Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

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 subjects 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 berages it is advisable to permit Member States to exempt from duty home-made products which are not produced for commercial purposes;

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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;

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 evaision, 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:

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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

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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 straigthforward 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,

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— 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 straigthforward 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 appaly 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.,