

Review of Directive 92/83

Civil Dialogue Spirits
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The subject of the contract is the retrospective evaluation of Directive 92/83/EEC and its functioning under the existing legal framework.

The objective is to provide the Commission with the economic information to adapt their policy on the structures of alcohol excise duties and assess the likely impact of this future policy for the internal market.

In this respect, the evaluation should:

- Assess the extent to which Directive 92/83/EEC meets its objectives in terms of securing the revenues of tax administrations, ensuring the proper functioning of the internal market and reducing the opportunities for evasion, avoidance and abuse;
- Identify issues that have the highest potential for efficiency gains in terms of securing the revenues of tax administrations and reducing administrative and compliance costs, while meeting the requirements for a proper functioning of the internal market;
- Formulate recommendations, based on the collected evidence, on how best to address identified issues.

Four key issues have been identified that will be given specific attention over the course of the evaluation of Directive 92/83/EEC:

- The application and treatment of exemptions for denatured alcohol
- The classification of excisable alcohol and alcoholic beverages
- The application of reduced rates for small producers
- The exemptions applicable to private production for own consumption of certain product categories.

Exemptions of denatured alcohol

Under Article 27.1 (a) and (b) of the Directive denatured alcohol is exempted from the application of excise duties.

In Article 27.1 (a), the Directive lays down that “alcohol which has been completely denatured in accordance with the requirements of any Member State” which have been notified under the procedure in Article 27.3 and 27.4 shall be exempted from the application of excise duties.

Article 27.1 (b) stipulates that alcohol that is “denatured in accordance with the requirements of any Member State and used for the manufacture of any product not for human consumption” shall equally be exempted.



There are indications that the application of these provisions may be causing considerable problems for economic operators (by failing to provide legal certainty, clarity and an equal legal playing field) as well as for Member States (through opening possibilities for abuse and/or fraud).

Early exchanges with Member States' tax authorities have revealed that the provisions regarding these exemptions are interpreted and applied very differently across countries.



Categorisation of products

The market for alcohol and alcoholic beverages has evolved beyond the product categories known when the Directive was adopted in 1992.

Today, an increasing number of products containing mixtures of different categories of alcoholic beverages or mixes of alcoholic with non-alcoholic beverage exist. The classification of such products may not always be straightforward. Producers of mixed beverages containing spirits have an incentive to have their products classified as intermediate products under Article 17 rather than ethyl alcohol defined in Article 20 as lower excise duty rates apply to the prior. Similarly, for the producers of an increasing number of mixtures of beer with spirits a classification of their beverages under Article 2 rather than as an intermediate product or an ethyl alcohol would allow for a lower excise rate.



Finally, there are more traditional products like mead made from fermentation of honey which do not clearly fall into one of the categories and are thus taxed differently from one Member State to another.

Difficulties linked to the categorisation of products may lead to increased costs when administrations have to spend time verifying products or even situations in which Member States tax the same product differently leading to unfair competition and potential revenue loss for economic operators.

Reduced rates for small producers

The third identified key issue relates to the reduced rates for small producers. While Member States can apply lower excise duty rates to small breweries and distilleries, there is no such possibility for small producers of wine, other fermented beverages or intermediate products. This could potentially create advantages for producers of beer and ethyl alcohol able to sell their products at a lower price. The lack of reduced rates for wine and other fermented beverages can potentially discourage Member States from introducing an excise duty on these products.



Furthermore, there is concern about the level of production at which these reduced rates apply. The Directive foresees that breweries producing less than 200,000 hl per year and distilleries producing less than 10 hl per year can benefit from a reduced rate. Intending to create a level playing field for all producers, this provision entails the potential to place at a disadvantage medium sized breweries and distilleries.



Exemptions applicable to private production for own consumption of certain product categories

Under the Directive Member States can grant exemptions for beer, wine and other fermented beverages stemming from private production intended for own consumption (Articles 5.2, 10 and 14). Similar provisions for intermediate products and ethyl alcohol do not exist.



During the Fiscalis Workshop held in May with representatives of the Member States it was noted that several Member States nevertheless apply exemptions for own production to producers of ethyl alcohol. A general interest was expressed to expand the exemptions. However, concerns about consumer health and potential cross-border fraud were raised.