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Delegations will find attached document SWD(2016) 337 final.

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COMMISSION STAFF WORKING DOCUMENT

Executive Summary of the Evaluation

Accompanying the document

REPORT FROM THE COMMISSION TO THE COUNCIL

on the evaluation of Council Directive 92/83/EEC on the structures of excise duties on alcohol and alcoholic beverages

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EXECUTIVE SUMMARY

Directive 92/83/EEC, the alcohol "structures" Directive (hereinafter also referred to as “the Directive”) was identified for a retrospective evaluation. The specific arrangements for the taxation of alcoholic beverages were introduced on 1st of January 1993 in the run-up to the completion of the internal market, through the parallel adoption of two legislative instruments -the structures Directive and the rates Directive, and little has changed since then. The evaluation was proposed because of the significant developments since 1992 in the alcohol sector, the range of beverages manufactured and available now, and how Member States interpret those original rules of the structures of excise duty in this now diverse and changed market. In addition, there is a reporting requirement in Article 22 (6) to review the arrangements and report to the Council, in 2015, on the rules for 3 Member States to apply a reduced rate for ethyl alcohol produced by fruit growers' distilleries producing more than 10 HL p.a. from fruit supplied by fruit growers' households, for personal consumption limited to 50L of ethyl alcohol per fruit producing household per year. The wider evaluation examined whether the current arrangements do not impose unnecessary compliance costs and whether there is a scope for reducing costs for businesses and national administrations, while ensuring the objectives of the Directive could be met effectively.

This retrospective evaluation was designed to provide the Commission with information to assess the current policy regarding the structures of alcohol excise duties. It had to allow the Commission to:

- Assess the extent to which the Directive meets the objectives it sought to achieve
- Verify whether the original objectives continue to be relevant
- Identify legislative weaknesses caused by the Directive which result in negative consequences for stakeholders
- Assess the coherence of the Directive's provisions with EU and international law
- Examine the added value of the established common rules at EU level
- Formulate recommendations on how best to address the identified issues, such as EU added value, efficiency, relevance etc.

The evaluation followed the logical order of the legislative act, covering the definitions of different categories of alcoholic beverage for excise purposes, reduced rates, exemptions and other legislative provisions.

The evaluation was supported by an external comprehensive study, including:

- desk research
- survey questionnaires - open to responses between August and November 2015 - to Member States (all 28 replied), economic operators (323 replies) and to the public / EU citizen (328 replies)
- 5 targeted case studies to Member States administrations (tax/customs/finance and health authorities) and economic operators active in the alcohol market and/or associations, in the areas of classification for tax purposes of alcoholic beverages, application of reduced rates for small producers, the functioning of the exemptions for denatured alcohol, exemptions applicable to provide production for own consumption and coherence of the Directive with health aspects.

- triangulation and analysis of the data and feedback

The responses from stakeholders adequately covered the different product categories, all countries and the coverage also included a good distribution between small and large operators.

The overall the sample size and composition is considered balanced and representative, and the analysis performed at EU level and for each sector is sufficiently accurate.

The evaluation found that the Directive was on the whole, effective in achieving the three objectives of a clear and consistent framework, a “level playing field”; and limiting the risk of circumvention of excise duty.

However, there are several points where the Directive does not provide the necessary legal clarity, creating an adverse effect on the functioning of the internal market, in the areas of classification of certain products, the exemptions applied to completely denatured alcohol, and for products manufactured using denatured alcohol which are not for human consumption, and reduced rates for small producers.

Fraud is evident in the area of denatured alcohol and the failure to provide unambiguous classificatory definitions may result in the Member States losing revenue. In the area of the abuse of the exemption for denatured alcohol, although fraud is not a major concern in the majority of Member States, the evaluation showed that in some Member States, it was significant. However, when asked about the extent to which excise duty loss was due to fraudulent activity, most Member States indicated "do not know". In the area of classification, the evaluation showed that the current rules do not accurately capture all existing products, nor do they provide a sufficient degree of legal certainty and clarity, particularly in the light of technological and market developments. These weaknesses result in an increased risk of lost revenue, in the application of differing rates of taxation, increased administrative costs and in an increased potential for competitive distortions. The evidence is clear that systemic flaws in the legislative environment are at the origin of these weaknesses. For example, detailed modelling was performed to look at the potential impact on tax revenues, through scenarios in which total volumes of a particular product group are taxed under one category (e.g. fermented beverages) and are then moved to another category (e.g. intermediate products) — and vice versa. The results varied among the selected case study Member States, depending on consumption patterns of the particular alcoholic strength of the products. This should be further examined at impact assessment across a wider population.

The evaluation found that the Directive is inefficient in the area of cost of compliance and administrative burdens which is now therefore identified as a reason for simplification. This evidence stems not from the application of systematic obligations of the legislation; rather, that they are the result of the complications, disputes and the inconsistent application of the Directive’s provisions that arise from situations in which stakeholders disagree on their correct interpretation. The 2 main areas are the classification of products and the management of exemptions for denatured alcohol.

The evidence from the evaluation, when assessing effectiveness and efficiency, shows that the current Directive provides the uniformity and harmonised conditions are necessary to ensure the proper functioning of the internal market, facilitate trade, prevent competitive distortions, reduce administrative costs and prevent fraud. Moreover, the evaluation results indicate that the same results would not be possible if an alternative national, bi-lateral or international approach had been used.

According to the evaluation, the provisions still correspond to the needs of the stakeholders, although there are a few provisions which are no longer used or needed.

In relation to the protection of public health the main findings of the evaluation show that all stakeholders (tax and health administrations in the Member States, EU citizens and industry) clearly expect the Directive to respond to the health risks connected with the consumption of alcohol. Some of the administrations (tax and health) suggested that excise duties should be imposed as a response to the negative externalities associated with alcohol consumption, and that the Directive should therefore encourage the production of alcohol and alcoholic beverages having low alcoholic strength. Their objective being this should lead to a general reduction in the consumption of alcoholic beverages by increasing the price of higher strength alcohol and alcoholic beverages. There was also a view – supported by the health associations and health administrations in the Member States - that, for health policy purposes, it would be beneficial to tax alcohol and alcoholic beverages on their alcoholic strength rather than their volume. With regard to the effect on health policy of the exemptions, there were 3 emerging areas connected to health issues: the exemptions for private production for own consumption; the potential introduction of exemptions for small producers; and the exemption of denatured alcohol, including the risk of its consumption.

Concerning the coherence of the rules with other EU and international legislation, there are a number of references in the Directive 92/83/EEC which need to be updated (CN codes) to mitigate problems of interpretation, but there were no other significant practical problems, and the Directive and international agreements were found to be consistent.

Finally, the evaluation recommended a targeted revision of the Directive in order to enable it to fully respond to the challenges identified. The main areas where the Commission is to present recommendations are in the areas of the exemptions applied to denatured alcohol, classification and reduced rates for small producers. Some areas may, however, be mitigated through soft law or through actions taken at Member State level.