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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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1. INTRODUCTION

According to Article 22¹, paragraph 7 of Directive 92/83/EEC² on the harmonisation of structures of excise duty on alcohol and alcoholic beverages (the "structures" Directive) the Commission is required to review the arrangement for reduced rates for private production / own consumption of alcohol in Hungary, Romania and Slovakia during 2015 and report to the Council on possible modifications.

The Directive as a whole has not been evaluated since its adoption in 1992, as there is no requirement to periodically evaluate and report to the Council other than in Article 22. In view of its commitment to ensuring Regulatory Fitness and Performance (REFIT) under its better regulation agenda the Commission has decided to evaluate the Directive in its totality. This report presents the results and conclusions of this evaluation and responds to the review requirements in the Directive.

2. BACKGROUND

Directive 92/83/EEC sets out the rules on the structures of excise duty applied to alcohol and alcoholic beverages. In particular, it defines and classifies the different types of alcohol and alcoholic beverages, and provides a legal framework for reduced rates in some sectors, exemptions and certain derogations.

The Directive aims to ensure the proper functioning of the internal market, including the avoidance of distortions of conditions of competition, ensuring the free movement of products in this sector. The Commission is committed to ensuring that EU law is fit for purpose and achieves its objectives at least cost and burdens.

¹ Article 22(7) Hungary, Romania and Slovakia may apply a reduced rate of excise duty applied to ethyl alcohol produced by fruit growers' distilleries producing more than 10HL p.a. from fruit supplied to them by fruit growers' households, limited per household to 50 L of fruit spirit p.a. and destined exclusively for their own consumption.

² [Council Directive 92/83/EEC](#) of 19 October 1992 on the harmonisation of structures of excise duty on alcohol and alcoholic beverages

3. THE EVALUATION OF THE DIRECTIVE

The Commission undertook an evaluation of the functioning of the Directive, which was supported by an external comprehensive study (hereafter: study).³

Following consultation with Member States, it was agreed that the objective of the evaluation should be to assess whether the legislation leads to unnecessary administrative costs and burdens for both national administrations and economic operators and to identify elements which could be further assessed as part of an impact assessment on the level of compliance and security in collecting excise duties on alcohol and alcoholic beverages. The evaluation started in December 2014 and was finalised in July 2016. A Steering Group composed of staff from all the relevant Commission Services oversaw the execution of the evaluation.

The evaluation follows the new Better Regulation Guidelines of 19 May 2015⁴, covering the five main evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value. The evaluation collected stakeholder views through targeted surveys and also through an open public consultation. The evaluation is presented in more detail in the accompanying Commission Staff Working Document.

3.1 SCOPE OF THE EVALUATION

The scope of this evaluation is a retrospective assessment of the Directive's functioning under the existing, general, legal framework. It covers all provisions, beginning with the definitions of different categories of alcoholic beverage for excise purposes, reduced rates, exemptions and other legislative provisions.

The report concentrates exclusively on structures of excise duties on alcohol and alcoholic beverages, and does not discuss or combine the findings in any way with the requirements laid down in Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages (the "rates Directive").

3.2 METHODOLOGY

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

³ <https://circabc.europa.eu/faces/jsp/extension/wai/navigation/container.jsp> - consortium led by Ramboll Management Consulting AS, Coffey and Europe Economics

⁴ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

- a series of recommendations was drawn up to address the problems identified.

3.3 RESULTS OF THE EVALUATION

3.3.1 The proper functioning of the Internal Market, avoiding distortions in competition

The proper functioning of the internal market in the context of the excise structures on alcohol and alcoholic beverages, is understood to include three core components:

- i) a clear and consistent framework for excise duties to be paid on alcohol and alcoholic beverages;
- ii) a “level playing field” in terms of competition between economic operators;
- iii) limited risk of circumvention of excise duty.

Overall, the Directive was found to be partially effective in achieving these three objectives. Through the harmonisation of structures, the approximation of rates and the definition of the scope of application of excise duty, at a general level, the Directive allows intra-EU trade to take place free of significant tax-related trade barriers, or major competitive disruptions between economic operators operating in the same sector of activity.

The Directive successfully structures the taxation of alcoholic beverages in the categories specified in Directive 92/84/EEC which, in turn, sets minimum excise rates. There are clear rules with regard to the possibility of setting reduced rates for small producers or low-strength alcohol products. This provides a consistent framework for the taxation of alcohol.

Despite this overall positive conclusion, there are several points where the Directive does not provide the necessary legal clarity, and the issues this creates have an adverse effect on the functioning of the internal market.

The classification of certain products (of which there are potentially hundreds in each product sector) remains unclear because they could fall into any of several categories, resulting in different treatment in different Member States and complications when these products have to be transported between Member States. Similarly, the difficulties encountered with the interpretation of the provisions for exempting denatured alcohol hinder the proper functioning of the internal market, as the conditions for such exemption vary considerably across the Member States. Not one Member State is applying the rules the same as another, across all the treatments – e.g. national formulation of one Member State, recognised in another territory, the ability to manufacture another Member State formulation in their territory, third country denaturing formulations and the general principle of mutual recognition differs across the EU28.

Where the Directive does set clear rules, it also ensures similar conditions for economic operators across the EU. Their products are taxed on the basis of principles that apply in all the Member States. However, the absence of clarity regarding the exemptions for denatured alcohol permits wide room for interpretation by the Member States. In turn, this leads to imbalances in competition, because the producers and users of denatured alcohol located in some Member States have a much wider choice of denaturing formulations than those in other Member States.

Furthermore, the legislation prevents Member States from consistently applying reduced rates to small producers in respect of all the categories of alcoholic beverage. This limits the ability of Member States to correct potential market imbalances where such a policy objective might be otherwise worth pursuing.

3.3.2 Safeguarding the budgetary interests of the Member States

Concerning the potential loss of excise duties for Member States, this evaluation considered:

- i) fraud involving alcohol and alcoholic beverages, and specifically the extent to which fraud involving denatured alcohol is taking place;
- ii) the potential misclassification of alcoholic beverages into a tax category lower than was intended by the Member States.

The Directive's provisions for ensuring the denaturation of alcohol intended for industrial purposes aim to protect the integrity of the exemption, and prevent such alcohol from being converted back into consumable alcohol. Overall, the available data on fraud showed that misuse of the exemption for denatured alcohol represents a very low proportion of total alcohol-related fraud. This is because many Member States do not collect and / or analyse the data to the level of detail required to make an evidence based judgement. However, in a few Member States the findings suggest that fraud with denatured alcohol is non-trivial. Further investigation – working with the national authorities such as health and consumer protection who may well collect data on illicit product removed from the market - would be needed to identify whether this fraud can be traced back to a deficiency in the Directive and whether as a result of that investigation, it would be necessary to define denatured alcohol, how it is manufactured and used in order to qualify for the exemption, and require economic operators to use denaturing formulations which cannot easily and cheaply be removed from the product. It is clear that the ambiguities in the current Directive are responsible for the wide interpretation of the rules. Whether this can be linked to fraud can only be proven with more extensive research with non-fiscal authorities.

Several different product types were identified whose classification is not straightforward, and which could arguably be assigned to two or more different tax categories. The problem lies at the root of what the correct definition is of a fermented beverage. Some of these products (e.g. wine based drinks with ethyl alcohol added) have been regarded as deliberately manufactured in such a way as to take advantage of / abuse a favourable tax category. Besides creating competitive distortions, the failure to provide unambiguous classificatory definitions may result in the Member States losing revenue. The study has conducted preliminary research into how the differing classification categories affect revenue collection, but what is needed now is a further examination of the impact any potential changes to those classifications would have on the current revenues of the EU 28, where both are affected. This would involve detailed analysis of the main product sectors, and an exercise to re-classify them under each potential new category.

3.3.3 Cost of compliance and administrative burdens – scope for reduction

Directive 92/83/EEC does not directly impose compliance costs on economic operators. By including certain products in the scope of excise duty, it indirectly subjects those sectors to the provisions of Directive 2008/118/EC⁵, which sets out the rules and conditions for holding and moving excise duty goods.

⁵ COUNCIL DIRECTIVE 2008/118/EC, of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

The evaluation of Directive 92/83/EEC has identified multiple areas in which the application of the provisions of the Directive is resulting in increased costs for both economic operators and Member States. Consequently, it is concluded that the Directive is inefficient, specifically of most significance in the areas of classification of other fermented beverages, and the exemption applied to denatured alcohol.

These increased administrative and compliance costs identified 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 national interpretation. The number of examples supporting this assessment, plus their geographical extent, indicates that these complications are the result of a failure of the Directive to provide sufficient clarity to the stakeholders.

In summary, issues surrounding the classification of products which have been identified as 'difficult to classify' and the management of exemptions for denatured alcohol is resulting in increased costs, such as increased guarantees in some Member States for movements of denatured alcohol, the costs of resolving legal disputes, and manipulation of the classification rules resulting in price differentials

3.3.4 EU added value – the added benefits for the stakeholders of achieving the Directive's objectives at the EU level

The evaluation has assessed the added value of establishing common rules at the EU level for the classification of alcoholic beverages, the granting of reduced rates for small producers, and the exemption of denatured alcohol from the scope of excise duty.

The findings of this study clearly show that only an EU-wide system can provide the uniformity and harmonised conditions that are necessary to ensure the proper functioning of the internal market. It would not have been possible to achieve the same results in terms of effectiveness and efficiency – let alone more positive ones – via an alternative, bilateral or international approach.

Moreover, the stakeholders' divergent interpretations of the Directive show that its effectiveness could be improved by expanding the EU-level approach.

Overall, the evidence collected shows that all types of stakeholder strongly support an EU-level approach regarding the excise duty levied on alcohol and alcoholic beverages, which in turn, facilitates trade, prevents competitive distortions, reduces administrative costs and prevents fraud.

3.3.5 Responsiveness of the Directive to the needs of the Member States and economic operators

This part sought to understand whether the provisions of the Directive as formulated are still fulfilling the needs of Member States and economic operators. As a result, it was assessed:

- (i) whether the needs that the Directive sought to address still exist;
- (ii) to what extent those needs have evolved, and how;

(iii) whether the arrangements meet the current needs.

While important progress has been made in the past twenty years towards the establishment of the Internal market, the Directive's objectives of providing a clear and consistent legal framework, ensuring fair competition and reducing the risk of excise duty being circumvented continue to be highly relevant. In this context, the provision of common rules regarding the levying of excise duty on alcohol and alcoholic beverages has continued to be important. Consideration was given to whether the objectives of the Member States have evolved in relation to the imposition of excise duty on alcohol, in so far as they might today also include the objective of influencing alcohol consumption habits via adjustments in excise duty rates. In practice, only a few Member States mentioned health policy objectives in connection with the overall relevance of the provisions; accordingly, no definitive conclusions can be drawn in this area. However, public health considerations should be included in any further process.

Overall, the specific provisions of the Directive were reported by the stakeholders to correspond to their needs. The assigning of alcohol and alcoholic beverages to different categories for excise duty purposes continues to be relevant. Although some Member States (and spirits producers in particular) argued in favour of taxation based on alcohol strength but without specific product categories, the evidence shows that the maintenance of different categories is important for preserving socio-cultural traditions (e.g. the continuous production and consumption of traditional products often made from natural ingredients grown in a particular location), and for supporting the creation or preservation of jobs, practices and traditional crafts.

The findings reveal that there are a few provisions that no longer seem to be needed, such as rules in Article 28⁶ for the United Kingdom which that Member State no longer applies. The UK has indicated that it does not consider the provision relevant to its current needs. In the interest of clarity, it can be removed in the context of a potential revision of Directive 92/83/EEC.

In addition, as several Member States have introduced positive excise duties on wine, the omission of reduced rates for small producers of wine and other fermented beverages can no longer be justified.

Finally, the relevance of reduced rates for products of low alcoholic strength was questioned. Further analysis at the impact assessment stage would be needed to draw any conclusion as to whether these reduced rates correspond to national practices linked to health policy objectives, and whether they correspond to any of the overall objectives that are stated in the Directive and identified in the evaluation criteria. Specifically, reduced rates for intermediate products and ethyl alcohol are rarely used by the Member States, and they might actually be undermining the objectives of the provision in the first place, as they could unintentionally increase the consumption of a product benefiting from the reduced rate in its own duty

⁶ The UK no longer applies the exemption for aromatic bitters of an actual alcoholic strength from 44,2 to 49,2 % vol., containing from 1,5 % to 6 % by weight of gentian, spices and other aromatic ingredients and from 4 to 10 % by weight of sugar, delivered in containers holding 0,2 litres or less of product, and concentrated malt beverage the worts of which prior to fermentation were of a specific gravity of 1 200 of Original Gravity (47° Plato) or more

category despite its alcohol strength actually being higher than that of a similar product belonging to a different duty category.

3.3.6 To what extent are the provisions of Directive 92/83/EEC coherent with EU and international legislation on excise duties on alcohol and alcoholic beverages?

The evaluation has assessed the external coherence of the Directive with EU legislation and international agreements. Because the Directive was adopted more than 20 years ago, some changes have been made to ancillary legislation. However, these changes do not undermine the coherence of the provisions. While there are a number of references in the Directive to other EU legislation and to CN codes that need to be updated, besides two points described below the inconsistencies identified were not reported to be causing any significant practical problems.

Two points with regard to coherence are creating problems for economic operators, namely the CN codes for denatured alcohol, and the treatment of wine precursors:

- The Member States are not using the CN codes for denatured alcohol in a consistent manner. While there is a CN code for denatured alcohol (2207 20), a number of other codes are being used for particular products that may contain denatured alcohol. This can have an impact on the conditions applying to the movement of these products, as well on the ability of the Member States to monitor and control the movements.
- Two Member States reported issues with the treatment of wine precursors (i.e. must and juices that are due to be turned into wine). The Directive does not define them as excisable goods, but (in those Member States) the practice is that they can be moved under the Excise Movement and Control System (EMCS). There is currently no legal requirement to do this

No inconsistencies between the Directive and international agreements were found.

4. RECOMMENDATIONS OF THE EVALUATION

4.1 QUALITY OF THE EVALUATION

The Commission has carefully examined the study supporting the evaluation and has also taken account of the feedback received from stakeholders. The work carried out by the evaluation team was in accordance with the better regulation guidelines of the Commission.⁷ The judgements and conclusions in the study were derived directly from findings based on the evidence collected. To ensure the robustness of the findings, the study used several data collection methods, including surveys, interviews, desk research and case studies. This methodological mix was overall considered as sufficient by the Commission.

4.2 RECOMMENDATIONS

On the basis of the evidence gathered, the evaluators put forward 17 recommendations with the view to improving the functioning of the regulatory framework concerning the structures of excise duty on alcohol and alcoholic beverages. These are presented in as annex I to this report.

⁷ http://ec.europa.eu/smart-regulation/guidelines/toc_guide_en.htm

The Commission has examined the relevance of each of the recommendations and finds the following to be worthy of further consideration. However, it is not the purpose of this evaluation report to make recommendations for the future. The Commission therefore makes the following provisional assessment. More definite conclusions for the future will be decided in the light of any reactions from the European Parliament, the Council, stakeholders or other interested parties.

- Recommendations 1, 3, 4, 5, 6, 7, 8 and 10 suggest creating more accurate definitions / greater clarity in the legislation in order to reduce legal uncertainty, avoid different approaches in Member States and distortion of the internal market. Addressing these recommendations would have an impact on the work parameters of other recommendations and could take priority.
- The aim of recommendations 9, 11, 12 and 13 is to undertake further research on the impacts of extending the scope and / or making improvements in these areas.
- Recommendations 14, 15 and 16 concern minor technical changes which could be addressed during a possible review of the Directive.

The other recommendations are considered to either fall outside the scope of possible revision of Council Directive 92/83/EEC or to be only indirectly linked to it. These include:

- Recommendation 2 is more relevant to Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty.
- Recommendation 17 – regarding the excise treatment of pre-cursors of wine e.g. grape juice and grape must. This has no current basis in either Directive 92/83 or in Directive 2008/118/EC, as pre-cursors of wine are not excise products. Therefore, the holding and movement provisions cannot be extended to include them, nor can a legal base in secondary law for these products to be defined in either the structures or rates Directives for alcohol taxation.

4.3 STATUS QUO

Besides the recommendations to take action which are presented in annex I to this report and described in the previous section, the evaluators also put forward recommendations to maintain the status quo in certain areas. These areas are listed and explained in this section.

4.3.1 Excise duty based on alcoholic strength

4.3.2. Classification

The current system of classifying alcoholic beverages for excise purposes allows the Member States to use the EU rules to pursue a multi-dimensional set of national policy goals which include both economic objectives and health objectives.

Despite the views expressed by several groups of stakeholders to the effect that the structures of excise duties on alcoholic beverages would be simplified if the duty was applied equally to all excisable alcoholic beverages on the basis of their alcohol strength, it seems unlikely that such a fundamental change to the structures of excise duties, one which would eliminate the current excise categories and link excise duty to alcohol content, would be feasible to implement and achieve satisfying outcomes for all the relevant stakeholders.

Because a majority of the Member States and other stakeholders maintain strong views on the appropriateness of the status quo, as well as uncertain outcome regarding the potential impacts (either positive or negative) of any potential change to this regime, the attention of the Commission might better be directed towards improving the functioning of the system within the current framework.

4.3.3 Reduced rates for small brewers

The research has shown that not all the Member States make use of Article 4.1 up to the full extent of 200,000 hl. However, most Member States do provide reduced rates for small brewers; only two Member States expressed discontent with the available limit.

As there is no evidence to suggest that those Member States which do not make full use of the provision are unduly negatively affected by the application of the provision in other Member States, and taking into account the limited degree of consensus in favour of any change, the balance of advantage may lie in keeping in place the existing applicable limits.

4.3.4 Reduced rates for small distilleries

The research conducted in this evaluation suggests that the quantitative limit of 10 hl (20 hl in special circumstances) of pure alcohol produced by small distilleries, below which the Member States may grant reduced rates (Article 22.1), may be too small to have a sizeable impact on the internal market. There might, therefore, be scope to raise the limit in order to increase the effectiveness of the Article.

However, 13 out of 28 Member States indicated that they considered this limit to be appropriate, while only two Member States disagreed. As a result, the case does not seem to have been fully made out for legislative change in this area.

4.3.5 Reduced rates and exemptions for specific products in specific Member States

Those Member States which have requested, and been granted, special derogations to the application of the Directive strongly support maintaining them in order to continue to pursue various policy objectives nationally.

As there is no evidence to suggest that those derogations create any significant adverse effects on the EU market as a whole, on neighbouring Member States or on the Member State where they apply, maintaining the status quo in this respect is appropriate.

5. FINAL CONCLUSIONS

Levying taxes on the consumption of products, such as excise duties on alcohol and alcoholic beverages, should neither distort competition nor hinder the possibility for goods to move freely within the EU in a proper functioning internal market. This evaluation has examined questions of effectiveness, efficiency, relevance, coherence and EU added value and administrative burden arising from Directive 92/83/EEC in order to ensure that EU legislation on the structures of excise duties on alcohol and alcoholic beverages achieves its policy objectives at least cost.

Overall, the evaluation found that the general principles which define the current structures of alcohol and alcoholic beverages allow for neutral conditions of competition. At the same time, the evaluation findings show that there are some distortions within the internal market, and that they are significantly detrimental that the Commission must act upon them.

The evaluation identifies unnecessary administrative and compliance costs for tax administrations and economic operators. These costs result from certain definitions which can lead to legal uncertainty over the treatment of specific products.

Finally, the Directive has proven to be effective and generally appropriate for enabling adequate collection of excise duties for the large majority of stakeholders.

ANNEX I EXTERNAL EVALUATION RECOMMENDATIONS⁸

No	Recommendation
Recommendations relating to classification	
1	Clarify the scope of application of the excise category of “other fermented beverages
2	Create another excise category code within the Excise Movement & Control System (EMCS): Annex II, Table 11 (Excise Product) of Regulation 684/2009 to include two additional Excise Product Codes (EPC): one for still fermented beverages other than wine and beer, and another for sparkling fermented beverages other than wine and beer.
3	Clarify the notion of “entirely of fermented origin” within the understanding of Articles 8, 12(1) and 17
4	Clarify the interpretation of Article 3.1 with respect to the application of excise duty on beer by reference to the number of hectolitres/degrees Plato
Recommendations relating to exemptions	
5	Continue efforts to revise the composition of the "Euro" denaturant formulation for completely denatured alcohol (CDA)
6	Ensure a common interpretation of mutual recognition regarding the conditions under which the denaturing methods listed in Regulation 162/2013 for complete denaturation can be used.
7	Ensure a common understanding of which products can be exempted under Article 27.1 (b)
8	Ensure a consistent approach towards the exemptions applied to denatured alcohol coming into the EU from a third country
9	Conduct further research into the volume and value of fraud stemming from the abuse of exemptions for denatured alcohol
10	Implement measures aimed at increased mutual trust between Member States
Recommendations relating to reduced rates	
11	Consider extending the application of reduced rates to small producers of still and sparkling wines, other fermented beverages and intermediate products
12	Further investigate the extent to which provisions on reduced rates for low-strength alcohol can support restated policy objectives
Recommendations relating to private production / own consumption	
13	Investigate the impacts of allowing the Member States to exempt the production of ethyl alcohol and intermediate products for own consumption
Recommendations relating to outdated references / good housekeeping	
14	Ensure coherence of the definition of sparkling beverages with the definition employed for customs purposes
15	References in the Directive to outdated legislation and CN codes should be updated
16	Remove Article 28
17	Investigate the need to clarify the treatment of precursors of wine