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COVER NOTE

From: General Secretariat of the Council
To: Delegations

Subject: - Proposal for a Council Directive amending Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages
[COM(2018) 334 final – 2018/0173 (CNS)]
- Proposal for a Council Directive laying down the general arrangements for excise duty (recast)
[COM(2018) 346 final – 2018/0176 (CNS)]
- Proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast)
[COM(2018) 341 final – 2018/0187 (COD)]
- Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register
[COM(2018) 349 final – 2018/0181 (CNS)]
– Opinion of the European Economic and Social Committee

Delegations will find attached the abovementioned opinion. This opinion is available in all language versions on the following website:

<http://www.eesc.europa.eu/>



European Economic and Social Committee

ECO/468
Review of EU excise duties

OPINION

European Economic and Social Committee

Proposal for a Council Directive amending Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages

[COM(2018) 334 final – 2018/0173 (CNS)]

Proposal for a Council Directive laying down the general arrangements for excise duty (recast)

[COM(2018) 346 final – 2018/0176 (CNS)]

Proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast)

[COM(2018) 341 final – 2018/0187 (COD)]

Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register

[COM(2018) 349 final – 2018/0181 (CNS)]

Rapporteur: **Jack O'CONNOR**

Referral	European Parliament, 05/07/2018 Council of the European Union, 13/06/2018 - 12/07/2018 - 18/07/2018
Legal basis	Articles 113 and 114 TFEU
Section responsible	Economic and Monetary Union and Economic and Social Cohesion
Adopted in section	03/10/2018
Adopted at plenary	17/10/2018
Plenary session No	538
Outcome of vote (for/against/abstentions)	193/0/9

1. Summary and conclusions

- 1.1 The EESC welcomes the measures contained in this package proposed by the Commission. It believes that they will largely achieve the goals set out, – namely, to provide greater certainty and clarity over the treatment of certain alcoholic products, facilitate cross-border trade under streamlined and modernised systems, and reduce the administrative and legal burdens on small enterprises.
- 1.2 The EESC is cognisant of the varying contribution that excise tax revenue plays in Member States, in particular excise taxation on alcoholic products. Further, there are varied cultural relations to particular products, social goals (e.g. health), and enterprise objectives (e.g. promotion of small enterprises, innovation). Therefore, a guiding principle is to provide for the widest possible discretion to allow Member States to adapt excise taxation on alcoholic products to national needs and objectives in the areas of taxation structure, cultural and social contexts. The EESC is satisfied that this principle has been respected by the proposed changes.
- 1.3 To the extent that definitions are given greater clarity and consistency (e.g. *legally and economically independent, cider, etc.*); that access to cross-border trade for small producers is made administratively simpler and modernised through updated IT systems; that process and conditions for denatured alcohol are clarified – the EESC supports the measures contained in the package of revisions. These will reduce administrative and legal uncertainty for both Member States and economic operators, resulting in cost reductions and removal of barriers. In addition, a report should be commissioned into the illicit spirit market.
- 1.4 There are two areas of concern. First is the proposal to increase the lower duty threshold for beers from 2.8 percent volume to 3.5 percent volume. Despite this being put forward as a health measure there is concern that it could, perversely, increase alcoholic intake. However, given that this would be left optional to the discretion of Member States, the EESC supports the proposal but calls for a review within five years to assess the impact in any Member State availing of this proposal.
 - 1.4.1 Second, the Commission proposes to rationalise the method of measuring the Plato degree of the "finished product" on beer, on the basis that it should be done at the end of the brewing process. The European Court of Justice (ECJ) recently interpreted the current Directive to the effect that the Plato degree should be measured before sugar/sweeteners are added, for the purposes of levying excise. However, the EESC notes that this method is used in only three Member States. This would require eleven Member States to change their method, (the remaining Member States do not use the Plato method). Therefore, on the basis of introducing the least disruption, the EESC supports the Commission proposals. This would require only three Member States to change their method.

2. Summary of the Commission's proposals

2.1 The Commission's proposals are divided into two parts. These are the proposed Council Directive amending Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages; and the proposed Council Directive laying down the general arrangements for excise duty (recast). There are two further proposals that are of an administrative nature that support the proposals contained in the Council Directive laying down the general directives for excise duty (recast). These are the proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register; and the proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast).

2.2 **Proposed Council Directive amending Directive 92/83/EEC:** The Commission's proposals address issues in four areas: (i) treatment of denatured alcohol, (ii) reduced rates for small producers and classification of certain alcoholic beverages, (iii) low strength alcoholic beverages, and (iv) measurement of Plato degree of sweetened/flavoured beer.

2.2.1 **Treatment of Denatured alcohol:** currently, there is inconsistent mutual recognition of completely denatured alcohol (CDA) between Member States while there are differing interpretations of the indirect uses of partially denatured alcohol (PDA). The Commission proposes to (a) clarify the mutual recognition of CDA and to modernise the procedures for notification by Member States of new formulations for same; (b) ensure the equal treatment of PDA for indirect uses, and (c) require movements of partially denatured alcohol exceeding 90 percent *Actual Alcoholic Strength by Volume* (ABV) and unfinished goods containing alcohol to be completed using the Excise Movement and Control System (ECMS).

2.2.2 **Reduced rates for small producers and classification of alcoholic beverages:** Member States may grant reduced rates to small producers of beer and ethyl alcohol. Small producers must be "*legally and economically independent*"; however, this is not adequately defined. This results in uncertainty and administrative/judicial costs. Further, Member States cannot apply reduced rates to small producers of other alcoholic beverages. This disadvantages small cider producers. The Commission proposes to (a) define "legal and economically independent" and to introduce a uniform certificate for small brewers, including cider makers, across the EU;¹ and (b) introduce optional reduced rates for independent small cider makers².

2.2.3 **Low-Strength Alcoholic Beverages:** Member States may apply reduced rates on low-strength alcoholic beverages. This is relevant for only some alcoholic products (e.g. beer). The Commission proposes to increase the threshold from 2.8 percent volume to 3.5 percent volume³. It has been argued that the threshold for low-strength beer is too low, undermining product innovation and providing little incentive to develop this sub-sector. As a consequence, consumers are not switching to low-strength beers, which undermines health policy.

¹ Article 4 and Article 13a.

² Article 13.

³ Article 5.

2.2.4 **Measurement of Plato degree of sweetened/flavoured beer:** Excise is levied on beer with reference to the Plato degree of "*finished product*" in 14 Member States. Eleven States measure at the end of the brewing process while the other three do it before sugar syrup or aromatic substances are added. (The remaining Member States do not use the Plato methodology; rather, they employ the ABV measurement – Actual Alcoholic Strength by Volume). The term "*finished product*" is not defined in the Directive resulting in three different interpretations. This results in non-uniform measurement and, therefore, leads to differences in the excise duty applied to products which can have the same alcoholic content. It is further asserted that monitoring procedures are burdensome given varying requirements for measuring the Plato degree in the three different interpretations (e.g. monitoring required in the brewery rather than from the bottle). The European Court of Justice⁴ has interpreted the current Directive to the effect that the Plato degree should be measured prior to the end process, therefore excluding the added substances. The Commission proposes to clarify the provision relating to the degree Plato measurement of beer – in particular, when the measurement of Plato degree should occur⁵. This envisages measurement at the end of the process (i.e. taking into account any added substances). This will effectively clarify the definition of "*finished product*".

2.3 **Proposal for a Council Directive laying down the general arrangements for excise duty (recast).** This second package of measures is technical in nature, comprising measures to streamline the transport of excise goods. Excise and customs procedures are not always aligned or synchronised, which creates issues when excise goods are imported or exported. In some situations the excise procedures are cumbersome or vary significantly from one Member State to another. Moreover, given the high fiscal risk for holding and moving excise goods under duty suspension, these arrangements are mostly used by large companies. SMEs use procedures, which are more amenable to small consignments and low numbers of movements but result in higher per-movement regulatory burden. This causes extra administrative and compliance cost, and effort for businesses as well as for national authorities. This is because some steps in the procedures have to be performed manually and subject to requirements that vary from one Member State to another. Moreover, such steps are a source of tax fraud. The Commission is proposing a number of measures to streamline and simplify these processes covering export and import interaction of excise products, business-to-business duty and exceptional situations.

2.3.1 **Import Interaction:** There are no standard documentary requirements for claiming exemption from excise duty at release for free circulation. An exemption from payment at release can be claimed if the goods are to be moved from the place of importation under EMCS, but there is no standard evidence requirement, unlike the arrangements for the exemption from VAT at importation for intra-EU supplies. The Commission is proposing a requirement that a consignor and the consignee be declared (Member States have the option of requiring identification of the excise movement associated with the goods).

⁴ C-30/17 - Kompania Piwowarska, 17 May 2018.

⁵ Article 3.

- 2.3.2 **Export Interaction:** There is no harmonised synchronisation between EMCS and ECS. Movements have to be manually closed while invalidated exports are not reported to EMCS. This can lead to administrative burdens on businesses (e.g. delay in release of guarantees), potential fraud and market distortions. The Commission is proposing a requirement to identify the excise consignor and the ARC (Administrative Reference Code) of the EMCS movement. There will also be an obligation to report an exceptional situation on the export side to the EMCS (e.g. failure to exit the EU, declaration invalidation) in order to improve synchronisation.
- 2.3.3 **Transit Alignment:** In addition to the combination of EMCS and ECS, other procedures are used to supervise the export of excise goods: the external and internal transit procedure and Single Transport Contracts (STC). The use of these procedures simplifies export operations for economic operators because it allows them to close the export procedure at the start of transit and therefore complete the movement in EMCS. The use of these simplified export procedures, however, has resulted in a number of issues: weak evidence of excise duty exemption, no proof of physical exit, guarantees released before the actual exit of the goods, and weak supervision. This may give rise to fraud opportunities and legal uncertainties that create complexities and confusion at firm level. Currently, it is not legally possible to close excise movement by opening transit. The Commission proposes to allow economic operators to use a simplified way to export excise goods by using the external transit procedure after export instead of using EMCS until the external border. This would provide adequate guarantee management and would prevent goods from disappearing at destination, as the goods, which have become non-Union goods with the start of external transit, would be under customs supervision until the goods exit the customs territory.
- 2.3.4 **Business-to-Business Duty Paid (B2B):** the current procedure for moving goods for which B2B duty has been paid is paper-based. This is used by SMEs as it does not require a tax warehouse for dispatch or receipts. But the procedure is out-of-date, unclear and burdensome. The Commission is proposing that these movements be automated through the extension of the EMCS's scope, facilitated by the creation of two new categories: certified consignor and certified consignee. This will reduce simplify and reduce costs for SMEs and introduce greater efficiencies.
- 2.3.5 **Exceptional Situations:** Exceptional situations refer to a range of contingencies: the quantity of goods arriving at a destination is lower than the quantity declared at dispatch (including national shortages such as the evaporation of petrol) or higher; consignee rejects responsibility for the goods; official cancellation of the movement; etc. These situations are not legislatively detailed leading to Member States using different procedures to assess shortages, process rejections and thresholds for allowable losses. This can create complexity and confusion. Directives already ensure quantities are measured in a common way. The Commission accepts that it must make national authorities more aware of them. However, it proposes a new intervention to standardise allowable losses thresholds.
- 2.4 There are two further proposals that are of an administrative nature that support the proposals contained in the Council Directive laying down the general arrangements for excise duty (recast).

2.4.1 The Proposal for a Council Regulation amending Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic register concerns the automation of the supervision of movements of excise goods which have been released for consumption in one Member State and that are being moved to another Member State in order to delivered for commercial purposes in that other Member State.

2.4.2 The Proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast) accompanies the above Council Regulation and gives effect to the automation of the supervision of movements of excise goods.

3. **Comments**

3.1 **Proposed Council Directive amending Directive 92/83/EEC**

3.1.1 Treatment of denatured alcohol (2.2.1 above). The EESC believes the Commission's proposals are good and should proceed. In addition, there is a need for a more comprehensive understanding of the illicit spirit market. Therefore, a report should be commissioned on it so that better tools to tackle it can be developed.

3.1.2 Reduced rates for small producers and classification of certain alcoholic beverages (2.2.2 above). Again, the EESC believes the Commission's proposals would address current problems and result in greater clarity while improving the regime so as to retain an incentive to assist small producers. The EESC believes that, in the future, the Commission should give consideration to introducing a similar reduced rate with revised thresholds for spirit distillers.

3.1.3 Low strength alcoholic beverages (2.2.3 above). The Commission's proposals in relation to this matter are more contentious. There is little evidence that product innovation is harmed. There is anecdotal evidence of a growing presence of low-strength beers among producers, including small producers. Any health benefit would require consumers of standard-strength beer being incentivised to switch to the volume-revised low-strength alcohol. If this does not occur, then this could result in low-strength beer consumers increasing their alcoholic content. However, the EESC recognises that these proposals are not binding on Member States: each State would retain discretion to maintain a lower threshold and reduce excise rates. Therefore, the EESC accepts these proposals. However, a review should be conducted within five years in those Member States that avail of these provisions to measure the extent to which there has been a shift in consumption to lower-alcohol products and away from those of standard strength.

3.1.4 Measurement of Plato degree of sweetened/flavoured beer (2.2.4 above): the EESC acknowledges that the Commission's proposals in relation to this matter may prove contentious, especially in light of the European Court of Justice (ECJ) interpretation of the current Directive. The assertion that the process of measuring alcohol content before sugars/sweeteners are added is administratively burdensome is disputed by representatives of economic operators. However only three Member States currently measure before sugars/sweeteners are added while the remaining eleven which utilise the Plato methodology employ the method consistent with the Commission proposals. Given this, and the benefits accruing from a consistent definition of "*finished product*", it is less disruptive that three Member States amend their methodology rather than requiring eleven to do so. It should be further noted that when such products are exported, the differences in the Plato methodology are not relevant, as the ABV measurement is required. Accordingly, the EESC believes the Commission's proposals are the least disruptive and would have the benefit of protecting tax revenue.

3.2 **Proposal for a Council Directive laying down the general arrangements for excise duty (recast)**

3.2.1 The EESC believes that the measures contained in this proposal for a Council Directive covering import and export interaction, transit alignment, business-to-business duty paid, and exceptional situations will have the intended effect; namely, to streamline the transport of excise goods, align excise and customs procedures, reduce administrative and compliance costs for economic operators as well as national authorities and assist in combatting fraud. The EESC supports these proposals.

3.3 **The proposal for a Council Regulation amending Regulation (EU) No 389/2012 and the proposal for a Decision of the European Parliament and of the Council on computerising the movement and surveillance of excise goods (recast).**

3.3.1 The EESC supports these proposals as they administratively facilitate the implementation of the proposals contained in the Council Directive laying down the general directives for excise duty (recast).

Brussels, 17 October 2018

Luca JAHIER

The president of the European Economic and Social Committee