

## III

*(Preparatory Acts)*

## EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

## 436th PLENARY SESSION, HELD ON 30 AND 31 MAY 2007

**Opinion of the European Economic and Social Committee on the 'Proposal for a Council Directive amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages'**COM(2006) 486 *final*

(2007/C 175/01)

On 26 September 2006 the Council decided to consult the European Economic and Social Committee, under Article 93 of the Treaty establishing the European Community, on the abovementioned proposal.

The Section for Economic and Monetary Union and Economic and Social Cohesion, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 April 2007. The rapporteur was **Mr Iozia**.

At its 436th plenary session, held on 30 and 31 May 2007 (meeting of 30 May 2007), the European Economic and Social Committee adopted the following opinion by 78 votes to 10 with 0 abstentions.

**1. Conclusions and recommendations**

1.1 The Committee thinks it would be wrong to apply an automatic adjustment for the rate of inflation in the EU-15 since 1992, given that another three countries joined the Union in 1995, a further ten on 1 May 2004 and two more on 1 January 2007.

1.2 The Committee thinks that if the desired harmonisation is to be achieved in the EU-27, the adoption of a maximum rate of duty should be considered: this is certainly one measure that holds out the prospect of effectively combating smuggling and fraud and approximating taxation rates, thus facilitating the emergence of a real single market. The way to protect the interests of consumers — who should not be seen as smugglers simply for buying alcoholic beverages where they cost less — is through progressive harmonisation.

1.3 The Committee recommends that Member States be explicitly forbidden to add to the normal duty and VAT regimes other forms of consumer taxation — for which, as the European Court of Justice has found <sup>(1)</sup>, they sometimes invent the name 'Community tax'.

1.4 In the Committee's view, the proposal does not sufficiently justify the choice of Article 93 of the Treaty as the legal basis, authorising the Council to adopt measures to harmonise national legislation on fiscal issues by unanimous vote. By leaving the Member States free to set their own rates above the minimum, the proposal does not, in fact, harmonise anything.

1.5 The Committee thinks the Commission is wrong to play down the proposal and in this way justify the absence of an impact assessment and a consultation of interested parties. In a hearing held at the Committee, all the participants not only declared their own opposition to the Commission proposal, but also called on it to carry out a thorough impact assessment in the future.

1.6 The Committee wishes the proposal to be withdrawn and calls on the Commission, in its future work, to update references to the codes in the Common Nomenclature set out in Directive 92/83 and revise the methods of classification.

**2. The Commission proposal**

2.1 The Proposal for a Council Directive amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages sets minimum rates for excise

<sup>(1)</sup> C-437/97 Evangelischer Krankenhausverein Wien (EKW).

duty on alcohol and the different categories of alcoholic beverages. Article 8 of the Directive obliges the Commission to carry out periodical inspections and submit a report and, where appropriate, a proposal for amendment.

2.2 The debate following the report issued by the Commission on 26 May 2004 — in which it concluded that greater convergence of the minimum rates of excise duty in the different Member States was needed to ensure proper functioning of the internal market and prevent the fraud and smuggling which was facilitated by the different regimes in the Member States — led to the initiative, prompted by the Council's call for it 'to come forward with a proposal to adjust the minimum rates of excise duty in order to avoid a fall in the real value of the Community minimum rates, providing transitional periods and derogations for those Member States who may have difficulties in increasing their rates'. The Council also added that 'the Commission should also duly take into account the overall political sensitivity of this special issue'.

2.3 The Commission therefore proposes amending the Directive by:

- revalorising the minimum rates on alcohol, intermediate products and beer in line with inflation from 1993 to 2005, which is in the order of 31 %, to take effect from 1 January 2008;
- providing transitional periods to one year for those countries which should increase their rate by more than 10 % and equal to two years for those which should increase theirs by over 20 %;
- prolonging the review period of the review procedure under Article 8 of the Directive from two to four years.

2.4 The primary aim of the proposal, as requested by the Council, is to restore the real value of rates to the 1992 level — a value which the Commission thinks will 'ensure the functioning of the Internal Market without fiscal borders'.

### 3. Remarks

3.1 In the absence of an impact assessment, the Committee decided to hear for itself the views of producers' associations, consumers and trade unions. In the course of the hearing, participants spoke with one voice of their bewilderment at the proposal for a directive. Some organisations also noted that the proposal would further increase the unequal treatment of alcoholic beverages — to the manifest detriment of those liable to duty. Producers of beverages not liable to duty, on the other hand, called for the present structure — which was, moreover, set defined in the Common Agricultural Policy agreements — to remain unchanged.

3.2 Those participating in the hearing <sup>(2)</sup> also agreed that social and health aspects should be taken into consideration, but should not determine taxation. At the same time, they called for support for a 'responsible consumption' campaign to limit risks of abuses — a demand which the Committee endorses. It was also stressed that the European industry led the world and made a by no means negligible contribution to Europe's GDP and to both direct and indirect employment.

3.3 At first sight, the draft Directive would appear to be a routine measure simply adjusting the figures to match inflation since 1993. However, it deals with an extremely involved and sensitive issue that exposes how far national policies and interests are from giving way to a high degree of Community fiscal convergence. The Committee has on several occasions expressed its desire for a process of fiscal harmonisation, which is absolutely vital if consumers are to appreciate the benefits of the single market.

3.4 The ECOFIN meetings of 7 and 28 November 2006, at which this proposal was one of the items on the agenda, have reopened the interminable discussions between Member States, in many ways recreating the situation which back in 1992 gave rise to the Directive, which succeeded only in setting minimum rates and offered no possibility of identifying a joint approach for harmonising and converging excise duties.

3.5 Close inspection reveals truly vast differences in the rates in the various Member States. The report of 26 May 2004 included measures applied for various categories in the then 25 Member States and the candidate countries Romania and Bulgaria <sup>(3)</sup>, members since 1 January 2007. The gap between the lowest and highest rates amounted to 1 100 %!

3.6 By way of example, for wine the range was from 0 to EUR 273; for sparkling wine from 0 to EUR 546 per hl.; for beer, from 0.748 per degree Plato <sup>(4)</sup>, equivalent to EUR 1.87 to EUR 19.87 per hl./degree of alcohol; for still and sparkling intermediate products from EUR 45 to 497 per hl.; for pure alcohol from EUR 550 to 5 519 per hl., equivalent to a range of between EUR 220 and EUR 2 210 per hl. for 40° alcoholic beverages.

<sup>(2)</sup> CEPS — The European Spirits Organisation; AICV — The Association of Cider and Fruit Wine; The Brewers of Europe; Comité Européen des Entreprises Vins.

<sup>(3)</sup> See appendix: the charts published by the Commission on 26 May 2004 in its Proposal for a Council Directive amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages.

<sup>(4)</sup> According to the free online encyclopaedia Wikipedia, the degree Plato is a unit of measurement to determine the **density** of a solution. The Plato scale is used especially in the beer industry for its ease of use. The density of a **solution** measured in degrees Plato is defined as the equivalent of the density measured in weight/weight percentage of a **water-sucrose solution**. In other words, if a litre of **beer wort** has a content equal to 12 degrees Plato, the density of the extract (or sugars dissolved in the wort) in question is equal to that of a litre of solution containing 12 % wt/wt of sucrose approximating the specific gravity of water at 1 Kg/l and **at sea level** and ambient temperature. Our sample contains around 120 grams of extract.

3.7 Revalorising the minimum rate as proposed by the Commission would reduce the gap between the rates used in different countries from 1 100 % to somewhere between 800 % and 1 000 %. The suggestion that this measure would ensure the operation of the internal market seems bold, to say the least. The Committee suggests that the effective solution is to introduce not only a minimum rate, but also a maximum rate — a measure that holds out the prospect of combating smuggling and fraud.

3.8 The insistence that adjusting the minimum rates to the rate of inflation will not increase real value is equally unconvincing. In the interests of providing fuller information, the Commission should have supplied a dynamic model of the way excise duty has operated in the Member States, starting with the year in which the proposal for harmonisation was put forward in a White Paper, namely 1985. The truth is that the result of this, with one or two exceptions, has been to increase the real value of duties in Member States once the derogation granted to some countries had expired. The Committee is critical of all national practices that add other forms of taxation to duties, in some cases calling them 'Community tax'.

3.9 That this is indeed the case has been confirmed by a study instigated by the Commission itself <sup>(5)</sup>, which makes it clear that all but three of the Member States have increased the value of their duties every year or every few years.

3.10 The same study, which took into account demand elasticity in response to prices, showed that if the minimum rates were readjusted in line with inflation:

- spirits would benefit substantially from a change in rates — this would be particularly the case in Nordic countries, but also in the UK and Ireland;
- under the relatively high price elasticity option the increases in spirits consumption would be greater when compared to the crossprice elasticity assumption (the relationship between demand for a certain types of product and the cost of other categories of product) <sup>(6)</sup> as far as high-proof spirits are concerned;
- in the high elasticity option, the main losers would be in beer and wine — the Nordic countries would see significant losses in wine consumption and Germany, Belgium, France and Luxembourg would see a drop in beer consumption.

3.11 It would be interesting to compare this study, which was limited to the EU-15, with the effect of variation of the minimum rates in the new EU of 27 Member States.

<sup>(5)</sup> Customs Associates Ltd, Study on the competition between alcoholic drinks — Final report — February 2001.

<sup>(6)</sup> Crossprice elasticity in relation to price gives an indication of the degree of competition between beverages.

3.12 The Committee wonders whether the Commission should continue to perform a merely administrative role on what has been stated to be an extremely sensitive subject, or whether it should not instead put forward proposals, in some cases in dialogue with the Member States, to effectively mitigate the substantial distortions to competition entailed in maintaining such a fragmented taxation regime.

3.13 Another aspect that the Commission completely ignored in drafting its proposal for amending the directive is that in the 12-member European Community in 1992 the gap in per capita income was not such as to make the rates in force onerous. In the Europe of 27, where there is a very diverse range of salary and pension levels, continuing the same degree of taxation for new and old Member States is an unfair measure that hits only more modest incomes. For households containing workers and pensioners whose salaries and pensions are no higher than EUR 100 to EUR 150 a month and who have already had to suffer an increase in alcohol duties of between 50 % and 400 %, a further 31 % hike would undoubtedly adversely affect consumption. In the particular light of the accessions that have occurred in the meantime, bringing in 12 new countries, the Committee does not believe it would be right to apply an automatic adjustment for an inflation rate recorded in the EU-15 from 1992 onwards.

3.14 Save for very rare exceptions, then, the system proposed is at odds with all the anti-inflation policies put in place by the Member States which some time ago abolished, where they existed, mechanisms indexing wages and pensions to the inflation rate. The Commission fails to explain adequately why such a mechanism should be retained only for taxes and duties.

3.15 The Committee believes, on the contrary, that the current regime is entirely unfit for purpose and finds adjustment to the rate of inflation (of the EU of 12, 25 or 27?) to be an unnecessarily punitive measure, especially for the lowest incomes, as are all forms of indirect taxation that eat into the tax-payer's net income.

3.16 Just as the consumption of wine in moderation is part of the culture and history of some Member States, the same is true for other types of alcoholic beverages for other European peoples. The issue, in all its ramifications, needs to be seen in a broader perspective.

3.17 The Committee respects the decision of some countries to adopt a stringent fiscal policy on alcohol and tobacco, probably because of the abuse involved, especially among young people. Some Member States have made it clear that their fiscal policies must take account of public health. Nevertheless, these decisions have chosen to make cannot influence the choice and motivations of other Member States.

3.18 In this regard, the Committee has already expressed its position in a detailed opinion <sup>(7)</sup> which stressed that: 'Abuse is best tackled by education, information and training programmes primarily aimed at those who do abuse alcohol.'

3.19 In the Committee's view, the requirements of Article 93 of the Treaty are not met, authorising the Council to decide by unanimous vote on measures to harmonise tax regimes in order to implement or improve the operation of the internal market within the scope of Article 14. The fact is that increasing minimum duties does not contribute to harmonisation, but merely sets a minimum level that every Member State can decide to raise as much as it wishes. The fact that actual rates have further diverged since the adoption of Directive 92/84 EEC shows that harmonisation cannot be achieved through a directive of this kind.

#### 4. Combating fraud and smuggling

4.1 One adverse consequence of wide-ranging differences in taxation, apart from hindering sound operation of the internal market, is the strong tendency to avoid duties — either in part, by paying them in a Member State other than that of end consumption, or completely by importing goods from third countries or rerouting goods while they are in transit and duties are suspended.

4.2 The arrival of e-commerce has provided another area of potential fiscal fraud, given the impossibility of monitoring online sales and the absence of a coordinated policy to combat alcohol duty fraud, since some Member States do not consider this to be a problem and it is almost the exclusive concern of areas with the highest taxation.

4.3 Enlargement has brought the Union's external borders to countries where taxation levels are far lower than the EU average and the potential for fraud has increased exponentially. Corruption is rampant in some of these countries, with customs authorities themselves involved in some cases. Measures to combat smuggling must be further strengthened and if an increase in duties is adopted in the form proposed, the profit margins for international smugglers will be even greater.

4.4 As far back as 1992, the Union was aware of the problem of combating fraud on goods liable to excise duty, and published the Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products. As this met with little success, it was amended in 2004 by Council Directive 2004/106/EC of 16 November 2004, which amends also Directive 77/799/EEC concerning mutual assistance by the competent authorities of the Member

States in the field of direct taxation, certain excise duties and taxation of insurance.

4.5 On this issue, the Committee maintains in one of its opinions <sup>(8)</sup> that in order to effectively combat fraud 'there is a clear need to modernise, strengthen, simplify and make more efficient the instrument for administrative cooperation and exchange of information between Member States on excise duties'.

4.6 The same opinion highlighted the fact that: 'Once again the benefits which would flow from more effective operation of the single market, and in the case in point from procedures likely to detect and combat fraud and tax evasion, are being limited by the wish to safeguard national interests.' And again: 'There is no doubt that many fraudulent practices are directly related to the differences — sometimes significant — which exist between excise rates applied in the different Member States.'

'The Committee takes this opportunity to criticise the limitations arising from the unanimity principle, which at present governs most Community decisions on tax law, and reiterates the need to replace it with the qualified majority principle when it is a matter of taxes which influence the operation of the internal market or cause distortions of competition'.

4.7 The Committee has, over the years, repeatedly emphasised the following key concepts:

- strengthening administrative cooperation, permanent dialogue between fiscal administrations, mutual assistance, ongoing and identical training for those combating fraud, networks of police forces and tax authorities on compatible platforms and sharing databases;
- facilitating processes of fiscal harmonisation in both direct taxation and the more intricate field of excise;
- launching a process to abandon the requirement of unanimity for certain fiscal issues, starting with those that are easiest to implement;
- abandoning the VAT taxation model, which makes fraud easier, and
- not increasing the tax burden.

4.8 In Sweden in 2004, for example, travellers or smugglers imported around 164 million litres of beer alone, which was roughly the same volume — 173 million litres — sold by the state monopoly (Systembolaget) and represented a loss of around EUR 190 million in revenues from excise tax and VAT. Such purchases have risen 40 % since 2002 and the lifting of a special regime restricting purchases from abroad. Smuggling is

<sup>(7)</sup> OJ C 69 of 21.3.2006 (Rapporteur: Mr Wilkinson).

<sup>(8)</sup> OJ C 112 of 30.4.2004, p. 64 (Rapporteur: Mr Pezzini).

estimated to have doubled in the past two years. Denmark puts the amount of beer that travellers have bought in Germany and then imported at 95 million litres and this, added to 10 % of smuggled goods, means that around 30 % of beer consumed in the country is not subject to Danish taxation. In 2005, travellers imported more than 42 million litres, 10 % of total consumption, into Finland, causing revenue losses in excess of EUR 50 million. Thirty million litres were imported into Austria from Germany and the Czech Republic and more than 100 million into the UK (in addition to large-scale smuggling) <sup>(9)</sup>.

## 5. The structure of excise applied to alcoholic beverages

5.1 In its 2004 report, the Commission set out some of the problems identified over time in the actual implementation of Directive 92/84/EEC, highlighting three in particular:

- **Member States are allowed to tax still and sparkling alcoholic beverages differently;**
- **the need to update references to the codes in the Common Nomenclature in Directive 92/83/EEC** for defining the categories of alcoholic beverages for excise purposes, to take account of possible changes to those codes since 1992;
- **the classification of alcoholic beverages in the categories contained in Directive 92/83/EEC** has resulted in differing classifications and, in consequence, different taxation of the same products in different Member States.

5.2 As far as the first point is concerned, the Commission justifies its proposal to remove the option of treating sparkling

and still wines differently by saying that the arguments which had originally informed this decision — namely that sparkling wines were still a luxury product — were now less valid. (In point of fact, quite the opposite is true for certain still wines!).

5.3 Regarding the second point, Article 26 of Directive 92/83 (on the structure of excise) stipulates that the Common Nomenclature codes to which the directive refers are those in force on the day that the directive was adopted (19 October 1992). The Commission, however, proposes a reference instead to the most recent applicable Common Nomenclature codes and for future modifications to be adopted in line with Article 24 of Directive 92/12 EEC (involving a Committee on Excise Duties of the kind set up for energy products).

5.4 On the third point: to avoid the problem raised by many operators regarding the directive's vague wording, which fails to specify the amount of distilled alcohol that can be added to 'other fermented beverages', the Commission proposes to make the definition of alcoholic beverages for excise purposes less dependent on the Common Nomenclature classification.

5.5 The Committee finds the changes requested by operators to ensure simplification and protection of competition to be well founded and coherent. It endorses the proposals made earlier by the Commission and wonders why these changes have not been introduced to amend Directive 92/83 to this end.

5.6 The Committee calls for the proposal for a directive to be withdrawn, while recommending that the changes to Directive 92/83 proposed by the Commission be adopted.

Brussels, 30 May 2007.

The President  
of the European Economic and Social Committee  
Dimitris DIMITRIADIS

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<sup>(9)</sup> Oxford economics 'The consequences of the proposed Increase in the minimum excise duty rates for beer'. February 2007.

## APPENDIX

**to the Opinion of the European Economic and Social Committee**

The following amendments, which received at least a quarter of the votes cast, were rejected in the course of the debate:

**Point 4.6**

Delete text:

*The same opinion highlighted the fact that: "Once again the benefits which would flow from more effective operation of the single market, and in the case in point from procedures likely to detect and combat fraud and tax evasion, are being limited by the wish to safeguard national interests." And again: "There is no doubt that many fraudulent practices are directly related to the differences — sometimes significant — which exist between excise rates applied in the different Member States."*

~~*"The Committee takes this opportunity to criticise the limitations arising from the unanimity principle, which at present governs most Community decisions on tax law, and reiterates the need to replace it with the qualified majority principle when it is a matter of taxes which influence the operation of the internal market or cause distortions of competition".*~~

*Reason*

The decision-making procedure is a highly sensitive political issue which will have to be agreed on in the future treaty. Fiscal policy — once the single currency is established and the subsequent abolition of the possibility of developing monetary policies geared to the economic situation in each country — is the sole tool which the Member States have for directing their economic policy. For as long as no further progress is made on economic and social cohesion, it should not be proposed that a majority, even a qualified majority, can impose its criteria on all the Member States.

Furthermore, abandoning the unanimity rule would mean that some countries, which thanks to this rule are able to maintain their support for key sectors of their economy (such as wine and/or beer in certain countries), would be obliged to agree to a different decision-making scenario, losing the possibility of continuing to block certain policies contrary to their national interests, a possibility of which they make use at the moment.

*Voting:*

For: 21

Against: 54

Abstentions: 4

**Point 4.7**

Add the following:

*The Committee has, over the years, repeatedly emphasised the following key concepts:*

- strengthening administrative cooperation, permanent dialogue between fiscal administrations, mutual assistance, ongoing and identical training for those combating fraud, networks of police forces and tax authorities on compatible platforms and sharing databases;*
- making it easier for consumers to exercise their rights when distance-buying all products on the internal market;*
- facilitating processes of fiscal harmonisation in both direct taxation and the more intricate field of excise;*
- launching a process to abandon the requirement of unanimity for certain fiscal issues, starting with those that are easiest to implement, as part of a coherent European tax policy;*
- abandoning the VAT taxation model, which makes fraud easier, and;*
- not increasing the tax burden.'*

*Reason*

Reason 1: The concept of a maximum rate should be uncoupled, at least formally, from those of harmonisation, approximation of rates of duty and progressive harmonisation. Although one of the effects of a maximum rate would be to squeeze the present differentials between existing rates, as explained in points 3.5, 3.6 and 3.7, with an ensuing increase in real harmonisation, the way the point is worded could suggest that the maximum rate is the same as the objective rate. The proposed amendment seeks to avoid this.

Indeed, the present problem is caused by the high rates imposed by some countries (Ireland, United Kingdom, Finland and Sweden, for example), which have generated enormous differentials with their neighbouring countries.

[The following paragraph does not apply to the English text].

Moreover, an effective way to boost the internal market and combat fraud is to allow EU citizens to exercise their right to buy these beverages from a distance, as happens with other foodstuffs. This would establish legal distribution channels subject to checks by the tax or health authorities, leading to greater consumer knowledge of these products. It would also comply with the principle of free movement of goods, which does not cover only the professional trade, but also transactions carried out by private individuals. Freedom of movement means that consumers living in one Member State must be able to buy goods in the territory of another Member State, subject to a minimum, standard set of fair rules governing the buying and selling of consumer goods.

The Committee has recently stated that promoting the benefits of the single market among consumers must be a priority for its completion (EESC Opinion on the Review of the Single Market, OJ C 93 of 27.4.2007 (opinion INT/332)).

Reason 2: Clarification is needed since, as mentioned in the following point, the model established under the VAT framework has generated abundant case-law, due to the loopholes in legislation and in its implementation at European and national level. If the process discussed in the opinion is to be put into action, it is important to ensure coordination.

*Voting:*

For: 20

Against: 55

Abstentions: 4

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