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'I/A' ITEM NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee (Part 2)/Council
Subject:	Council Conclusions on the Commission Report to the Council on the evaluation of Directive 92/83/EEC – Endorsement

1. The Commission on 28 October 2016 presented a Report to the Council on the evaluation of Council Directive 92/83/EEC on the structures of excise duties on alcohol and alcoholic beverages (hereafter – "the Commission Report")¹.
2. The Commission was required to present a report to the Council in accordance with Article 22(7) of Directive 92/83/EEC². Furthermore, the Directive has been identified for evaluation under the Commission's Regulatory Fitness and Performance Programme (REFIT)³.

¹ Doc. ST 13870/16 FISC 178 + ADD1, ADD2.

² Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages (OJ L 316, 31.10.1992).

³ REFIT is a programme to review the entire stock of EU legislation – to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

3. The Commission Report outlines the background that led to its production, the methodology used for evaluation of Directive 92/83/EEC, the issues that were identified and 17 recommendations that were made on that basis. The Commission then identifies three work areas where specific recommendations could be addressed and the fourth area where the Commission suggests to maintain the status quo and not to take any action.
 4. The Commission Report was discussed at the meeting of the Working Party on Tax Questions (WPTQ) on 10 November 2016, where delegations agreed to work towards reaching an agreement on Council conclusions, which would set out its views on the Commission Report and on the way forward.
 5. At the meeting of the High Level Working Party on Tax Questions (HLWP) on 22 November all delegations unanimously supported the draft Council Conclusions on the Commission Report, which are set out in Annex I to this note.
 6. Against this background, the Committee of Permanent Representatives is invited to suggest that the Council endorse the abovementioned draft Council conclusions as set out in Annex I of this note, as an "A" item on the agenda of a forthcoming meeting.
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COUNCIL CONCLUSIONS
ON THE COMMISSION REPORT TO THE COUNCIL ON THE EVALUATION OF
COUNCIL DIRECTIVE 92/83/EEC ON THE STRUCTURES OF EXCISE DUTIES ON
ALCOHOL AND ALCOHOLIC BEVERAGES

The Council (ECOFIN):

1. WELCOMES the Commission Report to the Council on the evaluation of Council Directive 92/83/EEC on the structures of excise duties on alcohol and alcoholic beverages and TAKES NOTE of the findings and recommendations set out in that Report.
2. AGREES with the assessment that, in general, Directive 92/83/EEC functions effectively and makes it possible to avoid tax-related trade barriers or competitive disruptions between economic operators in the same sector of activity.
3. TAKES NOTE that the Commission Report concentrates exclusively on the structures of excise duties on alcohol and alcoholic beverages, and in no way either covers or combines the findings with the requirements laid down in Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages.
4. CONFIRMS, that it is necessary to prevent ambiguities leading to distortions of competition between economic operators and to apply harmonised conditions and rules for taxing alcohol and alcoholic beverages. Moreover, it is essential to provide equal conditions for economic operators in the functional internal market, eliminate disruptions to fair competition and prevent tax evasion and avoidance.
5. NOTES, however, that the Directive could be amended as appropriate in order to eliminate certain ambiguities that sometimes cause particular types of alcohol and alcoholic beverages to be treated differently. This would also improve collection of excise duties and reduce administrative costs for both economic operators and tax administrations in Member States.

6. RECOGNISES the need to clarify and to harmonise further the classification rules for products manufactured as mixtures of different categories of alcoholic beverages or as mixtures of alcoholic beverages with non-alcoholic beverages in order to unify the treatment for excise purposes of the same products across the Member States, and so ensure legal certainty and clarity for economic operators.
7. STRESSES the need to ensure uniform treatment of alcoholic beverages, which are the mixture of fermented beverages and alcohol, and in this context, for the purposes of legal certainty, to clarify the notion of “entirely of fermented origin” in Directive 92/83/EEC.
8. AGREES with the assessment that clear rules are in place for applying reduced rates for small producers of beer and ethyl alcohol and INVITES the Commission to investigate the impact of extending those rules to small producers of still and sparkling wines, other fermented beverages and intermediate products.
9. INVITES the Commission to investigate further the potential impact of allowing Member States to exempt from excise duties the production of ethyl alcohol and intermediate products for own consumption and to present a report to the Council and RECALLS the particular importance of striking the right balance between revenue, the costs of tax administration, other aspects relating to consumption and the impact on cross-border trade.
10. TAKES NOTE of the recent adoption of Commission Implementing Regulation 2016/1867/EU stipulating one common "euro" procedure for completely denaturing alcohol and in this context, RECOGNISES that Article 27 of Directive 92/83/EEC, more generally, needs to be updated, in order to define the transparent and clear conditions for applying the exemptions for any type of denatured alcohol, without prejudice to the Member States' competences.

11. RECALLS the need to achieve the right balance between preventing tax evasion and avoidance while ensuring flexibility in the use of different denaturing procedures laid down by the Member States in accordance with the point (b) of Article 27 (1) of Directive 92/83/EEC, and ENCOURAGES the Commission to develop, in collaboration with all Member States, a clear definition of final products, which should eliminate the consequences of different treatment of products from denatured alcohol within internal market.
12. TAKES NOTE that in order to ensure further harmonization of the exemptions provided for in points (a) and (b) of Article 27 (1) of Directive 92/83/EEC, it might be necessary to amend the rules on holding and transporting denatured alcohol to reflect the provisions of Council Directive 2008/118/EC.
13. RECOGNISES that some CN codes referred to in Directive 92/83/EEC need to be updated, as this Directive was adopted more than 20 years ago.
14. TAKES NOTE that, in the interest of clarity and given the potential revision of Directive 92/83/EEC, rules that were designed for specific Member States and are no longer used could be removed.
15. REQUESTS that the Commission, taking into account these Council Conclusions and the objectives set out in Directive 92/83/EEC, undertakes all relevant studies and, after carrying out the relevant technical analysis, public consultations and an impact assessment, submits to the Council an appropriate legislative proposal in 2017 or, in case it chooses not to submit a proposal, informs the Council of the reasons.
