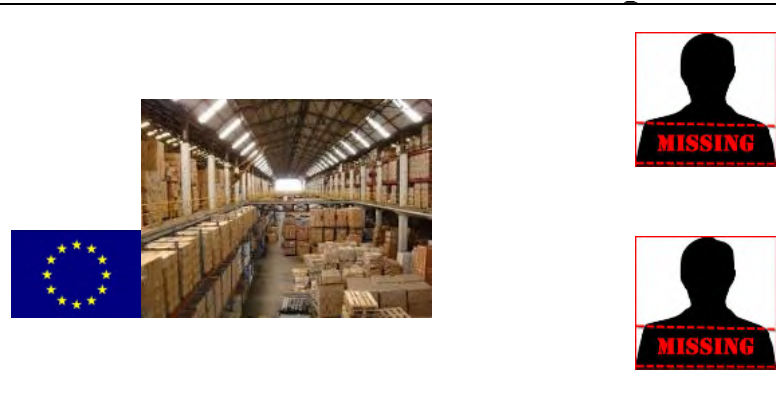
- *No new UK EO records shared with EU27*
- *Existing UK records*
 - Kept in SEED register "read-only"
 - Invalidated
 - Invalidation date set to withdrawal date*
- *No synchronisation UK – EU27*

* If the authorisation has not been invalidated before

Point for attention I: "orphan" tax warehouses (1/3)

Before withdrawal date

After withdrawal date



EU27 warehouse

UK authorised
keepers only

EU27 warehouse

No EU27 authorised
keeper

Point for attention I: "orphan" tax warehouses (2/3)

- *UK warehouse keeper*
 - "GB" in SEED number,
or
 - Address in the UK

*Directive 2008/118/EC article 4(1): 'authorised warehousekeeper' means a natural or legal person authorised by the competent authorities of **a** Member State, in the course of his business, to produce, process, hold, receive or dispatch excise goods under a duty suspension arrangement in a tax warehouse*

Point for attention I: "orphan" tax warehouses (3/3)

Possible solutions

- *Encourage orphan tax warehouse owner to assign a warehouse keeper established in EU27 before withdrawal date*

Point for attention II: IT risk on SEED synchronisation

- *11 400 UK records to invalidate*
- *If all records invalidated on the withdrawal date then risk of SEED « saturation »*
 - Central SEED application, and/or
 - National SEED applications
- *Risk mitigation: being discussed TAXUD + EU27 MS IT teams (e.g. conformance tests, time slot per MS to synchronise with central SEED)*

Point for attention III: Date of invalidation

- *SEED allows*
 - Date of application
 - No time of application
- *SEED dates start at 00:00 GMT (not CET)*
- *UK SEED records will be invalid as of
30/03/2019 00:00 GMT (01:00 CET)*

Excise ACO – ongoing requests



Existing ACO requests from/to UK not replied to and not closed before withdrawal date

- Cannot be replied to or completed normally after withdrawal date*
- To be closed by any ad-hoc means available at each MS' National Excise Application*

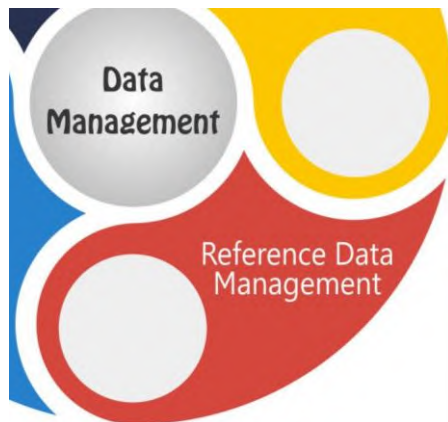
Excise ACO after withdrawal date (2/2)



- *OECD-Council of Europe Convention of 25.1.1988*
- *Certain MS – UK*
- *Point for attention: data protection and adequacy measures*

Impact of the UK withdrawal without a withdrawal agreement

REFERENCE DATA



After withdrawal date (1/3)



Excise role removed from UK "Customs Office code list"



After withdrawal date (2/3)

- 'GB' removed from "Member State code list"*
- *Immediate removal after withdrawal date requested by several EU27 MS*
 - *Impact on EU27 exchanges of information for "before withdrawal date" data*
 - General query to retrieve an e-AD
 - ACO requests
 - Possibly other depending on NEA implementation



After withdrawal date (3/3)

IT dependency MS code list – SEED records

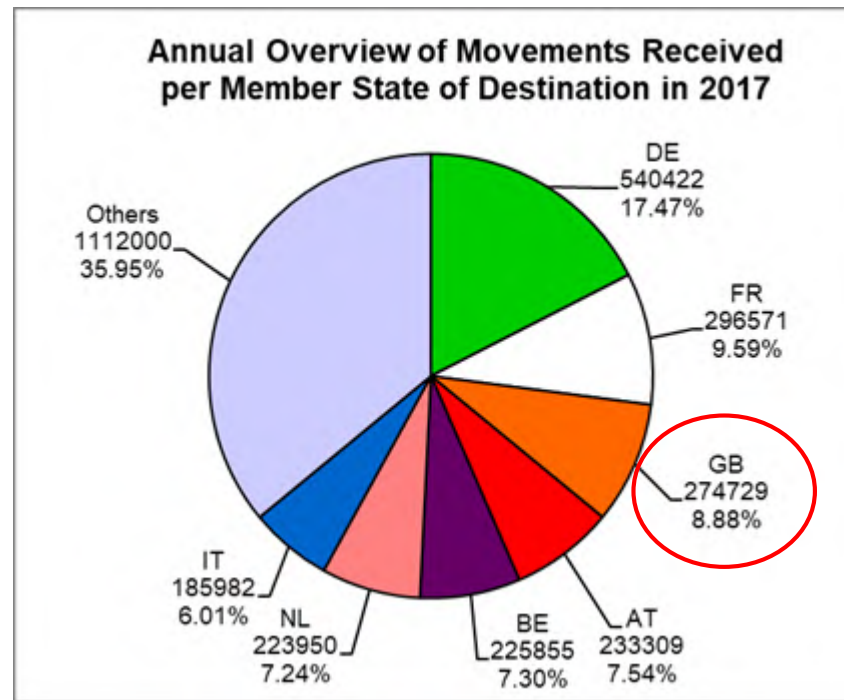
- If National SEED applications perform semantic validation
Then synchronisation of invalidated GB SEED records requires “GB” to still be in “Member States code list”
- Reduce volume of synchronised data by retrieval of “GB” records only

ISSUES IDENTIFIED BY EU27 MS

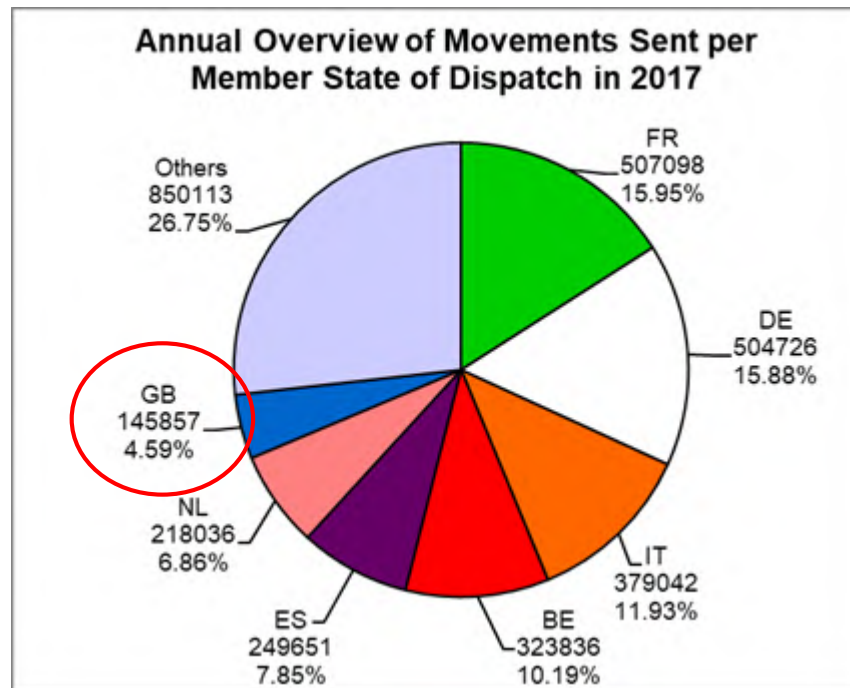


ANNEXES

Volumetrics – Movmts ending in UK



Volumetrics – Movmts starting in UK



For 2017...

