

Council Directive (EU) 2020/1151 of 29 July 2020 amending
Directive 92/83/EEC on the harmonization of the structures
of excise duties on alcohol and alcoholic beverages

COUNCIL DIRECTIVE (EU) 2020/1151
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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 Parliament⁽¹⁾,

Having regard to the opinion of the European Economic and Social Committee⁽²⁾,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Some provisions of Council Directive 92/83/EEC⁽³⁾ are outdated and unclear and result in unnecessarily burdensome administrative procedures for both tax administrations and economic operators.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 Furthermore, references to Union legislation that is no longer in force need to be updated.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.
- (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 29 July 2020,

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 Council⁽⁴⁾. 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.
- (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

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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 29 July 2020, 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:

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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