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NOTE

From:	Presidency
To:	Council
No. Cion doc.:	9570/18 - COM(2018) 334 fnal
Subject:	Proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages – General approach

I. INTRODUCTION

1. In response to Council Conclusions of 6 December 2016, [1] on 25 May 2018 the Commission submitted a proposal for a Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages[2].

2. The objective of the proposal is to update the rules governing excise duty on alcohol within the EU, pave the way for a better business environment and reduce costs for small alcohol-producing businesses. More particularly, this legislative proposal aims at:

   i) putting in place a uniform certification system in the EU for confirming the status of independent small producers throughout the Union, recognisable in all EU countries;

[1] doc. 15009/16 FISC 212 ECOFIN 1134.
[2] doc. 9570/18 + ADD1, ADD2.

ii) ensuring a precise and consistent classification of cider across the EU, the current absence of which is a major obstacle for small cider producers who do not have access to the reduced rates afforded to small beer and ethyl alcohol producers;

iii) clarifying the conditions for application of the exemption for denatured alcohol in the EU;

iv) increasing the threshold for lower strength beer that can benefit from reduced rates from 2.8% volume to 3.5% volume, to provide an incentive for brewers to be innovative and create new products. This should encourage consumers to choose low-strength alcoholic drinks over standard ones, reducing alcohol intake.

3. The opinion of the European Economic and Social Committee was issued on 17 October 2018[3]. On 24 October 2018, the European Parliament delivered its opinion on the Commission proposal.[4]

II. STATE OF PLAY

4. The Romanian Presidency brought further technical examination of the Commission proposal, as well as negotiations on the possible compromise. These discussions began during Bulgarian and Austrian Presidency terms and took place at the level of the Working Party on Tax Questions (WPTQ) and High Level Working Party on Taxation (HLWP).

5. In the course of negotiations, the Presidency noted that a variety of considerations, such as health issues and efficient collection from alcohol excise should be taken into account, in order to reach a compromise that could be acceptable to all delegations.

[3] *OJ C 62, 15.2.2019, p. 108.*
[4] T8-0415/2018.

6. Following the meeting of the Fiscal Attachés of 7 March and the meeting of the Committee of Permanent Representatives (Part 2) of 8 March 2019, as well as bilateral contacts, the Presidency made further amendments to the compromise text of the draft Directive (the latest compromise text is attached to the present note). The Presidency hopes that issues raised by delegations (e. g. with regard to Articles 9a, 13a, 18a and 27(2)(f)) would now be resolved and that Member States could consider reaching an agreement on this dossier, in a spirit of a compromise, including on the three key issues set out in Part III of this note.

III. KEY ISSUES

(i) Method to measure Plato degree for beer and transitional period *(amendments to Art. 3 of Directive 92/83/EEC)*

7. Majority of delegations support the Commission proposal to amend Article 3 of Directive 92/83/EEC to the effect that all the ingredients of beer, including those added after the completion of fermentation have to be taken into account for the purposes of measuring the degree Plato (which is one of the methods to fix the excise duty on beer). However, some delegations can not accept that such modification of Article 3 is part of the compromise text.

8. The Presidency hopes that a transitional period till 31 December 2030 could enable raching a compromise: Member States, which do not take ingredients of beer that have been added after fermentation into account for the purposes of measuring the degree Plato, would be able to do so until that date.

(ii) Exemption from excise duty or reduced rates for small home distilleries *(draft Art. 22(8) of Directive 92/83/EEC)*

9. During negotiations on this dossier a number of Member States requested that Directive 92/83/EEC foresees the possibility (option) for Member States to exempt from excise duties or apply reduced rates of excise duties for ethyl alcohol distilled by private individuals, from fruit, for their households, and for their private use.

10. All delegations now seem to converge, in the spirit of a compromise, that Article 22(8) may remain part of the compromise, but only in case such an exemption/reduced rate is applied to a limited annual quantity of ethyl alcohol.

11. The Presidency suggests that the text of draft Article 22(8) contains a provision on a quantitative limit of 175 litres. However, there is yet an agreement to be reached on the exact size of such a quantitative limit which would be subject to exemption and/or reduced rate (many Member States indicate a strong preference for a lower figure).

(iii) Alternative method to fix excise duty on wine, other fermented beverages and intermediate products *(draft Art. 23b of Directive 92/83/EEC)*

12. Some Member States requested that, instead of applying the method of fixing excise duty set out in Article 9(1), 13(1) and 18(1), they are permitted to fix the excise duty on all products referred to in these Articles by reference to the number of hectoliter/degrees of actual alcoholic strength by volume of finished product.

13. However, some other delegations indicated that they still can not support that Article 23b is part of the overall compromise, as this Article, in their view, goes against the currently existing principles of establishing the excise duty on various types of beverages.

14. It is important to note that this Article, which is optional for Member States, would apply with a number of safeguards which are set out in that Article, such as:

- such choice would have to be applied to all products referred to in Article 9(1), 13(1) and 18(1);

- the excise duty levied would have to be not lower than the minimum excise duty per hectolitre of such products, as applicable in accordance with Directive 92/84/EEC;

- provisions of Article 23b would not be interpreted as amending rules of Directive 92/84/EEC on minimum rates of excise duty, etc.

15. Against this background, the Presidency suggests that, as part of the overall package, this Article could remain in the compromise text with two further conditions:
- first, it should be applicable until end of 2030, and would be subject to a review under Article 28b;
- second, to ensure legal certainty, paragraph 3 of this Article should clearly say that this Article shall apply without prejudice to the remaining provisions of Article 9, 13 and 18, as applicable.

IV. WAY FORWARD

16. Against this background, the Presidency hopes that the compromise text set out in the Annex to this note would be acceptable to all delegations, and the key issues set out in Part III of this note will be resolved at the forthcoming meeting of the Council.

17. The ECOFIN Council is invited to:

- resolve the key issues set out in Part III of this note; and
- reach a political agreement on this legislative proposal, on the basis of the compromise text set out in the Annex to this note, with a view to adopting draft legislative act, subject legal-linguistic revision.

ANNEX

DRAFT

COUNCIL DIRECTIVE

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[5],

Having regard to the opinion of the European Economic and Social Committee[6],

Acting in accordance with a special legislative procedure,

[5] OJ C , , p. .
[6] OJ C , , p. .

Whereas:

(1) Some provisions of Council Directive 92/83/EEC[7] 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 Directives and Regulations 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 the measurement of degrees Plato. More particularly, as regards the measurement of degrees Plato for sweetened or flavoured beer, it is important to specify that 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 correct and straightforward application of these rules by taxable persons concerned and by the tax administrations as well as effectiveness of fiscal supervision against risks of tax evasion, avoidance or abuse.

(2a) In order to ensure a smooth transition to the harmonised methodology for measuring the degree Plato in beer, it is appropriate to allow that Member States which, as of [OJ: please insert the date of adoption of this Directive], do not take ingredients of the beer that have been added after fermentation into account for the purposes of measuring the degree Plato continue to use the currently applied methodology for a transitional period of time.

[7] Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 21).

(3) 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.

(4) [deleted]

(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.

(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 a form for a uniform certificate confirming the annual output 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[8]. 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 this provision 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 the other Member States, except under duly justified circumstances, for example risk of tax fraud or abuse. Member States that apply higher thresholds for small producers should have to apply the same thresholds for producers from other Member States.

(6a) In the case of wine, other fermented beverages and intermediate products, it is appropriate to permit Member States, wishing to address public health issues, to apply an alternative method of calculating the duty on all of these products, ensuring that the excise duty levied on the finished product is not less than the minimum excise duty per hectoliter in accordance with Directive 92/84/EEC. Moreover, Member States choosing such method should ensure that beverages of higher alcoholic strengh by volume are subject to higher excise amount. These provisions should not be interpreted as amending the rules of Directive 92/84/EEC as regards minimum rates of excise duty.

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[8] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(6b) In view of the specific situation of the wine sector in the Republic of Malta, Malta should be allowed to apply a higher threshold in connection with the reduced rates mechanism provided for in the Directive to independent small producers of wine.

(7) Member States should be authorised to apply a reduced rate to ethyl alcohol produced in fruit (apples, pears, grape marc, berries, etc.) growers´ distilleries.

(8) In the case of beer, wine and other fermented beverages the Directive permits Member States to exempt from duty home-made products which are not produced for commercial purposes, however the Directive does not allow such an optional exemption for ethyl alcohol produced from fruit (apples, pears, grape marc, berries, etc.) for private consumption. As several Member States have a tradition of such home-made products it is appropriate to permit Member States to apply reduced rates or exemptions for ethyl alcohol products of a regional and traditional nature, which are not produced for commercial purposes. Member States may, under a number of conditions, exempt from duty or apply reduced rates of excise duty to home-made ethyl alcohol produced from home-grown fruits (apples, pears, grape marc, berries, etc.) of the household of the producer, using simple small distilling device. Member States applying such reduced rates or exemptions should be obliged to take the necessary measures to prevent any evasion, avoidance or abuse. These Member States should have adequate requirements and procedures in place to ensure the control of production and consumption and prevention of cross-border effect.

(8a) It is appropriate to update the references to the codes of the Combined Nomenclature used to describe alcohol products.

(8b) Member States should be permitted, under a number of conditions, to exempt from harmonised excise duty the products covered by this Directive, when such products are used in the manufacture of food supplements.

(9) In order to reduce the compliance burden for economic operators and to increase legal certainty, the conditions for applying the exemptions for any type of denatured alcohol should be revised.

(10) 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 increase the legal certainty it is also necessary to clarify the procedures for the notification of changes to the requirements for the complete denaturing of alcohol.

(11) In order to lay down the procedures for the assessment of Member States' requirements for the complete denaturation of alcohol, implementing powers should be conferred on the Commission in respect of accepting or rejecting the requirements for the complete denaturation of alcohol notified by Member States. Those powers should be exercised in accordance with Regulation (EU) No 182/2011.

(12) 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 lay down 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 the exemption. In order to reduce the fraudulent use of that exemption, it is necessary to lay down further conditions for its application.

(13) 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 United Kingdom's national legislation, they are no longer relevant and should be abolished at Union level.

(14) Since the objectives of this Directive, namely to reduce the compliance burden of economic operators and administrative burden for 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 the 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.

(15) 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 subparagraph is 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.";

(1a) in Article 3, the following subparagraph (3) is added:

"(3) By way of derogation from the second subparagraph of the first paragraph of this Article, Member States that, as of [OJ: please insert the date of adoption of this Directive], 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]"

(3) in Article 5, the text "2,8 %" is replaced by the text"3,5 %";

(3a) in Article 8 paragraph 2 the text "2204 21 10" is replaced by the text "2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09".

(3b) 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 1000 hl or, in the case of the Republic of Malta, on average more than 20000 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 producers' 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 1000 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 it may introduce apply equally to wine delivered into its territory from independent small wine producers situated in other Member States. In particular it shall ensure that no individual delivery from another Member States ever bears more duty than its exact national equivalent.

(3c) in Article 12 paragraph 2 the text “2204 21 10” is replaced by the text “2204 21 06, 2204 21 07, 2204 21 08, 2204 21 09” and the text “2206 00 91” ist replaced by the text “2206 00 31 and 2206 00 39”.

(4) in Article 13(2) the words "Except as provided in paragraph 3" are replaced by the words "Except as provided for in paragraph 3 and Article 13a";

(5) 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 fermented beverages made by independent small producers within the following limits:

   - the reduced rates shall not be applied to undertakings producing more than a total of 15 000 hl of these beverages per year,

   - the reduced rates shall not be set more than 50 % below the standard national rate of excise duty for other fermented beverages.

2. For the purposes of this Article, the other fermented beverages must be obtained from the fermentation of fruits, berries, vegetables, a solution of honey in water or from the fermentation of the fresh juice or concentrated juice obtained from the above. Member States shall not permit the addition of any other alcohol or alcoholic beverage. For the purposes of this Article, the addition of alcohol used to dilute or dissolve flavourings in the dose strictly necessary to the extent that the alcoholic strength does not increase by more than 1.2 % vol. shall not be considered as addition of alcohol for the purpose of production of other fermented beverages. The addition of these flavourings shall not significantly alter the character of the original product.

3. Member States may limit the application of this Article to certain types of other fermented beverages.

4. For the purposes of this Article the term 'independent small producer' shall mean a producer of other fermented beverages which is legally and economically independent of any other producer of other fermented beverages, which uses premises situated physically apart from those of any other producers and does not operate under licence. However, where two or more small producers cooperate, and their combined annual production does not exceed 15 000 hl, those producers may be treated as a single independent small producer.

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

(6) In Article 15 the words “Directive 92/12/EEC” are replaced by the words “Directive 2008/118/EC [or a new recast Directive, if already adopted and published]”.

(7) In Article 18 (4) the words “Regulation 4252/88, Article 13(1) and (2)” are replaced by the words “Annex VII, Part II of Regulation (EU) Nr. 1308/2013”.

(7a) the following Article is inserted:

"*Article 18a*

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

   - the reduced rates shall not be applied to undertakings producing more than a total of 500 hl of these beverages 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 intermediate products.

2. Member States may limit the application of this Article to certain types of intermediate products.

3. For the purposes of this Article the term 'independent small producer' shall mean a producer of intermediate products which is legally and economically independent of any other producer of intermediate products, which uses premises situated physically apart from those of any other producers and does not operate under licence. However, where two or more small producers cooperate, and their combined annual production does not exceed 50 hl, those producers may be treated as a single independent small producer.

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

(8) Article 22 paragraph 6 shall be amended as follows:

"(6) Bulgaria, the Czech Republic and Poland may apply a reduced rate of excise duty, of not less than 50 % of the standard national rate of excise duty on ethyl alcohol, to ethyl alcohol produced by fruit growers' distilleries producing, on an annual basis, more than 10 hectolitres of ethyl alcohol from fruit supplied to them by fruit growers' households. The application of the reduced rate shall be limited to 30 litres of fruit spirits per producing fruit growers' household per year, destined exclusively for their personal consumption ."

(9) In Article 22 the following paragraph 8 is inserted:

"(8) Subject to such conditions as they shall lay down to ensure the straightforward application of this paragraph, Member States may exempt from excise duty, or apply reduced rates of excise to ethyl alcohol:

(a) produced by a private individual from fruits supplied from his household, using simple, small distilling device

or

(b) produced in small distilleries, referred to in paragraphs 1 and 2, for a private individual, from fruits supplied from his household,

and consumed by the private individual, members of his family or his guests, provided no sale is involved.

Member States shall limit the application of the exemption or of the reduced rates to not more than [175] liters of fruit spirits per producing fruit grower's household per year.

Member States applying such an exemption or reduced rates of excise shall lay down conditions for the purpose of preventing any evasion, avoidance or abuse and shall have adequate requirements and procedures in place to ensure the control of production and consumption and prevention of cross-border effect."

(10) Article 23 is amended as follows:

(a) the words "Article 1(4)(a) of Regulation (EEC) No 1576/89", are replaced by the words “point 1 of Annex II to Regulation (EC) No 110/2008”;

(b) the words “at Article 1(3)(1) of that Regulation” are replaced by the words “in point (13) of Annex I to that Regulation”;

(c) the words “Regulation (EEC) No 1576/89” are replaced by the words "Regulation (EC) No 110/2008";

(10a) In Section VI ("Miscellaneous"), the following Articles will be inserted:

"Article 23a

1. Subject to such conditions as they shall lay down to ensure the straightforward application of the provisions in Articles 4, 9a, 13a, 18a and 22, Member States shall, on request, provide an annual certificate to independent small producers established in their territory confirming their annual total production of products referred to in these Articles, as applicable and confirming their compliance with the criteria in Article 4(2), 9a(2),13a(4), 18a(3) and 22(2), as applicable. The administrative document for the movement of goods under [Chapter IV or V of Directive 2008/118/EC] shall refer to this certificate mentioned in this paragraph.

2. Notwithstanding paragraph 1 of this Article, Member States may, under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of this provision and of preventing any evasion, avoidance or abuse allow independent small producers referred to in Articles 4(1), 9a(1), 13a(1), 18a(1) and 22(1) established in their territory to self certify their compliance with the criteria in Article 4(2), 9a(2), 13a(4), 18a(3) and 22(2) as applicable, and their annual total production of products referred to in these Articles.

3. Member States shall, under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of this provision and of preventing any evasion, avoidance or abuse, recognise the certificate for producers referred to in Articles 4(1), 9a(1), 13a(1), 18a(1) and 22(1) issued by the other Member States, except under duly justified circumstances.

4. The Commission shall adopt implementing acts laying down :

(a) the form of the certificates referred to in paragraph 1;

(b) the form of the reference to that certificate contained in the document for the movement of goods under [chapter IV or V of Directive 2008/118/EC], and

(c) the requirements for the completion of the administrative document in the case of self-certification.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28a(2).

Article 23b

1. Instead of applying the method set out in Article 9(1), 13(1) and 18(1), Member States may [until 31 December 2030] fix the excise duty on all products referred to in these Articles by reference to the number of hectoliter/degrees of actual alcoholic strength by volume of finished product.

2. Member States, which exercise this option, shall ensure that the excise duty levied should not be lower than minimum excise duty per hectoliter of such products, as applicable in accordance with Directive 92/84/EEC**.**

3. This Article shall apply without prejudice to the remaining provisions of Article 9, 13 and 18, as applicable."

(11) Article 26 is replaced by the following:

"*Article 26*

References in this Directive to codes of the combined nomenclature shall be to those of Commission Implementing Regulation (EC) 2018/1602 of 11 October 2018, amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff.";

(12) Article 27 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory wording is replaced by the following:

"Member States shall exempt the products covered by this Directive from 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:";

(ii) point (a) is replaced by the following:

"(a) when distributed in the form of alcohol which has been completely denatured in a Member State in accordance with the requirements of that Member State, where such requirements having been duly notified in writing and authorised in accordance with paragraphs 3 and 4 of this Article. Member States shall apply the provisions of [chapter 5 of Directive 2008/118/EC or new recast Directive];"

(iii) point (b) is replaced by the following:

"(b) when used as part of the manufacturing process of any product not for human consumption, provided the alcohol has been denatured in accordance with the requirements of any Member State for the given use. The exemption shall apply when such denatured alcohol:

- has been incorporated into the product not for human consumption, or

- is used for maintenance and cleaning of the manufacturing equipment used for this particular manufacturing process.

Member States shall apply the provisions of [chapter 4 of Directive 2008/118/EC or new recast Directive] to movements of denatured alcohol that has not yet been incorporated into a product that is not for human consumption;"

(iv) in point (d) the words “Directive 65/65/EEC” are replaced by the words “Directive 2001/83/EC and Directive 2001/82/EC”.

(b) in paragraph 2 the following point (f) is added:

“(f) in the manufacture of food supplements defined by Directive 2002/46/EC containing ethyl alcohol, if the unit packet of the food supplement released for consumption does not exceed 0,1 litres and food supplements are placed on the market pursuant to Article 10 of Directive 2002/46/EC.“

(c) paragraph 3 is replaced by the following:

"3. A Member State wishing to introduce a change to the requirements for the complete denaturing of alcohol referred to in paragraph 1(a) shall notify such new requirements to the Commission in writing together with all the relevant information about the denaturants which it intends to employ.

If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within one month of receipt and specify what information is required. Once the Commission has all the information it considers necessary, it shall transmit the notification to the other Member States within one month.";

(d) paragraph 4 is replaced by the following:

"4. The Commission shall adopt implementing acts authorising or rejecting the requirements notified in accordance with paragraph 3. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 28a(2).";

(e) paragraph 5 is replaced by the following:

"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 notify such refusal or withdrawal forthwith to the Commission in writing together with all the relevant information about the evasion, avoidance or abuse. If the Commission considers that it does not have all the necessary information, it shall contact the Member State concerned within one month of receipt of such information and specify what further information is required. Once the Commission has all the information it considers necessary, it shall transmit the notification to the other Member States within one month. A final decision shall then be taken in accordance with the procedure laid down in Article 28a no later than 4 months after the transmission of the notification to the other Member States. Member States shall not be obliged to give retroactive effect to such a decision."

(13) Article 28 is deleted;

(14) in Section VIII, the following Articles are inserted:

"*Article 28a*

1. The Commission shall be assisted by the 'Committee on Excise Duty'. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 28b

Reporting on the implementation of this Directive

Every five years after 1 January 2021, the Commission shall submit a report on the application of this Directive to the Council.

In particular, the report shall:

(i) assess the application and impact of national provisions adopted and applied pursuant to Article 5, Article 9a, Article 22(8), Article 23a, Article 23b and Article 27(2)(f) of this Directive; and

(ii) take account of relevant evidence on presence of impact of these provisions, such as negative cross-border effects, increase of fraud, impact on smooth functioning of internal market and public health.

Member States shall, upon request, submit to the Commission information required to establish the report.

The report shall be accompanied by a legislative proposal, if appropriate."

Article 2

1. Member States shall adopt and publish, by 31 December 2020, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text thereof.

   They shall apply those measures from 1 January 2021.

   When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President