COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 26.5.2004
COM(2004) 223 final

REPORT FROM THE COMMISSION TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE

on the rates of excise duty applied on alcohol and alcoholic beverages

(presented pursuant to Article 8 of Council Directive 92/84/EEC on the approximation of excise duty on alcohol and alcoholic beverages)

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SUMMARY

A. THE RATES OF EXCISE DUTY ON ALCOHOL AND ALCOHOLIC BEVERAGES

The present report examines the status of Community legislation in the field of excise duties on alcohol and alcoholic beverages. This legislation entered into force on 1 January 1993 and has not been amended since. This report is called for by Article 8 of Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, which provides for a regular examination of the excise duty rates on alcohol products.

The report mainly focuses on the following points: the proper functioning of the internal market, competition between the different categories of alcoholic drinks, the real value of the rates of duty and the wider objectives of the Treaty.

With regard to **the functioning of the internal market,** it notices that the abolition of fiscal frontiers in 1993, together with the continued application by Member States of widely diverging rate levels on alcoholic beverages caused a number of problems which disturb the proper functioning of the Internal Market. These problems derive from the sometimes high tax burden on the products relative to their underlying value and the fact that there are significant divergences in rates of excise duty between some Member States. These divergences constitute an opportunity for legitimate cross-border shopping but also an incentive for fraudulent transactions, which target the markets of those Member States where the rates of duty are high, often resulting in tax induced distortions of competition, diversion of trade and restrictions on freedom of movement for citizens. Enhanced approximation would go a long way in providing a long term solution to these Internal Market problems.

As regards **competition between different categories of alcoholic beverages**, it appears that, in general, the extent to which different types of alcoholic beverages compete with each other is not a decisive factor in determining their rate levels, and that the demand for a certain type of beverage is relatively insensitive to changes in its own price or to changes in the price of competing types of alcoholic beverages.

The report also concludes that, in order to maintain **the real value of the minimum excise duty rates**, Member States could consider a re-valorisation of about 24% to reflect the inflation between 1 January 1993 and 31 December 2002. Such a re-valorisation is required in order to avoid minimum rates becoming meaningless over time.

Finally, as regards **the wider objectives of the Treaty**, particular attention is given to the link between, on the one hand, taxation of alcoholic beverages and, on the other hand, health policy and agricultural policy. As for health policy, it notices that a majority of Member States do not usually take into account health policy considerations when they fix their rates. As far as agricultural policy is concerned, wine taxation remains a very controversial issue. Whilst wine producing Member States consider it necessary to keep the possibility of applying a zero rate on wine if they so wish, some of the other Member States argue that changes to the minimum rates should be conditional upon the introduction of a positive minimum excise duty rate for wine. The zero minimum rate applied to wine is also considered by wine producing Member States as a necessary auxiliary measure in order to promote one of the basic policy objectives of the Common Market Organisation for wine, namely a

balanced market situation. With regard to the **enlargement of the Union**, it is noted that all new Member States undertook to apply rates at or above the minimum rates on 1 May 2004.

B. THE STRUCTURE OF EXCISE DUTY ON ALCOHOL AND ALCOHOLIC BEVERAGES

Article 8 of Directive 92/84/EEC only requires the Commission to report on the rates of duty laid down in that Directive. However, the Commission feels that changes to the structure of taxation should also be considered, as this is an issue which is closely linked to the issue of the rates itself. This is especially the case for matters concerning the classification of alcoholic beverages in each of the categories defined in the structure directive (Directive 92/83/EEC). The report identifies the following three issues that have emerged from the consultation process and which require particular attention:

1. The issue of whether or not **the option that allows Member States to tax still and sparkling alcoholic beverages differently** should be maintained**.**

2. **The need to update the references to the codes of the combined nomenclature, to which Directive 92/83/EEC refers** to define the categories of alcoholic beverages for taxation purposes, in order to reflect possible changes of CN codes since 1992, and to simplify the situation for both operators and administrations. Furthermore, the updating of this reference to the applicable CN codes could in the future be carried out in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC.

3. Both traders and national administrations have brought problems of **classification of alcoholic beverages in the categories foreseen by Directive 92/83/EEC** to the attention of the Commission services, whereby they complain about divergent classifications and – hence – diverging taxation of the same product in different Member States. The report describes the problem and presents the main issues that arise in this matter.

Taking account of the complexity and the many politically sensitive aspects of the issue, and due to the fact that the Commission has decided in September 2002 not to propose a minimum excise rate for wine, the present report is not accompanied by a proposal for a Directive. At this stage, this report is intended to launch a broad debate in the Council, the European Parliament and the European Economic and Social Committee. On the basis of the outcome of this debate, the Commission will decide whether or not to submit any proposals on all or some of the issues raised in this report.

1. INTRODUCTION

1.1. The Community excise system

1. Excise duties are taxes on the consumption of goods such as alcoholic beverages, tobacco products and mineral oils. Excise duty on these products is an important source of revenue for the Member States, accounting in total for between 1,8% and 4,5% of GDP (**see Annex A**). Since Member States are free to set excise duty levels nationally provided that they comply with the Community minimum levels, excise duty rates vary from one Member State to another. When deciding on the level of their rates, Member States may take into account not only budgetary considerations but also such factors as health, agricultural policy, the risk of fraud and evasion, employment, the rate levels fixed by other Member States, the functioning of the internal market, etc.

2. The current arrangements were introduced on 1 January 1993. They are the outcome of discussions which started in 1985 with the White Paper on completing the internal market[1] and a subsequent proposal on approximation of excise duty on alcohol and alcoholic beverages[2], in which the Commission proposed full harmonisation of excise duties on the three categories of excise products mentioned above, including alcoholic beverages. However, the Council chose not to take this approach, nor a modified approach proposed by the Commission in 1989[3], consisting of the combination of minimum and target rates, and harmonisation extended only to taxation structures. As far as rates are concerned, only minimum rates were set.

3. Excisable goods move between Member States principally under duty-suspension arrangements[4]. Businesses wishing to move goods under such arrangements must be authorised in the Member State where they are established. Consignments must be accompanied by an administrative – or equivalent commercial – document, and goods are subject to taxation in the Member State of destination. Private individuals may purchase duty-paid goods in the Member State of their choice and transport them to another Member State without formalities and without having to pay duty again, on the condition that the goods are for their own use and are transported by them to the Member State of destination.

1.2. Excise duty on Alcoholic beverages

4. The Community framework concerning excise duty on alcohol and alcoholic beverages is laid down in two Directives. Council Directive 92/83/EEC[5] on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages lays down common definitions of the products subject to the duty, ensuring as such that all Member States treat the same product in the same way. The structures

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1 COM(85) 310 of 14.6.1985.

2 COM(87) 328 final/3 of 10.11.1987 (OJ C 250, 18.9.1987, p. 4).

3 COM(89) 527 of 7.12.1989 (OJ C 12, 18.1.1990, p. 12).

4 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 (OJ L 76, 23.3.1992, p.1), as last amended by Council Regulation (EC) No 807/2003 of 14 April 2003 (OJ L 122, 16.5.2003, p.36).

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

directive also specifies the method of calculating the duty, and the criteria under which certain products may qualify for exemptions or reduced rates.

5. Council Directive 92/84/EEC[6] on the approximation of the rates of excise duties on alcohol and alcoholic beverages lays down minimum rates of duty for each product category. These minimum rates, above which Member States can freely fix their national rates, are as follows:

Product category *(the exact definition of each category can be found in Directive 92/83/EEC)*	**Minimum rate laid down in the Directive**
Wine and fermented beverages other than wine and beer	**0 EUR** per hl of product
Beer	**0,748 EUR** per hl per degree Plato or **1,87 EUR** per hl per degree of alcohol
Intermediate products (e.g. fortified wines; liqueur wines)	**45 EUR** per hl of product
Ethyl alcohol and spirituous beverages	**550 EUR** per hl of pure alcohol *Note: Member States applying a rate of not more than **1000 EUR** may not reduce their national rate. Member States applying a rate exceeding **1000 EUR** may not reduce their national rate below that amount*

6. The introduction of these minimum rates in 1993 required increases of the rates applied in 7 out of 12 Member States at the time[7]. Above these minimum rates, Member States can freely determine their national duty rates. This has resulted in a diversity within the Community in the levels of taxation applied, reflecting varying national policy considerations. **Annexes B1 to B4** give a detailed overview of the rates applied by the Member States on 1 May 2004, including the Member States which joined the EU on that date, to each of the product categories.

7. It is worth noting that, in a statement entered in the minutes when Council Directive 92/84/EEC was adopted, Member States undertook to treat the target rates proposed by the Commission in COM(89) 527 as reference rates towards which they would endeavour to adjust their national rates. These target rates are as follows:

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6 Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992, p. 29).

7 On beer: in Germany, Greece, France and Luxembourg.
On spirits: in Greece, Spain, Italy and Portugal.

Ethyl alcohol and spirits	1398,1	EUR per hl of pure alcohol
Still wine	18,7	EUR per hl of product
Sparkling wine	33	EUR per hl of product
Beer	1,496	EUR per hl per degree Plato of finished product
Intermediate products	93,5	EUR per hl of product

In practice, Member States have not always taken these target rates into account when changing their national rates, but instead have made use of the flexibility offered in the statement to adjust their duty rates in a manner different from that envisaged by the reference rates for specific reasons and in particular to meet budgetary needs.

8. The following table shows the minimum rates for each product category expressed in Euro per hectolitre degree of alcohol, as well as the minimum rate expressed per litre of product at a degree of alcohol at which it is commonly sold.

Product category	**Minimum rate expressed per hl and degree of alcohol**	**Minimum rate expressed per l of product at a degree at which it is commonly sold**
Wine and fermented beverages other than wine and beer	**0 EUR**	**Wine (12°) 0 EUR**
Beer	**1,87 EUR**	**Beer (5°) 0,1 EUR**
Intermediate products	**2,5 EUR**	**Int. prod. (18°) 0,45 EUR**
Ethyl alcohol and spirit drinks	**5,5 EUR**	**Spirits (40°) 2,2 EUR**

9. On average, total receipts from excise duty on alcoholic beverages represent **10,5% of total excise duty receipts** or **0,29 % of Member States' total GDP** (see an overview per Member State in **Annex A**).

2. EXAMINATION OF THE STRUCTURE AND RATES OF EXCISE DUTY

2.1. General remarks

10. Article 8 of Directive 92/84/EEC stipulates that every two years, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the rates of duty laid down in that Directive and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the consideration by the Council shall take into account the proper functioning of the internal market, competition between the different categories of alcoholic drinks, the real value of the rates of duty and the wider objectives of the Treaty.

2.2. First Commission report

11. In September 1995 the Commission presented its first report, which, in addition to alcoholic beverages, dealt with tobacco and mineral oils[8]. It was not accompanied by a proposal. It noted that there was a marked stagnation in duty rates applied to alcoholic beverages. It indicated that this suggested at the time that the zero rate for wine could limit the scope for change on other alcohol products within the same Member State and in neighbouring Member States. It concluded that the issue of alcohol taxation needed further examination and that further consultation with all interested parties was needed, before final decisions were taken. In the meantime, Member States at or near the minimum rates could maintain their existing rates, and thus avoid trade distortions, which might be brought about by forced rate adjustments.

12. As part of the process of consultation of interested parties, the Commission decided to hold a Conference on excise duty in Lisbon in November 1995. This was the first stage of an ongoing consultation process. The Conference's aim was to evaluate the operation of the Community excise duty arrangements, which had been in force since January 1993, and in particular to assist the Commission in its task of planning future excise duty policy. At the Conference, the difficulties highlighted in the report and the views of trade and health associations and Member States were confirmed, but no possible solution emerged.

13. On 19 September 1996 the European Parliament adopted its opinion[9] on the Commission's review and called upon the Commission to examine and propose appropriate amendments to existing Directives, along a number of suggested guidelines and to work towards an equitable tax system where there is no distortion of competition between alcoholic beverages.

3. SCOPE OF THE PRESENT (SECOND) REPORT

3.1. General

14. As indicated before, this report is required to examine the excise duty rates applied to alcohol and alcoholic beverages, taking into account the proper functioning of the internal market, competition between the different categories of alcoholic drinks, the real value of the rates of duty and the wider objectives of the Treaty, such as health and agricultural policy.

15. A consultation process preceded this report. The services of the Commission requested the Member States to give their views on each of the elements to be examined on the basis of a questionnaire. As this consultation process started in 2001, it did not involve the Member States which joined the EU on 1 May 2004. As a consequence, their views are not reflected in this report. Trade associations as well as health associations were also invited to submit position papers and had the opportunity to discuss the matter during bilateral meetings with the Commission.

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8 COM(95)285, 13.9.1995.

9 OJ C 320, 28.10.1996, p. 205.

16. For one of the aspects to be taken into account - competition between alcoholic beverages - the Commission engaged an independent consultant to assess the extent of such competition (hereafter referred to as "the study on competition"). In addition, the study examined trends in consumption of alcoholic drinks and reasons for these trends (e.g. changes in taxation). Additionally, for a number of Member States, it looked into the issue of cross border shopping by individuals and unlawful commercial movements of tax-paid goods across frontiers[10]. (See references to results of the study in paragraphs, 41, 42, 58).

3.2. Functioning of the Internal Market

17. This chapter examines the impact of the rates applied by Member States on the proper functioning of the internal market for alcoholic beverages.

18. When looking at this issue, the first report distinguished three broad categories of intra-Community movements of excise products: commercial movements under suspension of excise duty, commercial transactions of duty-paid goods and movement of products by private individuals. This distinction is also used here.

Commercial movement of goods under duty suspension arrangements

19. The first report concluded that, on the whole, as far as legitimate trade is concerned, the Community excise system operated quite well despite the large differences in excise duty rates between Member States. Since goods move under duty suspension, whereby duty is payable in the Member State of destination, and at the rates applicable in that Member State, it is unlikely that rate differences lead to any significant distortion of choice or competition on the part of companies involved in trade at this level of the distribution chain. This has been confirmed by the Member States.

20. The first report also concluded that it was more difficult to assess the effect which the continued disparity in rates combined with the disappearance of frontier controls had on fraudulent activity in this area and that it was too early to assess whether such fraud was on the increase. However, shortly after the tabling of this report, Member States voiced their concern about increased fraud in the excise sector. This lead to the creation, at the beginning of 1997, of a High Level Group on Fraud in the area of excise duties, consisting of representatives of the Member States and the Commission. The Group had to identify the nature and extent of fraud as well as the flaws and weaknesses in the regulatory and control system, and to recommend solutions and/or improvements to those systems. In its report of 24 April 1998[11] the group concluded that fraud in the tobacco and alcohol sectors had reached alarming proportions. For the European Union as a whole, the Member States estimated the loss in 1996 at approximately 1,5 billion Euro for the alcohol sector (about 8% of total excise duty receipts on alcoholic beverages). In comparison, for tobacco products Member States estimated the loss in 1996 at approximately 3,3 billion Euro (or 7,5% of total excise duty receipts on tobacco products). The report also found

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[10] "Study on the competition between alcoholic beverages", Customs Associates Ltd., February 2001. The executive summary of this study is available on the following web-site: http://europa.eu.int/comm/taxation_customs/publications/reports_studies/report.htm

[11] Report of the High Level Group on Fraud in the alcohol and tobacco sector, approved by the Ecofin-council on 19 May 1998.

that alcohol fraud tended to centre on abuse of the intra-Community holding and movement system. These are the large-scale frauds, which target the markets of those Member States where the rates of excise duty are high. Clearly the corollary of this major loss of tax revenue is the huge profits that can be made very quickly by the fraudsters. The report indicated that these profits derive from the very high tax burden on the products relative to the underlying value of the goods and, in some cases, the fact that there are significant differences in rates of excise duty and VAT between Member States.

21. A number of Member States, in their replies to the questionnaire, confirmed the facts established in the report of the High Level Group on Fraud. Some of them (Ireland, UK, France) reported an increased number of cases of diversion fraud, whereby goods moving from one Member State to another under suspension of excise duty are then diverted en route, often into Member States applying relatively high levels of duty. Other Member States reported an increase in smuggling of alcohol from third countries (this is the case for Finland) or increases in home distilling and confiscation of alcoholic beverages brought into the country illicitly from other Member States (this is the case for Sweden). But also Member States applying relatively low duty rate levels (such as Portugal), reported increasing fraud in the alcohol and alcoholic beverage sector, mainly taking the form of duty evasion. The Commission has also become aware of an increasing number of cases, signalled by individual companies in the alcohol sector, of non-clearance of intra-EC movements or movements towards third countries, whereby these companies are held liable for payment of the duty on goods which have not reached their destination.

22. Following the recommendations of the High Level Group on Fraud, the Commission and Member States have taken a number of initiatives in order to combat fraud. Examples are the adoption of a Commission Recommendation concerning warehouse-keepers[12], and the computerisation of the movement and surveillance system of excisable products[13]. These initiatives will improve the efficiency of the present regulatory and control systems, and facilitate the fight against fraud and evasion.

Commercial activities involving duty-paid goods

23. The first report noted that only a small percentage of intra-Community commercial transactions take place outside the suspension arrangements. This is certainly still the case for commercial transactions between traders, to which the procedure of Article 7 of Directive 92/12/EEC applies. In such cases, movements between Member States take place with a simplified administrative document and the excise duty paid in the Member State of departure is refunded upon proof being given of duty payment in the Member State of destination. No serious problems have been raised by Member States, even though one Member State (UK) has indicated that it had experienced serious problems with fraudulent claims being made for the reimbursement of duty in respect of goods which had in fact never left the UK and/or had never borne UK duty. However the UK tightened up its reimbursement procedures, which effectively

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12 Commission Recommendation 2000/789/EC of 29 November 2000 setting out guidelines for the authorisation of warehousekeepers under Council Directive 92/12/EEC in relation to products subject to excise duty (OJ L 314, 14.12.2000 p. 29).

13 Decision No. 1152/2003/EC of the European Parliament and of the Council of 16 June 2003 on computerising the movement and surveillance of excisable products (OJ L 162, 1.7.2003, p. 5).

removed the scope for this type of fraud. This experience illustrates that fraudsters operate within whatever system is considered to be the weakest at any given time, are very flexible and, as one system is strengthened, simply move their activities to exploit another system. None of the systems can therefore be looked at in isolation when considering what should be done to strengthen them.

24. The main development to be reported under this heading relates to distance selling (sales of goods dispatched or transported directly or indirectly by the vendor or on his behalf to final consumers). A large number of Member States reported increases in distance selling to final consumers, especially in the wine and spirits sector, following the development of e-commerce. The procedures applicable to such sales are laid down in Article 10 of Directive 92/12/EEC and involve payment of the duty in the Member State of destination by or on behalf of the vendor. The increase of this type of trade is demonstrated by the increase, reported by a number of Member States, in their registrations of operators from other Member States for the payment of duty on distance sales.

25. However, a number of Member States (mainly those applying high tax levels) reported that Internet sales companies based in countries with low excise duty levels increasingly sell duty paid products to customers in the higher taxing territory without payment of the appropriate duty in the recipient country. This is attributed, to some extent, to the complexity of the procedures for payment of duty in the Member State of destination, as well as to the compliance cost of this procedure, which, especially for small and medium sized companies, is often disproportionate to the value of the operations carried out. This situation does not allow traders, nor citizens, to fully benefit from the Internal Market. In other cases, however, Internet sites offering alcoholic beverages have apparently been set up in order to exploit rate differentials between Member States. Products sold are sent by mail to customers in other Member States and it is clear that such consignments are difficult to control within an Internal Market, where free movement of goods is the rule.

26. The above mentioned problems of distance selling are considered in more detail by the Commission in a report on the functioning of the provisions of Articles 7 to 10 of Directive 92/12/EEC. The report and the accompanying proposal for a Directive propose simplifications to the distance selling procedures as well as a degree of liberalisation for distance purchasing of alcoholic beverages[14]. For more details, reference should be made to the report and proposal on Article 7 to 10 of Directive 92/12/EEC[15], adopted by the Commission on 2 April 2004.

Cross-border shopping

27. In accordance with the principles of the Internal Market, private individuals can purchase duty-paid goods in the Member State of their choice and transport them to another Member State without having to pay duty again. This is subject to the conditions that the goods are for their own use including the use of their families, and are transported by them to the Member State of destination (Article 8 of Directive 92/12/EEC). To determine whether excise products are for the personal use of the

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14 In this context, distance selling means a transaction whereby excise products are dispatched or transported to the buyer by or on behalf of the vendor. Distance purchasing means a transaction whereby this dispatch or transport is carried out by or on behalf of the buyer.

15 COM(2004)227, 2.4.2004.

traveller and his family, Member States must take account of a number of criteria one of which is the quantity of the products transported (see Article 9 of Directive 92/12/EEC). For the purposes of applying the latter criterion, they may also lay down guide levels, solely as a form of evidence. Moreover, it should be noted that three Member States (Sweden, Denmark and Finland) were authorised, until the end of 2003, to apply restrictions to the quantity of excise products (including alcoholic beverages) that can be brought into their territory, by travellers coming from other Member States, without further payment of excise duty (see Article 26 of Directive 92/12/EEC).

28. As to the scale of cross-border shopping, the first report noted that this phenomenon was generally widespread and that it had been growing since 1992, especially towards Member States applying rates significantly above the rates applied by neighbouring Member States. The report also noted that it was universally accepted that excise rate differences were a significant factor. On this issue, the report of the High Level Group on Fraud noted that, in addition to large-scale fraud by groups of organised criminals, there was also a significant amount of fraud by means of small-scale abuse of the current rules, which involves tax/duty-paid goods, and is the consequence of large differences in tax and duty rates between the Member States.

29. In their replies to the questionnaire, Member States applying relatively low tax levels to alcoholic beverages did not express major concerns about the issue of cross-border shopping and generally do not have any data on its magnitude. High taxing Member States monitor this issue more closely. The UK, for instance, carries out an annual survey of international passengers at various ports and airports around the country. Based on this survey, it estimated that total revenue evasion and losses (duty and VAT) resulting from cross-Channel smuggling, involving tax/duty-paid alcoholic drinks of all types, increased from 70M £ in 1992 to about 285M £ in 1999. Beer represented the major part of the total losses. Duty rate differentials played a very important part in this although other factors, such as pre-tax prices, exchange rates and fare prices also played a role. Denmark estimated cross-border purchases, as a percentage of total consumption by Danes in the year 2000, at 18% for beer, 13,5% for wine and 27% for spirit. Sweden experienced an increase in cross-border shopping in the second half of the 1990s, which is probably generated by tax differentials. In 2000, this represented a total of 1.26 litres of pure alcohol per person aged 15 years or more. This equated to 17% of total consumption. For spirits, this percentage was 27%, for beer 12% and for wine 14%. In Finland, frontier trade in alcoholic beverages is mainly conducted with third countries, as the price gap between Finland and Russia and Estonia is particularly important. So far, frontier trade with other Member States has not been a major problem, but Finland expects this to change after the enlargement of the EU. Trade organisations in Member States such as Belgium and the Netherlands, applying more "moderate" tax levels, have also complained about the negative impact upon their members of cross-border purchases by citizens in Member States applying a zero-rate or a rate close to zero on wine and sparkling wine.

30. For Denmark, Sweden and Finland the future development of their revenue from alcohol and alcoholic beverages either has been or will be influenced both by the termination on 31 December 2003 of the authorisation to apply restrictions as to the quantity of excise products that can be brought into their territory by travellers coming from other Member States, without further payment of excise duty, and by enlargement of the EU. There is an ongoing debate in these Member States

concerning the impact that these events should have on the level of their excise duty rates. Denmark reduced the duty rate on spirits by 45%, which took effect in October 2003 and Finland made across-the-board rate reductions (beer by 32%, wine by 10% and spirits by 44%), effective from 1 March 2004. The impact of these rate reductions on the tax revenue of these Member States will depend upon their effect on total consumption and, foremost, the extent to which cross-border shopping and cross-border smuggling is substituted by regular sales within these Member States.

31. The situation described above shows that citizens make extensive use of the possibility of purchasing duty-paid goods in the Member State of their choice and transporting them to another Member State without having to pay duty again. This is perfectly legitimate and a fundamental freedom for citizens in the Internal Market. It is also apparent that such cross-border purchases are to a large extent induced by tax differentials between Member States. To control whether or not goods transported by private persons are for commercial rather than for private use requires physical checks upon travellers. However, as systematic controls of the internal borders are incompatible with the basic Internal Market principles enshrined in Article 14 of the Treaty, such checks should be of an occasional nature only (random checks) and form part of internal monitoring arrangements covering the whole of the territory of a Member State. Such controls should furthermore comply with the general principles of Community law, and in particular should not be carried out in an arbitrary or unnecessarily restrictive manner[16]. The controls on travellers, and the way in which they are carried out by certain Member States, often cause irritation to travellers, and have led to numerous complaints to the Commission against those Member States. The very fact that such fiscal controls are still exercised, is often seen by travellers as an impediment to their right of free movement within the Internal Market. This report does not deal with the question concerning the extent to which Member States are still allowed to carry out controls on travellers. It is however clear that the very reason why a number of Member States still carry out such checks on travellers, to distinguish genuine cross-border shopping from smuggling of duty paid goods, is to a large extent their application of duty rate levels far in excess of those applied by neighbouring Member States.

Functioning of the Internal Market - Conclusions

32. It is clear from the above analysis that the abolition of fiscal frontiers in 1993, together with the continued application by Member States of widely diverging rate levels on alcoholic beverages, although sometimes advantageous for consumers, causes a number of internal market problems.

33. In addition, individual operators as well as organisations representing producers of alcoholic beverages in some Member States have repeatedly complained about distortions of competition and diversion of trade resulting from high rate divergences. Producers as well as traders established in Member States or in certain regions of Member States applying high duty rate levels point at the high level of taxes applied and at the negative impact on their business of fraud and smuggling, but also of tax-induced cross border shopping (even though they recognise that this is fully legitimate, from the consumer's point of view).

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[16] See, in that respect, the Judgement of the ECJ of 27.4.1991 in case 321/87.

34. Most Member States agree that the proper functioning of the Internal Market requires further rate approximation. However, there is no agreement on how this should be achieved. High taxing Member States, reporting increases in cross-border shopping, smuggling and commercial fraud due to rate divergences emphasise the need to increase all minimum rates. But many others emphasise that an effort is also required by Member States applying very high rates. As to the latter point, it should be noted that Denmark and Finland have recently made substantial reductions in their rates on some alcoholic beverages as a consequence of the expiry on 31 December 2003 of their derogations to apply restrictions on the amount of alcohol that intra-Community travellers can bring with them, and in anticipation of the enlargement of the EU on 1 May 2004.

3.3. Competition between alcoholic beverages

35. This section examines the extent to which there is competition between different types of alcoholic drinks and whether there should be harmonisation of the excise duties applied to competing categories.

36. The levels of the minimum rates on the various product categories as laid down in Directive 92/84/EEC are the outcome of a political compromise and reflect the issue of competition only to a limited extent. Minimum rates on beer were set at a relatively low level, which could be considered as reflecting the fact that beer is in competition with wine, for which the minimum rate was set at zero. Rates on spirits, and to a more limited extent on intermediate products (which contain distilled alcohol) have been set at a much higher level per degree alcohol, which could be interpreted as meaning that there is no, or only limited, competition between those products and beer and wine.

37. Directive 92/84/EEC as such does not require Member States to fix their national rates on the various product categories at comparable levels per degree of alcohol. However, when fixing their rates, they must also respect the general provision of the EC Treaty and in particular Article 90, which states that internal taxation should not discriminate against products of other Member States or provide indirect protection of other national products. Based on this provision, the European Court of Justice ruled (in case C-170/78), that where a Member State cannot be regarded as a producer of a given drink (wine) it may not tax that drink in such a way as to protect its closest domestic competitor (beer). Consequently, all Member States not producing wine have to tax wine and beer at comparable levels, taking into account their respective alcohol content, and are constrained in their freedom to set duty rates. In a more recent case (C-166/98), a question concerning the validity of Directives 92/83/EEC and 92/84/EEC was referred to the Court for a preliminary ruling under Article 234 of the EC Treaty. The question was whether these Directives were invalid from the point of view of the EC Treaty and in particular the second paragraph of Article 90, in that they required Member States to raise the tax on beer to the minimum rate and so bring about the creation of tax differentials liable to give rise to discrimination as between wine and beer. The Court ruled that consideration of the question referred disclosed no factor capable of affecting the validity of these Directives, arguing, inter alia, that the Member States retain a sufficiently wide margin of discretion to ensure that the relationship of the taxes on wine and beer excludes any protection for domestic production within the meaning of Article 90 of the Treaty.

38. Member States have generally indicated that the extent to which one product competes with another is not a decisive factor in determining the rate levels applicable to the various product categories. They feel that price is not the major factor influencing consumer choice and that other factors (habits, occasion, culture, climate) may be more or at least equally important. As a consequence, apart from the requirements that derive from the above-mentioned provision of the EC Treaty, their rates generally do not take this issue into consideration. This is illustrated by the chart in **Annex C**, showing the duty rates expressed per hl degree of alcohol applied to the various categories of alcoholic beverages. High taxing Member States (in particular DK, SE, UK and IE) emphasised however, in their replies to the questionnaire that contrary to wine producing Member States, they have to tax competing products equally according to ECJ Jurisprudence, whereas Member States producing both wine and beer are free to set their levels without taking into account the issue of competition.

39. Beer and wine producers do not regard competition between different types of alcoholic beverages as being of major importance. According to wine producers, in particular, the zero rate for wine does not pose any problem of competition with other alcoholic beverages for two reasons. First, the consumption of table wines but also of quality wines is decreasing in those Member States applying a zero-rate or a rate close to zero. Second, according to these producers, competition between various drinks does not depend upon price, but rather upon other factors such as traditions, culture, place and time of consumption, fashion, age, social environment and marketing.

40. Spirits producers, on the other hand see the current levels at which minimum rates are fixed as an institutionalisation of the discrimination against spirits that national excise policies embody. Their view is that all products compete to a certain extent and, therefore, the discrimination against spirits as opposed to beer and wine should be reduced by lowering the spirits minimum rate. They feel that excise duty can also affect the market shares of different categories of alcoholic beverage because of competition through prices. Particularly in the higher taxing Member States, spirits are more price sensitive than other categories.

41. The study on competition between alcoholic beverages examined the own-price elasticity of demand for the various drinks categories (the relationship between the demand for a certain type of product and its own price) as well as the cross-price elasticity of demand for these categories (the relationship between the demand for a certain type of product and the prices of other product categories)[17]. Cross-price elasticities give an indication on the degree of competition between drinks. Before looking at the results, one has to draw attention to the difficulties of this approach, highlighted by the consultant. First of all, he found that data on alcohol drinks' prices is either very scarce in most Member States and/or is not of the quality that can provide robust estimates of alcohol cross-price elasticities. Furthermore, he found that a range of factors influence alcoholic drink consumption and the degree of switching by consumers between categories of drink. For example, consumers' attitudes to consuming wine may change over a number of years leading to an increase in wine consumption at the expense of other drink categories, although this

[17] The conclusions of this study are without prejudice to the analysis of the Commission in competition cases.

is in contradiction to the current trend. Thus, in many circumstances, the switching to wine will be independent of the price of wine relative to other drinks, i.e. the switching would occur even if relative prices were stable over time. The consultant indicated that this made estimating price effects on consumption extremely difficult, as changing consumer tastes are likely to be a critical factor influencing switching between drinks. It is a fact however that consumption of both quality and table wine has decreased in the last years[18].

42. For those countries/products for which there was sufficient price data, the consultant made estimates of both own-price and cross-price elasticities. The majority of his estimates of the own-price elasticity of each product category were negative but not significantly different from zero, which could indicate that the demand for any type of alcoholic beverage is relatively inelastic (the demand is not very sensitive to changes in its own price). As far as his estimates of cross-price elasticities are concerned, on the whole, the results also showed relatively inelastic responses, indicating that the demand for one type of alcoholic beverage does not appear to be substantially dependent on prices of other alcoholic beverages.

Competition between alcoholic beverages - Conclusions

43. It is difficult to draw any firm conclusions on this issue, based on the different views expressed and on the results of the study of competition. The choice of the consumer for a certain product category depends on a variety of factors, one of which is the price, which in its turn is a function of the duty level applicable. The extent to which duty levels affect consumer choice will differ from one Member State to another, and tends to be more important in Member States where duty is high and constitutes a bigger proportion of the price.

3.4. The real value of the rates

44. Another element to be considered according to Article 8 of Directive 92/84/EEC is the real value of the rates of duty. In other words, should account be taken of the effect of inflation since the introduction of the minimum rates or should this be left open to Member States? According to Eurostat data on the annual rate of change of the HICP (Harmonised Index of Consumer Prices) between 1993 and 2002, the total EU-wide inflation rate for the period between 1 January 1993 and 31 December 2002 is of the order of 24,04%[19].

45. The re-valorisation of the minimum rates applying this percentage increase would give the following results:

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[18] At EU 15 level, overall per capita consumption is estimated to have gone down from about 37 l in 1990 to about 33 l in 2002. Consumption of table wine has gone down from 20,5 l to about 15 l. These trends are stronger in some southern wine producing countries. For example overall per capita consumption in Italy fell from about 63 l to about 47 l and in France from about 67 l to about 58 l.

[19] The genuine HICP series starts with the index for 1997. Date before 1997 are based on proxy-HICP. The following annual rates of change of the HICP have been used: 1993: 3,4%; 1994: 2,8%; 1995: 2,8%; 1996: 2,4%; 1997: 1,7%; 1998: 1,3%; 1999: 1,2%; 2000: 1,9%; 2001: 2,2%; 2002: 2,1%.

Product	*Rate expressed per*	*Present minimum rate*	*Indexed minimum rate on 1/1/2003 (present rate x 1,24)*
Wine (Still and sparkling)	**Hl**	**0 EUR**	**0 EUR**
Beer	**Hl degree Plato or Hl degree alcohol**	**0,748 EUR** or **1,87 EUR**	**0,93 EUR** or **2,32 EUR**
Intermediate products	**Hl**	**45 EUR**	**56 EUR**
Alcohol	**Hl of pure alcohol**	**550 EUR**	**682 EUR**

46. Such a re-valorisation on 1 May 2004 would have required some Member States to increase their rates as follows:

a) An increase of the rate applied to beer in seven Member States (LU, DE, ES, CZ, LT, LV, MT);

b) An increase of the rate applied to intermediate products in seven Member States (EL, ES, IT, PT, HU, MT, CY);

c) An increase of the rate applied to spirits in three Member States (IT, CY and SK).

47. Most Member States, in their replies to the questionnaire, pronounced themselves in favour of increasing the minimum rates in line with inflation in order to maintain their real value. For some of them, this is however conditional upon the introduction of a positive rate on wine, so as not to increase distortions between wine and other alcoholic beverages, even though an alignment for inflation, without introducing a positive rate on wine, merely re-establishes the situation as it existed on 1 January 1993. The first report noted that there was a marked stagnation in duty rates applied and indicated that this suggested that the zero rate for wine could limit the scope for change on other alcohol products within the same Member State and in neighbouring Member States. Many among the Member States are however of the opinion that the situation differs from one Member State to another and that it depends on factors such as traditions, culture as well as place and time of consumption.

The real value of the rates - Conclusions

48. Increasing minimum rates to account for inflation does not, by definition, produce real value increases. On the other hand, failure to maintain the specific minimum rates in line with inflation would result in erosion of their real value. Consequently, such increases in the minimum rates are necessary in order to maintain the level of rates to which the Council agreed in 1992, as a minimum requirement to ensure the functioning of the Internal Market without fiscal borders. In this context, it should be noted that the minimum rates on other excise products (tobacco products and mineral oils) have been increased in line with inflation. The current alcohol excise duty system however is a system of minimum rates and Member States can increase the

rates applied in order to take inflation into account, without any change to the current system.

49. As far as alcoholic beverages are concerned, a number of Member States however link this question to the question of the introduction of a positive minimum rate for wine, which remains a very controversial issue (see section 3.5.2.).

3.5. The wider objectives of the Treaty

50. Article 8 of Directive 92/84/EEC requires account to be taken of the wider objectives of the Treaty on the occasion of any review of the rates of duty applied to alcoholic beverages. Health policy, agricultural policy, regional objectives, rural development and cultural matters are also relevant in the context of this report. Other issues to be considered are enlargement and the impact on candidate countries of the measures proposed.

3.5.1. Health and social policy

51. Article 152 of the Treaty provides that a high level of human health protection shall be ensured in the definition and implementation of all Community policies and activities. On this issue, the first report mentioned that alcohol taxation is a potential means of discouraging excessive consumption, which can have positive consequences in terms of reduced problems associated with alcohol consumption, alcoholism and alcohol abuse. However in the last few years, medical reports have also pointed towards the positive contribution of some alcoholic beverages to health, if drunk moderately.

52. At national level, most Member States, in their replies to the questionnaire, have indicated that health policy considerations do not influence the level of the rates, even though some of them added that there is pressure from health organisations. Only for one Member State (Sweden), are health objectives predominant in determining the duty levels. For other high taxing countries (for instance Finland, the UK and Denmark), this has become less of an issue today than it was in the past. As a reason for this, the UK observed that there is conflicting scientific evidence on the benefits and risks of alcohol consumption.

53. Producers emphasise their efforts to promote responsible attitudes towards alcohol consumption. In the opinion of the producers, the great majority of European consumers drink sensibly, moderately and with pleasure. They also believe that alcohol, if consumed moderately, may have positive health effects, independently of the type of beverage. They feel that policies aimed at reducing overall per capita consumption through high taxation do not address those who abuse the product, and that experience shows that such an approach can even have unintended adverse effects (e.g. smuggling and illegal production).

54. Health organisations, and more particularly Eurocare (Advocacy for the prevention of alcohol related harm in Europe), are of the opinion that taxation should ensure a high price level, as there is a clear relationship between price and consumption. Furthermore, they feel that alcohol taxes should be used to fund alcohol control activities including health education, research into alcohol policy and support to

health services. As to the latter aspect, they point out that, in its White Paper on Growth, Competitiveness and Employment[20], the Commission had already called for the internalisation of the external costs of the consumption of alcoholic drinks. As to the issue of beneficial effects of alcohol consumption, Eurocare, while calling for great caution in attributing beneficial effects to alcohol consumption, shares the view that beverage differences are minimal: most of the benefit appears to come from the alcohol in wine, beer and spirits, and not from other constituents of the beverages.

Health and social policy - Conclusions

55. The majority of Member States usually do not take into account health policy considerations when they fix their rates, even though the present EC legislation, fixing only minimum rates, offers them substantial room for manoeuvre to integrate public health considerations in their tax policies. In any case, for excise duty to be able to play a long term role, both as a means of reducing overall consumption and as a means for internalising external or societal costs of alcohol abuse, some Member States feel that a minimum requirement appears to be to increase the minimum rates in line with inflation.

3.5.2. Agricultural policy

56. Wine is an agricultural product defined as such in the Treaty. In 14 of 25 Member States there is either no or a very low excise duty on wine (12 have none, France and Hungary have a very low one). An introduction of a positive excise duty for wine could have consequences on the consumption of wine and on the Common Market Organisation of Wine. Agricultural policy has always been invoked by wine producing Member States as a reason justifying the application of a zero rate for wine. Some of them point to the difficult situation of the wine growers, which would leave no margin to apply a positive rate of duty to wine.

57. At the time of the adoption of the first report, the common organisation of the wine market was subject of reform in the framework of the Common Agricultural Policy. The aim of the reform was to address the existing situation of overproduction combined with declining consumption in the wine producing Member States, particularly of table wines. This reform of the common organisation of the wine market was completed in 1999[21]. The new Common Market Organisation (CMO) aims at better aligning offer and demand for wine. Some of the main aspects are restrictions on new plantings and the restructuring of production potential in order to reduce production volume of table wines and to implant varieties that produce wine of a better quality, more in line with the needs of the market. The proper market intervention measures (mainly financial support for distillation of wine, for storage, for utilisation of must for purposes other than for wine) were adapted. In particular obligatory distillation measures were reduced to two and a crisis distillation in case of exceptional market disturbances was introduced. This new CMO constitutes a move towards more targeted measures and the reorientation of viniculture towards products of a higher quality.

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20 "Growth, Competitiveness, Employment - The challenges and ways forward into the 21st century - White Paper" – COM(93) 700 of 5.12.93.

21 Council Regulation (EC) No. 1493/1999 of 17 May 1999 (OJ L 179 of 14.7.1999).

58. It is argued, in favour of a zero rate for wine, that it is a necessary auxiliary measure in order not to contradict one of the basic policy objectives of the CMO for wine, namely a balanced market situation. Indeed, a possible decline of consumption that might occur following the introduction of a positive rate would negatively influence the market balance. Furthermore, such a decline of consumption needs, in the short run, to be compensated by increased market intervention measures, mainly in the form of distillation of surplus wine into alcohol. The high costs of this distillation are covered by the Community budget. On the other hand, the zero-rate is a general, non-targeted measure, also applying to the expanding market segments of higher quality wines and imported wines, having fewer or no problems in finding a market. Furthermore, the fundamental structural problems are mainly a consequence of changing consumption patterns in the wine producing Member States. This can be illustrated by the results of the study on competition, which also looked at the evolution of per capita consumption of the various products. Per capita wine consumption in Southern Member States (Spain, France, Italy and Portugal) has shown a marked decline over the last three decades, although still remaining at a high level compared to non producer countries. This has partly been balanced by an increase in wine demand in those countries that apply high rates of excise duty on wine and have traditionally been perceived as being dominated by beer drinking. In contrast, per capita beer consumption in Southern European Member States (Greece, Portugal, Italy and Spain) has increased significantly, whereas it has declined slightly in many Northern Member States (Austria, Belgium, Germany, Denmark, UK, Luxembourg and the Netherlands) during the 1990s.

59. Wine producing countries and producers in general strongly oppose the introduction of a positive minimum rate on wine. They argue that, in most producing Member States, wine has never been subject to excise duties, that wine is an integral part of their culture and that it would be difficult to introduce obligatory wine taxation for political reasons. They add that wine producing Member States, which apply a zero rate or only a very low control duty, account for about 85% of total EU wine consumption and that, consequently, possible Internal Market problems only relate to a small fraction of 15% of the EU wine consumption. They also argue that the zero-rate on wine is a necessary auxiliary measure supporting the objectives of the CMO for wine and that, in the present situation of the wine market the introduction of any new – even low – obligatory taxation in the wine producing countries would be regarded as harmful. Moreover, there are fears that further steps, leading towards a higher minimum level of wine taxation might follow. Additionally, they feel that a positive duty on wine would not contribute at all to solving the Internal Market problems caused by the huge differences in tax levels between high and low taxing Member States.

60. Finally, it is also argued that wine taxation would entail the introduction of, or an increase in the administrative burden for hundreds of thousands of small wine growers, and administrations, in the producing Member States to an extent that would be disproportionate to the revenue that this measure would generate. However, as wine production is already subject to strict quality and movement controls under the CMO for wine as well as under Directive 92/12/EEC, this burden may be less than expected, as far as intra Community movements are concerned.

61. As appears from the description of the various positions above, wine taxation remains a very controversial and politically sensitive issue. Some of the Member States which do not produce wine would require any changes to the minimum rates on any type of alcoholic beverages to be conditional upon the introduction of a positive minimum excise duty rate for wine. Wine producing countries, on the other hand, generally continue to oppose the introduction of a minimum excise duty rate for wine.

62. If it appears very difficult to change the present level of the minimum rates, another important question arises. Namely, if it is justified to maintain the present system of monitoring of excise products (a system of movements under duty suspension arrangements, between authorised tax warehouses, the setting up of guarantees, accompanying documents, etc.), for products such a wine and beer, which are subject to an excise duty, the absolute level of which is lower than the VAT applied upon them in at least 10 out of 15, and now 20 out of 25, Member States.

3.5.3. The enlargement of the European Union

63. The Member States which joined the EU on 1 May 2004 already apply rates to alcoholic beverages which are at or above the present minimum rate levels. The other candidate countries with which accession negotiations are ongoing (Romania and Bulgaria) have also not requested transitional periods after their date of accession in order to reach the present level of the minimum rates. **Annexes B1 to B4** include the rates of excise duty on alcohol and alcoholic beverages applied by the Member States which joined the EU on 1 May 2004 and the candidate countries.

3.6. The examination period

64. Article 8 of Directive 92/84/EEC stipulates that every two years, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the rates of duty laid down in that Directive and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures.

65. The Commission takes the view that a two-year period is too short to perform the necessary in-depth examination of the operation of the Internal Market and of the other aspects to be taken into account in the Commission's report and to provide the proper perspective for assessing changes in Member States' legislation. A four-year period would be more appropriate for assessing the operation of the Internal Market and the consequences of any possible changes in legislation. For that reason, any future proposal to modify the existing Community framework of alcohol taxation should include an amendment to Article 8 of Directive 92/84/EEC to provide for a review every four years instead of every two years.

4. THE STRUCTURE OF EXCISE DUTY APPLIED TO ALCOHOLIC BEVERAGES

66. Even though the review requirement of Article 8 of Directive 92/84/EEC only obliges the Commission to report on the rates of duty laid down in that Directive, the Commission feels that the reviews could also consider changes to the structure of taxation, as this is an issue which is closely linked to the issue of the rates. This is

especially the case for matters concerning the classification of alcoholic beverages in each of the categories defined in the structures directive (Directive 92/83/EEC). The following three issues have emerged from the consultation process that preceded this report:

a) Different treatment of wine and sparkling wine;

b) Adaptation of the CN (Customs Nomenclature) codes used to define the product categories;

c) Classification of products for excise purposes.

4.1. Different treatment of wine and sparkling wine

67. At present, Directives 92/83/EEC and 92/84EEC provide the possibility for Member States to apply different rates of duty to wine and sparkling wine. As can be seen from the table in **Annex B1**, 8 Member States (IE, UK, DK, NL, BE, FR, DE, AT) presently make use of this option.

68. At present, Germany and Austria apply a zero-rate to still wine, but a relatively high rate to sparkling wine. In Belgium, Denmark, France, the United Kingdom, Ireland and the Netherlands the rate applied to sparkling wine is higher than the (positive) rate for still wine (**see Annex B1**). Four Member States (DE, BE, NL, AT) also apply a different rate to sparkling intermediate products than to still intermediate products (**see Annex B3**).

69. This distinction in the Directives follows from the fact that these Member States historically consider sparkling wines to be “luxury products”. The question arises whether such a distinction is still justified, as both products are increasingly consumed on similar occasions. Moreover, both categories contain wine that can be regarded as “luxury” products but also very cheap products (e.g. classified wines as opposed to table wines).

70. The definition of "sparkling wines" in Article 8 of Directive 92/83/EEC may lead to unfair results as regards taxation. According to the definition provided by Article 8, the term “sparkling wine” covers products that are “contained in bottles with mushroom stoppers held in place by ties or fastenings, or have an excess pressure due to carbon dioxide in solution of three bar or more”. Both criteria could be regarded as arbitrary. Semi-sparkling wines that have an excess pressure of just below three bar will escape excise duty levied on sparkling wines, and benefit from a lower (even zero) rate on still wine, if the producer merely uses a different kind of stopper for the bottle. This raises the question of whether this different treatment should be maintained or if sparkling wines and intermediate products should receive the same treatment as still wines and intermediate products.

4.2. Adapt the CN (Customs Nomenclature) codes used to define the product categories

71. For the definition of the various categories of alcoholic beverages, Directive 92/83/EEC largely refers to CN codes. Article 26 of this Directive stipulates that references in the Directive to CN codes shall be those of the version of the combined nomenclature in force when the Directive was adopted (19 October 1992). In case of

changes of classification, operators have to use different CN codes for the same products, for movements between Member States and for movements between the EU and third countries. To reflect possible changes of CN codes and changes of interpretation (e.g. amendments to the explanatory notes to the Harmonised System), and to simplify the situation for both operators and administrations, **reference should be made to the CN codes applicable on data as recent as possible.** Furthermore, in order to simplify the updating of this reference to the applicable CN codes, the Commission submits to the Member States for debate **whether such decisions should in the future be taken in accordance with the procedure laid down in Article 24 of Directive 92/12/EEC** (procedure involving the Excise Committee as agreed for energy products in Article 2(5) of Council Directive 2003/96/EC[22]).

4.3. Classification of products for excise purposes

72. The changes suggested in section 4.2. would facilitate the life of operators and administrations, but would not solve the problems of classification of alcoholic beverages in the various categories of alcoholic beverages foreseen in Directive 92/83/EEC. The definitions of these categories always imply a reference to CN codes. Therefore, the decision on the customs classification of a product is a preliminary question for a decision on its excise treatment.

73. Both traders and national administrations have recently brought problems of classification to the attention of the Commission services, whereby they complain about divergent classifications and – hence – diverging taxation of the same product in different Member States. Most of the problems raised concern the distinction between products of CN codes 2206 (including other fermented beverages) and 2208 (including spirits). The Harmonised System Explanatory Notes to heading 2206 permit the addition of distilled alcohol to "other fermented beverages", without specifying to what extent such addition is possible. Member States interpret this very differently, resulting in a situation whereby the same product is classified as "other fermented beverages" or "intermediate products" by some Member States and as "spirits" by other Member States.

Possible solutions

74. Within the framework of the existing EU excise legislation (Directive 92/83/EEC), which refers to the CN codes as a basis for the classification of alcoholic beverages, a solution to the problem of divergent classifications of alcoholic beverages can only be reached through **a more uniform interpretation and application of the customs rules for classification of these products in the CN**.

75. For customs purposes, operators can obtain a Binding Tariff Information (BTI) from their customs authorities concerning the classification of products imported from or exported to third countries. BTIs are introduced into a database run by the Commission and are legally valid in all Member States. Even though BTIs are given on a case-by-case basis and do not fix general rules for classification of products in the CN, they do give some guidance to administrations and traders and can lead to a

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[22] Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity (OJ L 283, 31.10.2003, p. 51).

more common application of the CN rules for classification in the CN. However, a BTI cannot be requested for products for which no customs interest can be demonstrated (e.g. new products produced within the EU and marketed only within the EU). In order to enhance the value of BTIs for excise purposes, consideration could be given to extending the possibility for operators to obtain a BTI from their customs authorities, to excise products not intended to be imported or exported. This would require an amendment to the relevant Customs provisions[23].

76. As indicated above, BTIs are only issued by the Customs authorities on a case-by-case basis, upon request of operators. In order to try and establish clearer general rules for classifying alcoholic beverages in the CN, a working group constituted of the Commission's services and the Customs Administrations of a number of Member States has been set up. This working group will, in particular, try to determine a clear dividing line between CN codes 2206 and 2208. This is however a very complex issue and may not lead to results very quickly. Moreover, it should not be overlooked that any new customs rules for classification of alcoholic beverages in the CN will have no consequences at all for excise purposes, as long as the reference to the CN codes in Article 26 of Directive 92/83/EEC is not updated as suggested in paragraph 71 above. Finally, the classification in the CN does not – and should not – take account of the consequences of this classification upon the classification of a product for excise purposes and might even lead to undesired results as far as the classification of certain products for excise purposes is concerned.

77. Therefore, the Commission is of the opinion that consideration should also be given to **more drastic solutions, making the classification of alcoholic beverages for excise purposes less dependant on the classification in the CN**.

78. A first possibility would be to redefine the categories of excise products merely by the use of verbal descriptions, without reference to CN codes, comparable to the definitions used for tobacco products, in Directive 95/59/EC. However, this might prove to be extremely complex having regard to the big diversity of products offered on the market of alcoholic beverages. Moreover, new products appear regularly on the market, which may result in new classification problems.

79. A second possibility would be to combine both customs codes and additional elements to be provided for in Directive 92/83/EEC. Such additional elements for excise purposes, like the maximum quantity of distilled alcohol that may be added to beverages of fermented origin before they loose their character of “other fermented beverages” or “intermediate products”, could help to draw a borderline between different categories of alcohol products, in cases where the mere application of the CN codes does not show clear results or leads to unsatisfactory results in the field of taxation. The application of such rules in practice, however, could meet considerable difficulties, since it may be extremely difficult and/or expensive to determine the origin of ethyl alcohol in a product.

80. Finally, consideration could be given to introducing a new category of alcoholic beverages including "other fermented beverages" to which alcohol has been added.

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[23] Article 12 of Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code and Articles 5 to 14 of the implementing provisions of the Community Customs Code (Commission Regulation (EEC) No. 2454/93 of 2 July 1993, laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92).

While leaving the present definitions, basis for calculation and rates for excise duties on beer, wine and ethyl alcohol in Directive 92/83/EEC unchanged, “other fermented beverages” (CN 2206) could be taxed according to their alcoholic content. In addition, following the example of Article 3(2) of Directive 92/83/EEC, Member States could be permitted to divide such beverages into categories, consisting of not more than two or three degrees of alcohol per category, and charge the same rate of duty per hectolitre on all beverages falling within each category. The level of EU-minimum rates for these products could be fixed in a linear manner, or could increase progressively, as the alcohol content of the product increases. This solution would enable Member States to tax comparable products (fermented products to which alcohol has been added) equally, on the basis of their alcohol content, while reducing the need to draw a clear distinction between products classified under CN-heading 2206 and 2208. It should be noted that the present definition of "other fermented beverages" would remain unchanged and that the products which at present fall within the scope of that definition (e.g. cider or perry), would continue to be taxed as wine, in application of Article 15 of Directive 92/83/EEC.

Conclusions

81. EU legislation concerning excise duty on alcoholic beverages, adopted in 1992 to facilitate the abolition of controls of a fiscal nature at internal borders, has been unaltered since then. It was meant to establish the minimum requirements that, at that time, were considered to be necessary for the Internal Market to function. In this context, the Council has to review the situation regularly, based on a report from the Commission.

82. The present report - the second on this issue since the establishment of the Internal Market - has highlighted a number of remaining problems with the functioning of the Internal Market, faced by a number of Member States. The problems highlighted result from the sometimes high tax burden on the products relative to their underlying value and the fact that there are significant divergences between the rates of duty applied by Member States. Enhanced approximation could provide a significant contribution to a solution of these problems.

83. Taking account of the complexity and the many politically sensitive aspects of the issue, which include wider objectives of the Treaty, as well as regional, rural and cultural factors, the present report is not accompanied by a proposal for a Directive. At this stage, the report is intended to launch a broad debate in the Council, the European Parliament and the European Economic and Social Committee. On the basis of the outcome of this debate, the Commission will decide whether or not to submit any proposals on all or some of the issues raised in this report.

ANNEX A

Revenue from excise duties on alcoholic beverages, tobacco products and mineral oils (year 2001) in absolute terms, as a percentage of total excise revenue and as a percentage of GDP

	GDP in million EUR	Excise duty receipts										
		In million EUR				As a % of total excise receipts			As a % of GDP			
		Total	Mineral oil	Tobacco products	Alcoholic drinks	Mineral oil	Tobacco products	Alcoholic drinks	Total	Mineral oil	Tobacco products	Alcoholic drinks
B	254.282	5.235	3.387	1.275	573	64,7%	24,4%	10,9%	2,06%	1,33%	0,50%	0,23%
DK	177.840	4.418	2.819	1.019	580	63,8%	23,1%	13,1%	2,48%	1,58%	0,57%	0,33%
D	2.071.200	54.806	39.331	12.025	3.450	71,8%	21,9%	6,3%	2,65%	1,90%	0,58%	0,17%
EL	130.927	4.558	2.283	2.006	269	50,1%	44,0%	5,9%	3,48%	1,74%	1,53%	0,21%
E	651.641	15.340	9.450	4.798	1.091	61,6%	31,3%	7,1%	2,35%	1,45%	0,74%	0,17%
F	1.463.722	33.549	22.780	8.190	2.578	67,9%	24,4%	7,7%	2,29%	1,56%	0,56%	0,18%
IRL	114.479	3.326	1.375	1.142	809	41,3%	34,3%	24,3%	2,91%	1,20%	1,00%	0,71%
I	1.220.147	32.602	24.412	7.444	746	74,9%	22,8%	2,3%	2,67%	2,00%	0,61%	0,06%
L	21.510	974	597	347	30	61,3%	35,6%	3,1%	4,53%	2,78%	1,61%	0,14%
N	429.172	7.746	5.223	1.677	846	67,4%	21,6%	10,9%	1,80%	1,22%	0,39%	0,20%
A	211.857	4.406	2.876	1.234	296	65,3%	28,0%	6,7%	2,08%	1,36%	0,58%	0,14%
P	122.978	3.575	2.228	1.100	247	62,3%	30,8%	6,9%	2,91%	1,81%	0,89%	0,20%
FIN	135.791	4.152	2.264	588	1.300	54,5%	14,2%	31,3%	3,06%	1,67%	0,43%	0,96%
S	244.905	6.577	4.540	807	1.230	69,0%	12,3%	18,7%	2,69%	1,85%	0,33%	0,50%
UK	1.596.986	59.113	35.454	12.489	11.169	60,0%	21,1%	18,9%	3,70%	2,22%	0,78%	0,70%
EU	**8.847.436**	**240.377**	**159.019**	**56.141**	**25.216**	**66,2%**	**23,4%**	**10,5%**	**2,72%**	**1,80%**	**0,63%**	**0,29%**

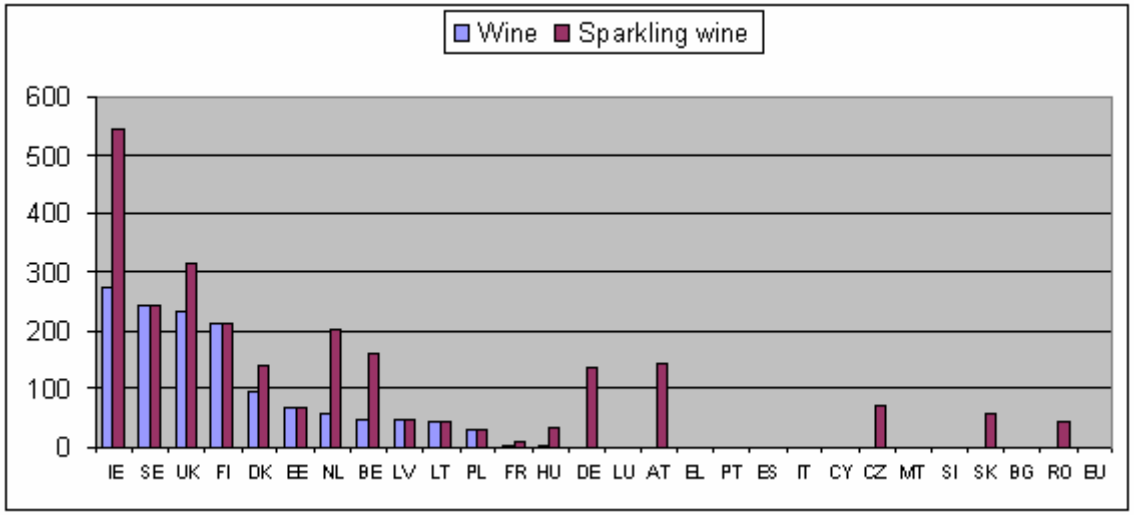
.

ANNEX B1

Excise duty rates applied to wine and sparkling wine (1/5/2004)

Member States	Wine	Sparkling wine
	Rate In EUR per hl	
IE	273	546
SE	243	243
UK	282	313
FI	212	212
DK	95	142
EE	67	67
NL	59	201
BE	47	161
LV	46	46
LT	44	44
PL	29,8	29,8
FR	3,4	8,4
HU	3,2	36
DE	0	136
LU	0	0
AT	0	144
EL	0	0
PT	0	0
ES	0	0
IT	0	0
CY	0	0
CZ	0	73
MT	0	0
SI	0	0
SK	0	58
Candidate countries		
BG	0	0
RO	0	42
EU	***0***	***0***

Excise duty rates applied to wine and sparkling wine (1/5/2004)



ANNEX B2

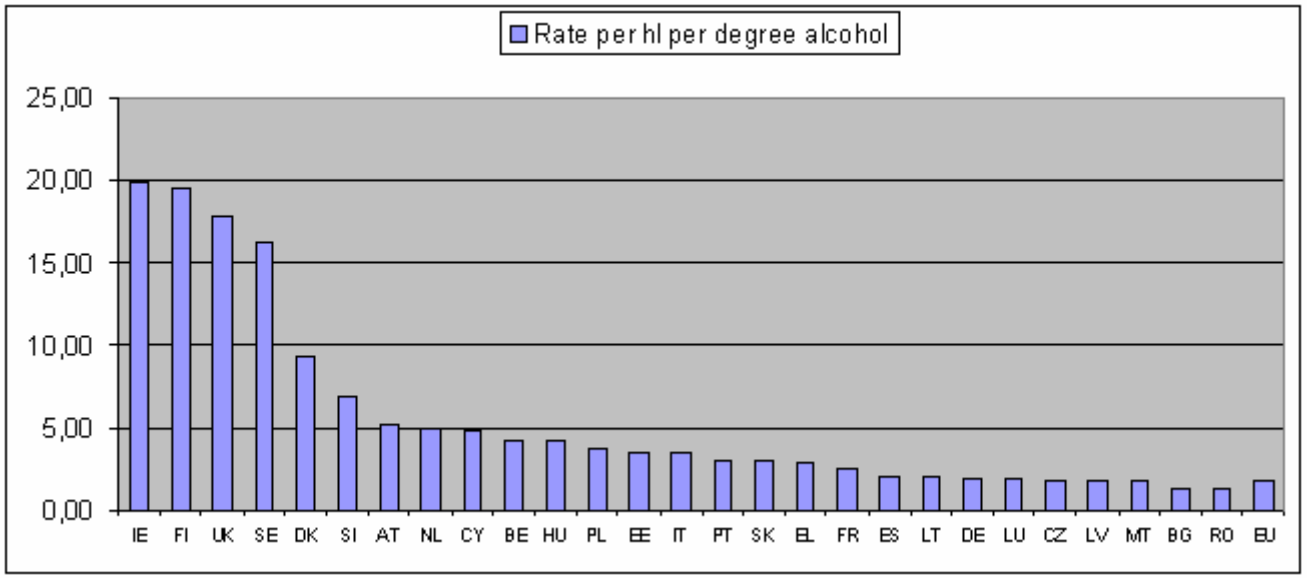
Excise duty rates applied to beer (1/5/2004)

Member States	In EUR per hl per degree alcohol[1][2]	In EUR per litre of beer at 5°	
IE	19,87	0,99	
FI	19,45	0,97	
UK	17,87	0,89	
SE	16,18	0,81	
DK	9,31	0,47	
SI	6,98	0,35	
AT	5,20	0,26	
NL	5,02	0,25	
CY	4,79	0,24	
BE	4,28	0,21	
HU	4,14	0,21	
PL	3,75	0,19	
EE	3,52	0,18	
IT	3,48	0,17	
PT	3,04	0,15	
SK	3,03	0,15	
EL	2,83	0,14	
FR	2,60	0,13	
ES	2,03	0,10	
LT	2,03	0,10	
DE	1,98	0,10	
LU	1,98	0,10	
CZ	1,88	0,09	
LV	1,88	0,09	
MT	1,87	0,09	
Candidate countries			
BG	1,35	0,07	
RO	1,37	0,07	
EU	**1,87**	**0,09**	

[1] Rate applied on beer of an actual alcoholic strength of 5% by volume

[2] For Member States taxing beer per degree Plato, conversion into degree alcohol has been made assuming that 1 degree alcohol equals 2,5 degree Plato

Excise duty rates applied to beer (1/5/2004)

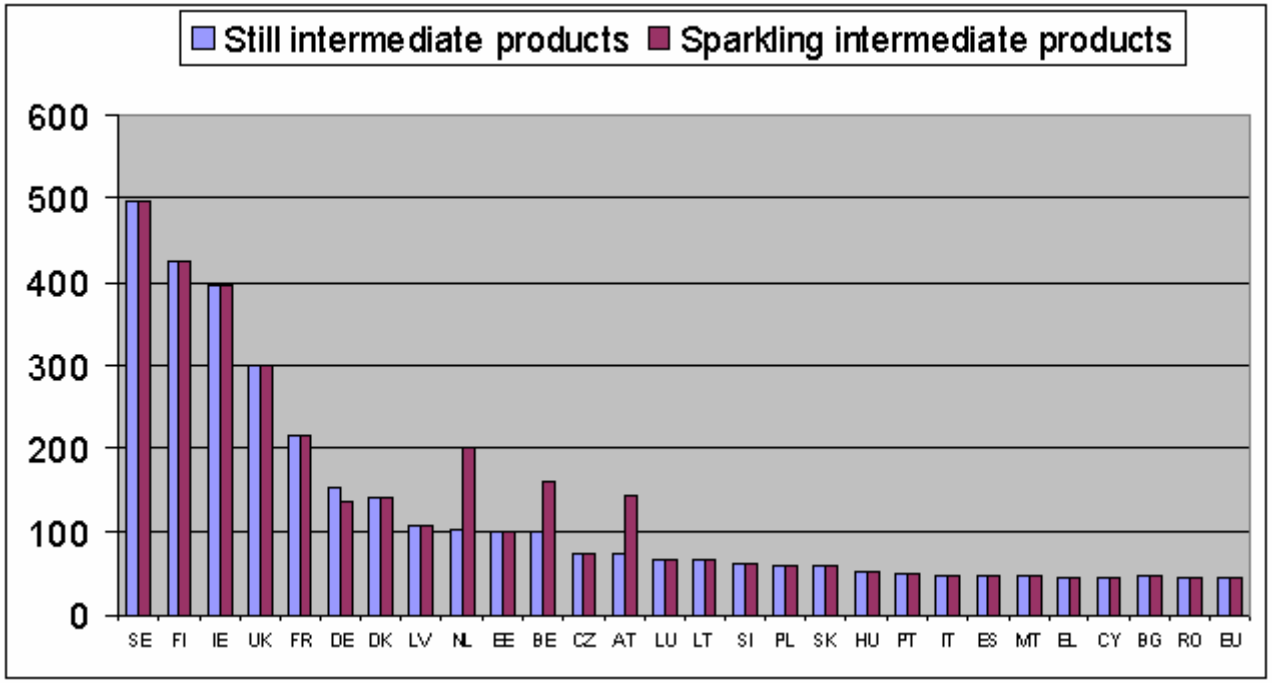


ANNEX B3

Excise duty rates applied to intermediate products (1/5/2004)

Member States	Still intermediate products	Sparkling intermediate products
	Rate in EUR per hl	
SE	497	497
FI	424	424
IE	396	396
UK	300	300
FR	214	214
DE	153	136
DK	142	142
LV	108	108
NL	103	201
EE	102	102
BE	99	161
CZ	73	73
AT	73	144
LU	67	67
LT	67	67
SI	64	64
PL	60	60
SK	58	58
HU	52	52
PT	51	51
IT	50	50
ES	49	49
MT	47	47
EL	45	45
CY	45	45
Candidate countries		
BG	46	46
RO	45	45
EU	***45***	***45***

Excise duty rates applied to intermediate products (1/5/2004)

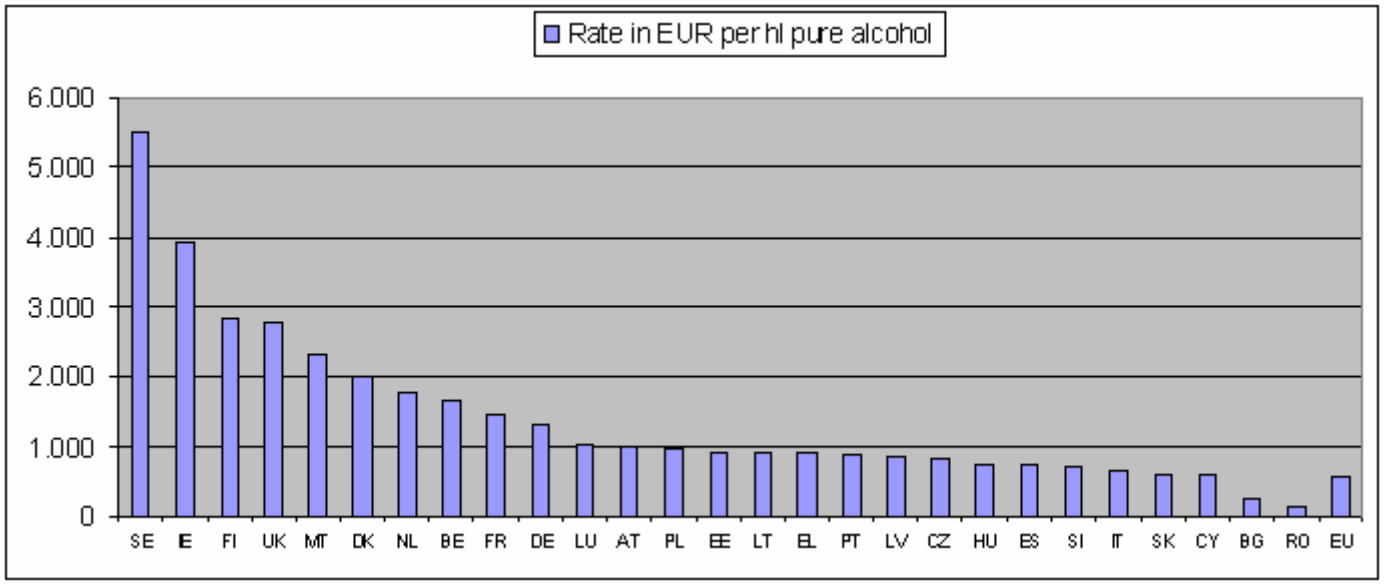


ANNEX B4

Excise duty rates applied to ethyl alcohol and spirits (1/5/2004)

	Rate in EUR per hl pure alcohol	Rate in EUR per litre of spirits at 40°
Member States		
SE	5.519	22,1
IE	3.925	15,7
FI	2.825	11,3
UK	2.776	11,1
MT	2.332	9,3
DK	2.020	8,1
NL	1.775	7,1
BE	1.661	6,6
FR	1.450	5,8
DE	1.303	5,2
LU	1.041	4,2
AT	1.000	4,0
PL	963	3,9
EE	927	3,7
LT	927	3,7
EL	908	3,6
PT	881	3,5
LV	847	3,4
CZ	831	3,3
HU	756	3,0
ES	740	3,0
SI	707	2,8
IT	645	2,6
SK	606	2,4
CY	599	2,4
Candidate countries		
BG	257	1,0
RO	150	0,6
EU	**550**	**2,2**

Excise duty rates applied to ethyl alcohol and spirits (1/5/2004)



ANNEX C

Excise duty rates applied by Member States expressed per hl per degree alcohol (in EUR) (1/5/2004)

Member State	Beer	Still wine (at 12% vol.)	Sparkling wine (at 12% vol.)	intermediate products (at 18% vol.)	Spirits
BE	4,28	3,92	13,42	5,51	16,61
DK	9,31	7,92	11,83	7,89	20,20
DE	1,98	0	11,33	8,50	13,03
EL	2,83	0	0	2,50	9,08
ES	2,03	0	0	2,75	7,40
FR	2,60	0,28	0,70	11,89	14,50
IE	19,87	22,75	45,50	22,01	39,25
IT	3,48	0	0	2,75	6,45
LU	1,98	0	0	3,72	10,41
NL	5,02	4,92	16,75	5,70	17,75
AT	5,20	0	12,00	4,06	10,00
PT	3,04	0	0	2,85	8,81
FI	19,45	17,66	17,66	23,56	28,25
SE	16,18	20,25	20,25	27,61	55,19
UK	17,89	19,33	26,08	16,66	27,76
CY	4,79	0,00	0,00	2,50	5,99
CZ	1,88	0,00	6,12	4,08	8,31
EE	3,52	5,54	5,54	5,68	9,27
HU	4,14	0,26	2,99	2,89	7,56
LT	2,03	3,63	3,63	3,70	9,27
LV	1,88	3,85	3,85	5,99	8,47
MT	1,87	0,00	0,00	2,59	23,32
PL	3,75	2,48	2,48	3,32	9,63
SI	6,98	0,00	0,00	3,54	7,07
SK	3,03	0,00	4,85	3,23	6,06

Excise duty rates applied by Member States expressed per hl per degree alcohol (in EUR)(1/5/2004)

