

COUNCIL DIRECTIVE 92/83/EEC**of 19 October 1992****on the harmonization of the structures of excise duties on alcohol and alcoholic beverages**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas Directive 92/12/EEC lays down provisions on the general arrangements for products subject to excise duty ⁽⁴⁾;

Whereas Directive 92/84/EEC ⁽⁵⁾ lays down minimum rates of excise duty to be applied in the Member States to alcohol and alcoholic beverages;

Whereas it is important to the proper functioning of the internal market to determine common definitions for all the products concerned;

Whereas it is useful to base such definitions on those set out in the combined nomenclature in force at the date of the adoption of this Directive;

Whereas, in the case of beer, it is possible to permit alternative methods of calculating the duty on the finished product;

Whereas, in the case of beer, it is possible within certain limits to permit Member States to apply the duty to gravity bands of more than one degree Plato, provided always that no beer is charged at less than the Community minimum rate;

Whereas, in the case of beer produced in small independent breweries and ethyl alcohol produced in small distilleries, common solutions are required permitting Member States to apply reduced rates of duty to those products;

Whereas it is possible to permit variations in the strength at which Member States commence to subject beer to

duty, provided that no unacceptable problems are caused in the internal market;

Whereas in the case of beer, wine and other fermented beverages it is advisable to permit Member States to exempt from duty home-made products which are not produced for commercial purposes;

Whereas, in principle, Member States should apply a single rate per hectolitre of finished product to all still wine and other still fermented beverages, and a single rate of duty per hectolitre of finished product to all sparkling wine and sparkling fermented beverages;

Whereas it is advisable to permit Member States to apply reduced rates of duty to all kinds of wine and other fermented beverages provided always that the actual alcoholic strength of the products does not exceed 8,5 % vol.;

Whereas Member States applying a higher rate of duty to certain wines on 1 January 1992 should be permitted to continue to do so;

Whereas in principle, Member States should apply a single rate of duty per hectolitre of finished product to all intermediate products;

Whereas it is advisable to permit Member States to apply a reduced rate of the intermediate products duty, on the one hand to products of strengths not exceeding 15 % vol., and on the other hand to natural sweet wines;

Whereas, in principle, Member States should apply the same rate of duty per hectolitre of pure alcohol to all ethyl alcohol as defined in this Directive;

Whereas it is possible to permit Member States to apply reduced rates or exemptions for certain products of a regional and traditional nature;

Whereas, in the cases where Member States are permitted to apply reduced rates, such reduced rates should not cause distortion of competition within the internal market;

Whereas Member States should be permitted to refund the excise duty on alcoholic drinks which have become unfit for consumption;

Whereas it is necessary to lay down at Community level the exemptions which apply to goods which are transported between Member States;

Whereas, however, it is possible to permit Member States an option to apply exemptions tied to end-uses within their territory;

⁽¹⁾ OJ No C 322, 21. 12. 1990, p. 11.

⁽²⁾ OJ No C 67, 16. 3. 1992, p. 165.

⁽³⁾ OJ No C 96, 18. 3. 1991, p. 25.

⁽⁴⁾ OJ No L 76, 23. 3. 1992, p. 1.

⁽⁵⁾ See page 29 of this Official Journal.

Whereas it is necessary to provide for a system of notification of the denaturing requirements of each Member State for completely denatured alcohol, and for their acceptance by other Member States;

Whereas Member States should not be deprived of the means of combating any evasion, avoidance or abuse which may arise in the field of exemptions;

Whereas Member States should be permitted to give effect to the exemptions required by this Directive by way of refund;

Whereas, since certain Member States apply a higher rate of duty to 'other sparkling fermented beverages' than to intermediate products, they should be permitted to apply this higher rate to intermediate products having the characteristics of these 'other sparkling fermented beverages',

HAS ADOPTED THIS DIRECTIVE:

SECTION I

BEER

Scope

Article 1

1. Member States shall apply an excise duty to beer in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 2

For the purposes of this Directive, the term 'beer' covers any product falling within CN code 2203 or any product containing a mixture of beer with non-alcoholic drinks falling within CN code 2206, in either case with an actual alcoholic strength by volume exceeding 0,5 % vol.

Establishment of the duty

Article 3

1. The excise duty levied by Member States on beer shall be fixed by reference either:

- to the number of hectolitre/degrees Plato,
- or
- to the number of hectolitre/degrees of actual alcoholic strength by volume

of finished product.

2. In assessing the charge to duty on beer in accordance with the requirements of Directive 92/84/EEC, Member States may ignore fractions of a degree Plato or degree of actual alcoholic strength by volume.

In addition, Member States which levy the duty by reference to the number of hectolitre/degrees Plato may divide beer into categories consisting of no more than four degrees Plato per category and charge the same rate

of duty per hectolitre on all beers falling within each category. Such rates shall invariably equal or exceed the minimum rate laid down in Article 6 of Directive 92/84/EEC, hereinafter referred to as the minimum rate.

Article 4

1. Member States may apply reduced rates of duty, which may be differentiated in accordance with the annual production of the breweries concerned, to beer brewed by independent small breweries within the following limits:

- the reduced rates shall not be applied to undertakings producing more than 200 000 hl of beer 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 excise duty.

2. For the purposes of the reduced rates the term 'independent small brewery' shall mean a brewery which is legally and economically independent of any other brewery, which uses premises situated physically apart from those of any other brewery and does not operate under licence. However, where two or more small breweries cooperate, and their combined annual production does not exceed 200 000 hl, those breweries may be treated as a single independent small brewery.

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

Article 5

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 2,8 % vol.

2. Member States may confine the application of this Article to products containing a mixture of beer with non-alcoholic drinks falling within CN code 2206.

Article 6

Subject to such conditions as they shall lay down to ensure the straightforward application of the exemption, Member States may exempt from excise duty beer produced by a private individual and consumed by the producer, members of his family or his guests, provided that no sale is involved.

SECTION II

WINE

Scope

Article 7

1. Member States shall apply an excise duty to wine in accordance with this Directive.

2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 8

For the purposes of this Directive :

1. The term 'still wine' covers all products falling within CN codes 2204 and 2205, except sparkling wine as defined in paragraph 2 of this Article :

- having an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 15 % vol., provided that the alcohol contained in the finished product is entirely of fermented origin,
- having an actual alcoholic strength by volume exceeding 15 % vol. and not exceeding 18 % vol. provided they have been produced without any enrichment and that the alcohol contained in the finished product is entirely of fermented origin ;

2. The term 'sparkling wine' covers all products falling within CN codes 2204 10, 2204 21 10, 2204 29 10 and 2205 :

- are contained in bottles with 'mushroom stoppers' held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more,
- have an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 15 % vol., provided that the alcohol contained in the finished product is entirely of fermented origin.

Establishment of the duty

Article 9

1. The excise duty levied by Member States on wine shall be fixed by reference to the number of hectolitres of finished product.

2. Except as provided in paragraphs 3 and 4, Member States shall levy the same rate of excise duty on all products chargeable with the duty on still wine. Similarly, they shall levy the same rate of excise duty on products chargeable with the duty on sparkling wine. they may apply the same rate of duty to both still and sparkling wine.

3. Member States may apply reduced rates of excise duty to any type of still wine and sparkling wine of an

actual alcoholic strength by volume not exceeding 8,5 % vol.

4. Member States which on 1 January 1992 applied a higher rate of duty to still wines as defined in Article (8) (1), second indent, may continue to apply this rate. This higher rate must not be more than the standard national rate applied to intermediate products.

Article 10

Subject to such conditions as they shall lay down to ensure the straightforward application of this Article, Member States may exempt from excise duty wine produced by a private individual and consumed by the producer, members of his family or his guests, provided no sale is involved.

SECTION III

FERMENTED BEVERAGES OTHER THAN WINE AND BEER

Scope

Article 11

1. Member States shall apply an excise duty to fermented beverages other than beer and wine (other fermented beverages) in accordance with this Directive.

2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 12

For the purposes of this Directive and without prejudice to the provisions of Article 17 :

1. The term 'other still fermented beverages' covers all products falling within CN codes 2204 and 2205 but not mentioned in Article 8 above, and products falling within CN code 2206, except other sparkling fermented beverages as defined in point 2 of this Article and any product covered by Article 2 :

- having an actual alcoholic strength by volume exceeding 1,2 % vol. but not exceeding 10 % vol.,
- having an actual alcoholic strength by volume exceeding 10 % but not exceeding 15 % vol., provided that the alcohol contained in the product is entirely of fermented origin.

2. The term 'other sparkling fermented beverages' covers all products falling within CN code 2206 00 91 as well as products falling within CN codes 2204 10, 2204 21 10, 2204 29 10 and 2205 not mentioned in Article 8 above which :

- are contained in bottles with 'mushroom stoppers' held in place by ties or fastenings, or they have an excess pressure due to carbon dioxide in solution of three bar or more,
- have an actual alcoholic strength by volume exceeding 1,2 % vol., but not exceeding 13 % vol.,
- have an actual alcoholic strength by volume exceeding 13 %, but not exceeding 15 % vol., provided that the alcohol contained in the product is entirely of fermented origin.

Establishment of the duty

Article 13

1. The exercise duty levied by Member States on other fermented beverages shall be fixed by reference to the number of hectolitres of finished product.
2. Except as provided in paragraph 3, 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.
3. Member States may apply reduced rates of excise duty to any type of other still and sparkling fermented beverages of an actual alcoholic strength by volume not exceeding 8,5 % vol.

Article 14

Subject to such conditions as they shall lay down to ensure the straightforward application of this Article, Member States may exempt from excise duty other still and sparkling fermented beverages produced by a private individual and consumed by the producer, members of his family or his guests, provided no sale is involved.

Article 15

For the application of Directive 92/84/EEC and Directive 92/12/EEC, references to 'wine' shall be deemed to apply equally to other fermented beverages as defined in this section.

SECTION IV

INTERMEDIATE PRODUCTS

Scope

Article 16

1. Member States shall apply an excise duty to intermediate products in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC. Such rates shall never fall below the rates which Member States apply to the products of Articles 8 (1) and 12 (1) of the present Directive.

Article 17

1. For the purposes of this Directive the term 'intermediate products' covers all products of an actual alcoholic strength by volume exceeding 1,2 % vol, but not exceeding 22 % vol and falling within CN codes 2204, 2205 and 2206 but not covered by Articles 2, 8 and 12.
2. Notwithstanding the provisions of Article 12, Member States may treat as an intermediate product any still fermented beverage falling within the scope of Article 12 (1) which has an actual alcoholic strength exceeding 5,5 % vol. and which is not entirely of fermented origin, and any sparkling fermented beverage falling within the scope of Article 12 (2) which has an actual alcoholic strength exceeding 8,5 vol. and which is not entirely of fermented origin.

Establishment of the duty

Article 18

1. The excise duty levied by Member States on intermediate products shall be fixed by reference to the number of hectolitres of finished product.
2. Except as provided in paragraphs 3, 4 and 5, Member States shall charge the same rate of duty on all products chargeable with the duty on intermediate products.
3. A Member State may apply a single reduced rate of duty to intermediate products with an actual alcoholic strength by volume not exceeding 15 % vol. subject to the following conditions :
 - the reduced rate shall not be set more than 40 % below the standard national rate of excise duty,
 - the reduced rate may not be less than the standard national rate applied to products covered by Articles 8 (1) and 12 (1) of this Directive.

4. Member States may apply a single reduced rate of duty to intermediate products which are defined in Article 13 (1) and (2) of Regulation (EEC) No 4252/88.

The reduced rate

- may fall below the minimum rate but shall not be set more than 50 % below the standard national rate of excise duty,
- or
- shall not be set below the minimum rate applied to intermediate products.

5. For intermediate products which are contained in bottles with 'mushroom stoppers' held in place by ties or fastenings, or have an excess pressure due to carbon dioxide in solution of three bars or more, Member States may apply the same rate as provided for products falling within the scope of Article 12 (2), provided that this rate is higher than the national rate for intermediate products.

SECTION V

ETHYL ALCOHOL

Scope

Article 19

1. Member States shall apply an excise duty to ethyl alcohol in accordance with this Directive.
2. Member States shall fix their rates in accordance with Directive 92/84/EEC.

Article 20

For the purposes of this Directive the term 'ethyl alcohol' covers:

- all products with an actual alcoholic strength by volume exceeding 1,2 % volume which fall within CN codes 2207 and 2208, even when those products form part of a product which falls within another chapter of the CN,
- products of CN codes 2204, 2205 and 2206 which have an actual alcoholic strength by volume exceeding 22 % vol.,
- potable spirits containing products, whether in solution or not.

Establishment of the duty

Article 21

The excise duty on ethyl alcohol shall be fixed per hectolitre of pure alcohol at 20°C, and shall be calculated by

reference to the number of hectolitres of pure alcohol. Subject to the provisions of Article 22, Member States shall charge the same rate of duty on all products chargeable with the duty on ethyl alcohol.

Article 22

1. Member States may apply reduced rates of excise duty to ethyl alcohol produced by small distilleries within the following limits:

- the reduced rates, which may fall below the minimum rate, shall not be applied to undertakings producing more than 10 hectolitres of pure alcohol per year. However, Member States which applied reduced rates on 1 January 1992 to undertakings producing between 10 hectolitres and 20 hectolitres of pure alcohol per year may continue to do so,
- 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 'small distillery' shall mean a distillery which is legally and economically independent of any other distillery and which does not operate under licence.

3. Member States shall ensure that any reduced rate they may introduce applies equally to ethyl alcohol delivered into their territory from independent small producers situated in other Member States.

4. Member States may lay down provisions whereby the alcohol produced by small producers shall be released for free circulation as soon as it is obtained (provided the producers have not themselves carried out any intra-Community transactions) without being subjected to the tax warehousing arrangements, and be taxed definitively on a flat-rate basis.

5. Member States may apply reduced rates of duty to products falling within CN code 2208 which have an actual alcohol strength by volume not exceeding 10 % vol.

Article 23

The following Member States 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 the following products:

1. the French Republic, in respect of rum as defined in Article 1 (4) (a) of Regulation (EEC) No 1576/89 and produced from sugar cane harvested in the place of manufacture as set out at Article 1 (3) (1) of 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, in respect of those aniseed flavoured spirit drinks defined in Regulation (EEC) No 1576/89 which are colourless and have a sugar content of 50 grams or less per litre, and in which at least 20 % of the alcoholic strength of the final product is composed of alcohol flavoured by distillation in traditional discontinuous copper stills with a capacity of 1 000 litres or less.

SECTION VI

MISCELLANEOUS

Article 24

1. Member States need not require that products covered by this Directive shall be manufactured in a tax warehouse from constituent alcoholic products which are held in suspension of the relevant excise duties, provided that the duty on the constituents has already been paid in advance and that the total tax payable on the constituent alcoholic products is not less than the tax payable on the product which results from their mixture.

2. The Kingdom of Spain need not consider as the manufacture of intermediate products the preparation of wines produced in the regions of Moriles-Montilla, Tarragona, Priorato and Terra Alta, to which alcohol has been added in such a way that their alcoholic strength does not increase by more than 1 % vol.

Article 25

Member States may refund the excise duty on alcoholic drinks withdrawn from the market because their condition or age renders them unfit for human consumption.

Article 26

References in this Directive to CN codes shall be to those of the version of the combined nomenclature in force when this Directive is adopted.

SECTION VII

EXEMPTIONS

Article 27

1. Member States shall exempt the products covered by this Directive from the harmonized excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of

such exemptions and of preventing any evasion, avoidance or abuse :

- (a) when distributed in the form of alcohol which has been completely denatured in accordance with the requirements of any Member State, such requirements having been duly notified and accepted in accordance with paragraphs 3 and 4 of this Article. This exemption shall be conditional on the application of the provisions of Directive 92/12/EEC to commercial movements of completely denatured alcohol ;
- (b) when both denatured in accordance with the requirements of any Member State and used for the manufacture of any product not for human consumption ;
- (c) when used for the production of vinegar falling within CN code 2209 ;
- (d) when used for the production of medicines defined by Directive 65/65/EEC ;
- (e) when used for the production of flavours for the preparation of foodstuffs and non-alcoholic beverages with an alcohol strength not exceeding 1,2 % vol. ;
- (f) when used directly or as a constituent of semi-finished products for the production of foodstuffs, filled or otherwise, provided that in each case the alcoholic content does not exceed 8,5 litres of pure alcohol per 100 kg of the product for chocolates, and 5 litres of pure alcohol per 100 kg of the product for other products.

2. Member States may exempt the products covered by this Directive from the harmonized excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemptions and of preventing any evasion, avoidance or abuse, when used :

- (a) as samples for analysis, for necessary production tests, or for scientific purposes ;
- (b) for scientific research ;
- (c) for medical purposes in hospitals and pharmacies ;
- (d) in a manufacturing process provided that the final product does not contain alcohol ;
- (e) in the manufacture of a component product which is not subject to excise duty under this Directive.

3. Before 1 January 1993 and three months before any intended subsequent change in national law, each Member State shall communicate to the Commission, together with all relevant information, the denaturants which it intends to employ for the purposes of paragraph 1 (a). The Commission shall transmit the communications to the other Member States within one month of receipt.

4. If, within two months of the other Member States being informed, neither the Commission nor any Member State has requested that the matter be raised in the Council, the Council shall be deemed to have authorized the denaturing processes notified. If an objection is raised within the time limit, a decision shall be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

5. If a Member State finds that a product which has been exempted under paragraphs 1 (a) or 1 (b) above gives rise to evasion, avoidance or abuse, it may refuse to grant exemption or withdraw the relief already granted. The Member State shall advise the Commission forthwith. The Commission shall transmit the communication to the other Member States within one month of receipt. A final decision shall then be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC. Member States shall not be obliged to give retroactive effect to such a decision.

6. Member States shall be free to give effect to the exemptions mentioned above by means of a refund of excise duty paid.

Article 28

The United Kingdom may continue to apply the exemptions which it applied on 1 January 1992 to the following products :

- 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 ;
- 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, deli-

vered in containers holding 0,2 litres or less of product.

SECTION VIII

FINAL PROVISIONS

Article 29

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

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

Article 30

This Directive is addressed to the Member States.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE