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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: COUNCIL DIRECTIVE amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

COUNCIL DIRECTIVE (EU) 2020/...

of ...

amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ Opinion of 24 October 2018 (not yet published in the Official Journal).

² OJ C 62, 15.2.2019, p. 108.

Whereas:

- (1) Some provisions of Council Directive 92/83/EEC¹ are outdated and unclear and result in unnecessarily burdensome administrative procedures for both tax administrations and economic operators. The costs for economic operators of complying with those procedures have the effect of restricting the participation of small and medium-sized enterprises in trade in alcohol and alcoholic beverages in the internal market. Furthermore, references to Union legislation that is no longer in force need to be updated.
- (2) In order to ensure the uniform application of the conditions for fixing excise duty on beer, it is necessary to lay down conditions for measuring the degree Plato. More particularly, as regards measuring the degree Plato for sweetened or flavoured beer, it is important to specify that the ingredients of the beer that have been added after fermentation are also to be taken into account for the purpose of measuring the degree Plato. In view of practical difficulties linked to the identification and measurement of the dry extract of the original wort of the finished product, such specification is necessary and justified by the need to provide a harmonised approach that would ensure the correct and straightforward application of those rules by taxable persons concerned and by tax administrations as well as the effectiveness of fiscal supervision against risks of evasion, avoidance or abuse.

¹ Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 21).

- (3) In order to ensure a smooth transition to a harmonised methodology for measuring the degree Plato of beer, it is appropriate to allow Member States which, on ... [the date of adoption of this Directive], do not take ingredients of the beer that have been added after fermentation into account for the purposes of measuring the degree Plato, to continue to use the currently applied methodology for a transitional period of time.
- (4) The alcoholic strength of beer to which reduced rates for low-strength beer may be applied is in general too low to provide any tangible incentive for brewers to be innovative and create new low-strength products. In order to encourage the development of low-strength beer, the threshold for low-strength alcohol rates should be increased.
- (5) Member States may apply reduced rates to beer and ethyl alcohol produced in small volumes by independent small producers. In order to avoid other alcoholic beverages being treated differently from beer and ethyl alcohol, Member States should also have the power to apply reduced rates to other alcoholic beverages produced in small volumes by independent small producers. Member States should be able to limit the application of reduced rates to intermediate products and other fermented beverages, taking into account various criteria, such as the alcoholic strength of the finished product or the quantity and type of raw materials used to produce it.

- (6) In order to facilitate the recognition of their status as independent small producers in all Member States, for the purposes of the application of the reduced excise duty rates, implementing powers should be conferred on the Commission in respect of laying down the form for a uniform certificate confirming the annual production of the independent small producer and its compliance with the criteria laid down in Directive 92/83/EEC. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹. Although certification of independent small producers by the Member State in which the independent small producer is established is desirable, it is appropriate to reduce the administrative burden by permitting self-certification by the independent small producer. The Member State in which the independent small producer is established should be required to lay down conditions to ensure the correct and straightforward application of such provisions and to prevent any evasion, avoidance or abuse. Member States should grant the reduced excise duty rates on the basis of the certificate issued by other Member States, except in duly justified circumstances, for example risk of evasion, avoidance or abuse. Member States that apply higher thresholds for small producers should have to apply the same thresholds for producers from other Member States.

¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (7) In view of the specific situation of the wine sector in the Republic of Malta, that Member State should be allowed to apply a higher threshold in connection with the reduced rates mechanism provided for in this Directive to independent small wine producers.
- (8) Member States should be authorised to apply a reduced rate to ethyl alcohol produced in fruit growers' distilleries from fruit (such as apples, pears, grape marc and berries).

- (9) In the case of beer, wine and other fermented beverages Directive 92/83/EEC permits Member States to exempt from excise duty home-made products which are not produced for commercial purposes. However, Directive 92/83/EEC does not allow such optional exemption for ethyl alcohol produced from fruits (such as apples, pears, grape marc and berries) for private consumption. As several Member States have a long-standing tradition of such products, Member States should have an option to apply reduced rates or exemptions for ethyl alcohol products, of a regional and traditional nature, which are not produced for commercial purposes. It is therefore appropriate to provide an option that Member States should be able, under strict conditions, to exempt from excise duty or apply reduced rates of excise duty to a limited volume of fruit spirits produced from fruits (such as apples, pears, grape marc and berries) owned, grown and supplied by a private individual from a plot of land to which that private individual holds a title. Member States applying such reduced rates or exemptions should be required to take the necessary measures to prevent any evasion, avoidance or abuse. Those measures should cover, for example, the registration of private individuals that produce such beverages, the registration of distilling devices including their size and location, the reporting of production volume and other control measures ensuring compliance with the conditions for applying reduced rates or exemptions. Those Member States should also have adequate requirements and procedures in place to ensure the control of production and consumption and the prevention of cross-border effects and sale. Member States should also lay down rules on penalties applicable to infringements of such national provisions and ensure that those penalties are implemented. While the choice of penalties remains within the discretion of Member States, the penalties provided for should be effective, proportionate and dissuasive.

- (10) Given that the reduced rates or exemptions from excise duties of home-made beverages should not be applied by a Member State in addition to the reduced rates for ethyl alcohol produced by small fruit growers' distilleries and in view of the country-specific traditions and related arrangements regarding small fruit growers' distilleries in the Republic of Bulgaria, once that Member State has exercised the available option concerning fruit spirits distilled for fruit growers' households by small fruit growers' distilleries, such option should continue to be applicable to the Republic of Bulgaria to the exclusion of any other option to apply reduced rates or exemptions.
- (11) It is appropriate to update the references to the codes of the combined nomenclature used to describe alcohol products.
- (12) Member States should be permitted, under a number of conditions, to exempt from harmonised excise duty the products covered by Directive 92/83/EEC, when such products are used in the manufacture of food supplements.
- (13) It is appropriate to update Directive 92/83/EEC as regards the application of the reduced rates to certain products that are distilled in the Hellenic Republic in traditional discontinuous copper stills and in simple traditional distilling devices.
- (14) In order to reduce the burden of compliance on economic operators and to increase legal certainty, the conditions for applying the exemptions for any type of denatured alcohol should be revised.

- (15) In order to ensure the uniform application of the exemption for completely denatured alcohol, it is necessary to further clarify the conditions for the mutual recognition of completely denatured alcohol. Member States should exempt from excise duty completely denatured alcohol which was completely denatured in another Member State, in accordance with the method authorised by that other Member State. In order to increase legal certainty, it is also necessary to clarify the procedures for the notification of changes to the requirements for the complete denaturing of alcohol.
- (16) In order to lay down the procedures for the assessment of Member States' requirements for the complete denaturing of alcohol, implementing powers should be conferred on the Commission in respect of accepting or rejecting the requirements for the complete denaturing of alcohol notified by Member States. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.
- (17) In order to ensure the uniform application of the exemption for partially denatured alcohol, it is necessary to clarify the conditions for the mutual recognition of partially denatured alcohol, and to provide that maintenance and cleaning of the manufacturing equipment is part of the manufacturing process and that the partially denatured alcohol used for the respective manufacturing process is therefore covered by that exemption. In order to reduce the fraudulent use of that exemption, it is necessary to lay down further conditions for its application.

- (18) The exemptions for the United Kingdom laid down in respect of two specific alcoholic beverages reflected exemptions provided for in the national legislation of the United Kingdom. As those exemptions from the harmonised excise duty were repealed in the legislation of the United Kingdom, they are no longer relevant and should be abolished at Union level.
- (19) Since the objectives of this Directive, namely to reduce the burden of compliance on economic operators and the administrative burden on tax administrations, cannot be sufficiently achieved by the Member States but can rather, by reason of the effects of the action, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.
- (20) Directive 92/83/EEC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/83/EEC is amended as follows:

(1) in Article 3(1), the following subparagraphs are added:

‘All the ingredients of the beer, including those added after the completion of fermentation, shall be taken into account for the purposes of measuring the degree Plato.

By way of derogation from the second subparagraph, Member States that, on ... [date of adoption of this Directive], do not take ingredients of the beer that have been added after fermentation into account for the purposes of measuring the degree Plato, may continue to do so until 31 December 2030.’;

(2) in Article 5, paragraph 1 is replaced by the following:

‘1. Member States may apply reduced rates, which may fall below the minimum rate, for beer with an actual alcoholic strength by volume not exceeding 3,5 % vol.’;

(3) in Article 8, point 2, the introductory wording is replaced by the following:

‘2. The term “sparkling wine” covers all products falling within CN codes 2204 10, 2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09, 2204 29 10 and 2205 which:’;

(4) the following Article is inserted:

Article 9a

1. Member States may apply reduced rates of duty to wine produced by independent small wine producers within the following limits:
 - the reduced rates shall not be applied to undertakings producing on average more than 1 000 hl or, in the case of the Republic of Malta, on average more than 20 000 hl of wine per year,
 - the reduced rates shall not be set more than 50 % below the standard national rate of excise duty.
2. For the purposes of the reduced rates the term “independent small wine producer” shall mean a wine producer which is legally and economically independent of any other wine producer, which uses premises situated physically apart from those of any other wine producer and does not operate under licence. However, where two or more small wine producers cooperate, and their combined annual production does not exceed 1 000 hl or 20 000 hl, as appropriate, those wine producers may be treated as a single independent small wine producer.

3. Member States shall ensure that any reduced rates they may introduce apply equally to wine delivered into their territory from independent small wine producers situated in other Member States. In particular they shall ensure that no individual delivery from another Member State ever bears more duty than their exact national equivalent.’;

(5) in Article 12, point 2, the introductory wording is replaced by the following:

‘2. The term “other sparkling fermented beverages” covers all products falling within CN codes 2206 00 31 and 2206 00 39 as well as products falling within CN codes 2204 10, 2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09, 2204 29 10 and 2205 not mentioned in Article 8 which:’;

(6) in Article 13, paragraph 2 is replaced by the following:

‘2. Except as provided in paragraph 3 of this Article and in Article 13a, Member States shall levy the same rate of excise duty on all products chargeable with the duty on other still fermented beverages. Similarly, they shall levy the same rate of excise duty on all products chargeable with the duty on other sparkling fermented beverages. They may apply the same rate of excise duty to both other still fermented beverages and other sparkling fermented beverages.’;

(7) the following Article is inserted:

Article 13a

1. Member States may apply reduced rates of duty, which may be differentiated in accordance with the annual production of the producers concerned, to other fermented beverages made by independent small producers within the following limits:
 - the reduced rates shall not be applied to undertakings producing more than a total of 15 000 hl of such beverages per year,
 - the reduced rates shall not be set more than 50 % below the standard national rate of excise duty for other fermented beverages.
2. For the purposes of this Article, the other fermented beverages must be obtained from the fermentation of fruits, berries, vegetables, a solution of honey in water or from the fermentation of the fresh juice or concentrated juice obtained from the above. Member States shall not permit the addition of any other alcohol or alcoholic beverage for the purpose of production of other fermented beverages. For the purposes of this Article, the addition of alcohol used to dilute or dissolve flavourings in the dose strictly necessary to the extent that the alcoholic strength does not increase by more than 1,2 % vol. shall not be considered as the addition of alcohol for the purpose of production of other fermented beverages. The addition of such flavourings shall not significantly alter the character of the original product.

3. Member States may limit the application of this Article to certain types of other fermented beverages.
4. For the purposes of this Article, the term “independent small producer” shall mean a producer of other fermented beverages which is legally and economically independent of any other producer of other fermented beverages, which uses premises situated physically apart from those of any other producers and which does not operate under licence. However, where two or more small producers cooperate, and their combined annual production does not exceed 15 000 hl, those producers may be treated as a single independent small producer.
5. Member States shall ensure that any reduced rates they introduce apply equally to other fermented beverages delivered into their territory from independent small producers situated in other Member States. In particular they shall ensure that no individual delivery from another Member State ever bears more duty than its exact national equivalent.’;

(8) Article 15 is replaced by the following:

Article 15

For the application of Directive 92/84/EEC and Council Directive 2008/118/EC*, references to “wine” shall be deemed to apply equally to other fermented beverages as defined in this section.

* Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC (OJ L 9, 14.1.2009, p. 12).’;

(9) in Article 18(4), the first subparagraph is replaced by the following:

‘4. Member States may apply a single reduced rate of duty to intermediate products which are defined in Annex VII, Part II, to Regulation (EU) No 1308/2013 of the European Parliament and of the Council*.

* Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007 (OJ L 347, 20.12.2013, p. 671).’;

(10) the following Article is inserted:

Article 18a

1. Member States may apply reduced rates of duty, which may be differentiated in accordance with the annual production of the producers concerned, to intermediate products made by independent small producers within the following limits:
 - the reduced rates shall not be applied to undertakings producing more than a total of 250 hl of such beverages per year,
 - the reduced rates, which may fall below the minimum rate, shall not be set more than 50 % below the standard national rate of intermediate products.
2. Member States may limit the application of this Article to certain types of intermediate products.
3. For the purposes of this Article, the term “independent small producer” shall mean a producer of intermediate products which is legally and economically independent of any other producer of intermediate products, which uses premises situated physically apart from those of any other producers and which does not operate under licence. However, where two or more small producers cooperate, and their combined annual production does not exceed 250 hl, those producers may be treated as a single independent small producer.

4. Member States shall ensure that any reduced rates they introduce apply equally to other intermediate products delivered into their territory from independent small producers situated in other Member States. In particular they shall ensure that no individual delivery from another Member State ever bears more duty than its exact national equivalent.’;

(11) Article 22 is amended as follows:

- (a) paragraph 6 is replaced by the following:

‘6. The Republic of Bulgaria may apply a reduced rate of excise duty, of not less than 50 % of the standard national rate of excise duty on ethyl alcohol, to ethyl alcohol produced by fruit growers’ distilleries producing, on an annual basis, more than 10 hectolitres of ethyl alcohol from fruit supplied to them by fruit growers’ households. The application of the reduced rate shall be limited to 30 litres of fruit spirits per producing fruit growers’ household per year, destined exclusively for their personal consumption. Once this option is exercised, the Republic of Bulgaria shall not apply paragraph 8 of this Article anymore.’;

(b) the following paragraph is inserted:

‘6a. The Czech Republic and the Republic of Poland may apply a reduced rate of excise duty, of not less than 50 % of the standard national rate of excise duty on ethyl alcohol, to ethyl alcohol produced by fruit growers’ distilleries producing, on an annual basis, more than 10 hectolitres of ethyl alcohol from fruit supplied to them by fruit growers’ households. The application of the reduced rate shall be limited to 30 litres of fruit spirits per producing fruit growers’ household per year, destined exclusively for their personal consumption.’;

(c) the following paragraph is added:

‘8. Subject to such conditions as they shall lay down to ensure the straightforward application of this paragraph, Member States may exempt from excise duty, or apply reduced rates of excise to ethyl alcohol that is consumed by a private individual, the members of his family or his guests, provided that no sale is involved, and which is:

- (a) produced by that private individual from fruits owned, grown and supplied by that private individual from a plot of land to which that private individual holds a title, using simple, small distilling device registered with the competent authority of the Member State concerned;
- and/or

- (b) produced for that private individual in distilleries authorised by the competent authority of the Member State concerned, from fruits owned, grown and supplied by that private individual from a plot of land to which that private individual holds a title.

Member States shall limit the application of the exemption or of the reduced rates to not more than 50 litres of fruit spirits per producing fruit grower's household per year.

Member States that apply such exemption or reduced rates of excise shall:

- (a) lay down conditions for the purpose of preventing any evasion, avoidance or abuse;
- (b) have adequate requirements and procedures in place to ensure the control of production and consumption, to prevent cross-border effects and sale; and
- (c) lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to this Article and take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall not apply these provisions in addition to the provisions of paragraph 6, 6a or 7.;

(12) Article 23 is replaced by the following:

Article 23

1. The French Republic may apply a reduced rate, which may fall below the minimum rate but not be set more than 50 % below the standard national rate of duty on ethyl alcohol, to rum as defined in point 1 of Annex II to Regulation (EC) No 110/2008 of the European Parliament and of the Council* and produced from sugar cane harvested in the place of manufacture as set out in point (13) of Annex I to that Regulation, having a content of volatile substances other than ethyl and methyl alcohol equal to or exceeding 225 grams per hectolitre of pure alcohol, and an actual alcoholic strength by volume equal to or exceeding 40 % vol.
2. The Hellenic Republic may apply a reduced rate, which may fall below the minimum rate:
 - (a) but not be set more than 50 % below the standard national rate of duty on ethyl alcohol, in respect of distilled anis drinks as defined in point 29 of Annex II to Regulation (EC) No 110/2008, which are colourless and have a sugar content of 50 grams or less per litre and the final product is composed at least in the percentage provided for in the said provision, of alcohol flavoured by distillation in traditional discontinuous copper stills with a capacity of up to 1 000 litres and those grape marc spirit drinks as defined in point 6 of Annex II to Regulation (EC) No 110/2008, which are distilled in traditional discontinuous stills;

- (b) but not be set more than 85 % below the standard national rate of duty on ethyl alcohol, in respect of ethyl alcohol from fruits supplied from the household of the producer, which are distilled in simple copper traditional distilling devices with a capacity of up to 130 litres or in earthen traditional distilling devices with a capacity of up to 40 litres, in both cases operating up to a maximum of eight days per year and producing a maximum of five hectolitres of pure alcohol per year.

* Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89 (OJ L 39, 13.2.2008, p. 16).’;

(13) in Section VI, the following Article is inserted:

Article 23a

1. Subject to such conditions as they shall lay down to ensure the straightforward application of Articles 4, 9a, 13a, 18a and Article 22(1), (2) and (3) of this Directive, Member States shall, upon request, provide an annual certificate to independent small producers established in their territory confirming their total annual production referred to in those Articles, as applicable, and confirming the compliance of the independent small producer with the criteria set out in Articles 4(2), 9a(2), 13a(4), 18a(3) and 22(2) of this Directive, as applicable. The administrative document for the movement of goods under Chapter IV or V of Directive 2008/118/EC shall refer to this certificate mentioned in this paragraph.
2. Notwithstanding paragraph 1 of this Article, Member States may, under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of this Article and of preventing any evasion, avoidance or abuse allow independent small producers referred to in Articles 4(1), 9a(1), 13a(1), 18a(1) and 22(1) established in their territory to self-certify their compliance with the criteria set out in Articles 4(2), 9a(2), 13a(4), 18a(3) and 22(2), as applicable, and the total annual production referred to in those Articles.

3. Member States shall, under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of this Article and of preventing any evasion, avoidance or abuse, recognise the certificate for producers referred to in Articles 4(1), 9a(1), 13a(1), 18a(1) and 22(1) issued by another Member State, except in duly justified circumstances.
4. The Commission shall adopt implementing acts laying down:
 - (a) the form of the certificate referred to in paragraph 1;
 - (b) the form of the reference to that certificate in the administrative document for the movement of goods under Chapter IV or V of Directive 2008/118/EC; and
 - (c) the requirements for the completion of the administrative document for the movement of goods under Chapter IV or V of Directive 2008/118/EC in the case of self-certification.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28a(2).’;

(14) Article 26 is replaced by the following:

‘Article 26

References in this Directive to CN codes shall be to the codes of the combined nomenclature of Commission Implementing Regulation (EU) 2018/1602*, amending Annex I of Council Regulation (EEC) No 2658/87**.

* Commission Implementing Regulation (EU) 2018/1602 of 11 October 2018 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 273, 31.10.2018, p. 1).

** Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff (OJ L 256, 7.9.1987, p. 1).’;

(15) Article 27 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) points (a) and (b) are replaced by the following:

‘(a) when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of the Member State where it has been released for consumption, where such requirements having been duly notified in writing and authorised in accordance with paragraphs 3 and 4 of this Article.

Member States shall apply Chapter V of Directive 2008/118/EC;

- (b) when used as part of the manufacturing process of any product not for human consumption, provided the alcohol has been denatured in accordance with the requirements of any Member State for the given use.

That exemption shall apply when such denatured alcohol:

- has been incorporated into the product not for human consumption,
- or
- is used for maintenance and cleaning of the manufacturing equipment used for this particular manufacturing process.

Member States shall apply Chapter IV of Directive [2008/118/EC](#) to movements of denatured alcohol that has not yet been incorporated into a product that is not for human consumption;’;

(ii) point (d) is replaced by the following:

‘(d) when used for the production of medicines referred to in Directives 2001/82/EC* and 2001/83/EC** of the European Parliament and of the Council.

* Directive 2001/82/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to veterinary medicinal products (OJ L 311, 28.11.2001, p. 1).

** Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).’;

(b) in paragraph 2, the following point is added:

‘(f) in the manufacture of food supplements defined by Directive 2002/46/EC of the European Parliament and of the Council* containing ethyl alcohol, if the unit packet of the food supplement released for consumption does not exceed 0,15 litres and food supplements are placed on the market pursuant to Article 10 of that Directive.

* Directive 2002/46/EC of the European Parliament and of the Council of 10 June 2002 on the approximation of the laws of the Member States relating to food supplements (OJ L 183, 12.7.2002, p. 51).’;

(c) paragraphs 3, 4 and 5 are replaced by the following:

- ‘3. A Member State wishing to introduce a change to the requirements for the complete denaturing of alcohol referred to in point (a) of paragraph 1 shall notify such new requirements to the Commission in writing, together with all the relevant information about the denaturants which it intends to employ.

If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within one month of receipt and shall specify what information is required. Once the Commission has all the information it considers necessary, it shall transmit the notification to the other Member States within one month.

4. The Commission shall adopt implementing acts authorising or rejecting the requirements notified in accordance with paragraph 3 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28a(2).

5. If a Member State finds that a product which has been exempted pursuant to point (a) or (b) of paragraph 1 of this Article gives rise to evasion, avoidance or abuse, it may refuse to grant exemption or withdraw the relief already granted. The Member State shall notify such refusal or withdrawal forthwith to the Commission in writing, together with all the relevant information about the evasion, avoidance or abuse. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within one month of receipt of such information and shall specify what further information is required. Once the Commission has all the information it considers necessary, it shall transmit the notification to the other Member States within one month. A final decision shall then be taken in accordance with the examination procedure referred to in Article 28a(2) no later than four months after the transmission of the notification to the other Member States. Member States shall not be obliged to give retroactive effect to such a decision.’;

(16) Article 28 is deleted;

(17) in Section VIII, the following Articles are inserted:

Article 28a

1. The Commission shall be assisted by the “Committee on Excise Duty”. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 28b

Every five years the Commission shall submit a report on the implementation of this Directive to the European Parliament and to the Council. The first report shall be submitted by 31 December 2024.

In particular, the report shall:

- (a) assess the application and impact of national provisions adopted and applied pursuant to Articles 5 and 9a, Article 22(8), Article 23a and point (f) of Article 27(2);

- (b) take account of relevant evidence on presence of impact of the provisions adopted and applied pursuant to those Articles, such as negative cross-border effects, increase of fraud, impact on the smooth functioning of internal market and on public health; and
- (c) where Member States apply national provisions adopted pursuant to Article 22(8), assess the adequacy of:
 - the conditions laid down by these Member States for the purpose of preventing any evasion, avoidance or abuse, and
 - the requirements and procedures put in place by these Member States to ensure the control of production and consumption and prevention of cross-border effects.

Member States shall, upon request, submit to the Commission information required to establish the report.

Member States that apply national provisions adopted pursuant to Article 22(8) shall, not later than three months after first year of application of such provisions, submit to the Commission all information necessary to carry out the assessment referred to in point (c) of the second paragraph of this Article.

The report shall be accompanied by a legislative proposal, if appropriate.?

Article 2

1. Member States shall adopt and publish, by 31 December 2021, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text thereof.

They shall apply those measures from 1 January 2022.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication.

Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
