



COMMISSION OF THE EUROPEAN COMMUNITIES

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2006/xxxx (CNS)

Proposal for a

COUNCIL DIRECTIVE

amending Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages

(presented by the Commission)

EXPLANATORY MEMORANDUM

1) CONTEXT OF THE PROPOSAL

- **Grounds for and objectives of the proposal**

Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages lays down minimum rates of duty for each product category. Under Article 8 of the Directive the Commission is required to undertake regular reviews and to produce a report, and where appropriate a proposal, upon which the Council shall examine the rates of duty laid down in that Directive.

The Commission's report, presented on 26 May 2004, concluded that more convergence of the rates of excise duty in the different Member States is needed so as to ensure the proper functioning of the internal market, in particular with regard to the potential for distortions of competition and fraud. However, it was not accompanied by a proposal but instead was aimed at stimulating a debate in the Council, the European Parliament and the Economic and Social Committee.

Following such debates, the Council called on the Commission, on 12 April 2005, "to come forward with a proposal to adjust the minimum rates of excise duty in order to avoid a fall in the real value of the Community minimum rates, providing transitional periods and derogations for those Member States who may have difficulties in increasing their rates; the Commission should also duly take into account the overall political sensitivity of this special issue".

Having assessed the position, the Commission proposes to amend Directive 92/84/EEC by:

- revalorising the minimum rates on alcohol, intermediate products and beer in line with inflation from 1993 to 2005, which is in the order of 31%, to take effect from 1 January 2008;
- providing, by way of derogation, transitional periods up to 1 January 2010 for those Member States that may have difficulties in increasing their national rates by 1 January 2008 to meet the revalorised minima, such transitional periods being determined by the efforts required of the Member States concerned;
- rendering the review procedure under Article 8 of the Directive more flexible and less onerous and to prolong the review period from 2 years to 4 years.

The primary purpose of revalorising the minimum rates is to restore their real value of 1992. 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 which the Council agreed in 1992, as a requirement to ensure the functioning of the Internal Market without fiscal borders.

It should be noted that the categories of alcoholic drinks for which positive minimum rates of excise duty were agreed in 1992 and are, therefore, the subject of revalorisation are beer,

intermediate products and alcohol. The minimum rate for wine is set at zero and consequently a revalorisation of that rate is not applicable.

- **General context**

The Community framework concerning excise duty on alcohol and alcoholic beverages is laid down in two Directives. Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages lays down common definitions of the products subject to the duty, specifies the method of calculating the duty and the criteria under which certain products may qualify for exemptions or reduced rates. Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages lays down minimum rates of duty for each product category. This proposal concerns only Council Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages.

Under Article 8 of Council Directive 92/84/EEC a regular review procedure shall take place.

In accordance with this provision, the Commission's first report appeared on 13 September 1995. However, it was not accompanied by any proposal but merely drew attention to certain difficulties.

The Commission's second report was presented on 26 May 2004 and followed a wide consultation process involving national authorities, business representatives and interest groups. The report concluded that more convergence of the rates of excise duty in the different Member States is needed so as to reduce distortions of competition and fraud. However, given the widely differing views in the Member States about the appropriate levels of the minimum rates, and given that any change would require unanimous agreement, the Commission did not make a proposal at that time. Instead the Commission indicated that it wished to launch a broad debate in the Council, the European Parliament and the Economic and Social Committee and that on the basis of the outcome of this debate the Commission would then decide whether or not to submit proposals on all or some of the issues raised in the report.

Debates subsequently took place. As a result, the Council pointed in particular to a broad convergence of views that minimum rates of excise duty should be adjusted in order to compensate for inflation and so restore their real value. The Commission has calculated that based on Eurostat data on the annual rate of change of the HICP (Harmonised Index of Consumer Prices) between 1993 and 2005, the total EU-wide inflation rate for the period between 1 January 1993 and 31 December 2005 is of the order of 31%¹.

- **Existing provisions in the area of the proposal**

Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages which lays down the minimum rates of duty, set in 1992 and applicable from 1 January 1993, for each product category, as follows:

¹ The genuine HICP series starts with the index for 1997. Data 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%; 2003: 2,0%; 2004: 2,0%; 2005: 2,1%.

<i>Product</i>	<i>Rate expressed</i> <i>Per</i>	<i>Present minimum rate</i>
<i>Wine (Still and sparkling)</i>	HI	0 €
<i>Beer</i>	HI degree Plato or HI degree alcohol*	0.748 € or 1.87 €
<i>Intermediate products</i>	HI	45 €
<i>Alcohol</i>	HI of pure alcohol	550 €

*The Directive provides Member States with the option to levy excise duty either by degree Plato or degree alcohol by volume.

- **Consistency with the other policies and objectives of the Union**

This proposal is in line with the main policies and objectives of the Union. The proposed increases in the minimum rates are necessary in order to maintain the level of rates which the Council agreed in 1992, as a minimum requirement to ensure the proper functioning of the Internal Market without fiscal borders. As hitherto, the fixing only of minimum rates enables Member States to set their national rates at levels which they consider appropriate to their own national circumstances and for integration of their own national policies, including health objectives if appropriate.

2) **CONSULTATION OF INTERESTED PARTIES AND IMPACT ASSESSMENT**

- **Consultation of interested parties**

The Commission's report of 26 May 2004 was meant to give the Council, the European Parliament, and the Economic and Social Committee the opportunity to debate the issues raised. Following discussions between Member States within the Council, the latter has presented its conclusions on the Commission's report in April 2005, which are as follows:

- A vast majority of Member States believe that enhanced approximation would help to reduce distortions of competition and fraud, but reservations were expressed as concerns the level and the direction of such approximation.
- No consensus could be reached on the introduction of a positive minimum rate for all alcoholic beverages. Twelve Member States are firmly against any proposition to introduce a positive minimum rate on wine.
- There is a broad convergence of views that minimum rates of excise duty should be adjusted in order to compensate for inflation and so restore their real value.
- The vast majority of Member States do not consider that health and social aspects should be a major determinant in setting rates.

The Council, therefore, called upon the Commission "to come forward with a proposal to adjust the minimum rates of excise duty in order to avoid a fall in the real value of the Community minimum rates, providing transitional periods and derogations for those Member States who may have difficulties in increasing their rates; the Commission should also duly take into account the overall political sensitivity of this special issue".

- **Collection and use of expertise**

Given the limited scope of this proposal, it was not necessary to collect and use particular expertise.

- **Impact assessment**

The purpose of the proposal is to update the existing Directive 92/84/EEC by increasing the minimum rates in order to restore their real value agreed by Council in 1992 as the minimum necessary to ensure the proper functioning of the Internal Market without fiscal borders.

The Commission's enquiry conducted in preparation of its 2004 report has not brought to light any new developments which, in today's perspective, would plead against such an adjustment.

However, this adjustment could create difficulties for some of the Member States required to increase their national rates substantially and within a relatively short period of time in order to meet the revalorised minima – see Tables 2, 3 and 4 below. To offset such difficulties, the proposal contains a derogation allowing transitional periods up to 1 January 2010, such transitional periods being determined by the efforts required of the Member States concerned. In this respect, it is proposed to refer to an objective criterion, expressed in terms of the percentage by which the existing national rates would need to be increased to meet the new minima. For those Member States that are required to increase their national rates by more than 10% but less than 20%, a transitional period to 1 January 2009 is proposed; for those Member States that are required to increase their national rates by more than 20%, a transitional period to 1 January 2010 is proposed (cf. below, sub Summary of the proposed action).

The economic and social impact of the proposal can be considered as minimal. For example, for beer, this would have as a consequence that Malta, Latvia, Germany, Luxembourg, Czech Republic, and Lithuania would have to increase their national excise duty by €0.01 (one eurocent) on half a litre of beer at 5% abv, at the latest by 1 January 2010. In addition, as far as SME are concerned, provisions already exist whereby small businesses (breweries and distilleries) can benefit from reduced rates², however, that is a matter for the Member States concerned to determine. For the consumer, and based on subsequent retail price adjustments, this increase is likely to represent less than the typical EU annual inflation rate.

3) LEGAL ELEMENTS OF THE PROPOSAL

- **Summary of the proposed action**

² OJ L316, 31.10.1992, p.21. Articles 4 and 22 of Council Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages.

The Commission proposes:

- *to revalorise the minimum rates on alcohol, intermediate products and beer in line with inflation from 1993 to 2005, which is in the order of 31%, to take effect from 1 January 2008.*

Based on Eurostat data on the annual rate of change of the HICP (Harmonised Index of Consumer Prices) between 1993 and 2005, the total EU-wide inflation rate for the period between 1 January 1993 and 31 December 2005 is of the order of 31%. Therefore, revalorising the minimum rates applying this percentage increase gives the following results:

TABLE 1

Product	Rate expressed Per	Present minimum rate	Indexed minimum rate on 31/12/2005 (present rate x 1.31)
Wine (Still and sparkling)	HI	0 €	0 €
Beer	HI degree Plato or HI degree alcohol	0.748 € or 1.87 €	0.98 € or 2.45 €
Intermediate products	HI	45 €	59 €
Alcohol	HI of pure alcohol	550 €	720 €

It is proposed that the changes come into force on 1 January 2008. This will allow sufficient time for those Member States that are affected to make the necessary adjustments during their annual budget processes.

- *to provide, by way of derogation, a transitional period until 1 January 2010 for those Member States that may have difficulties in increasing their national rates by 1 January 2008 to meet the revalorised minima.*

The national rates already applied by the majority of Member States are in excess of the proposed revalorised minima and consequently no action will be required by them. However, the national rates currently applied in several Member States are below the proposed revalorised minima and consequently they will be required to increase their national rates, as follows:

TABLE 2 - BEER

Member State	Current national rate € ⁽¹⁾⁽²⁾		% increase required to meet new minimum rate 0.98 €Plato or 2.45 €abv
	Plato	Abv	
Malta	0.746		31.3%
Latvia		1.87	31%
Germany	0.787		24.5%
Luxembourg	0.7933		23.5%
Czech Rep	0.81		20.9%
Lithuania		2.03	20.6%
Spain	0.91		7.7%

TABLE 3 - INTERMEDIATE PRODUCTS

Member State	Current national rate € ⁽¹⁾⁽²⁾	% increase required to meet new minimum rate – 59€
Greece	45.00	31%
Cyprus	45.89	28.5%
Malta	46.57	26.6%
Portugal	54.57	8.1%
Spain	55.53	6.2%

TABLE 4 - ALCOHOL

Member State	Current national rate € ⁽¹⁾⁽²⁾	% increase required to meet new minimum rate – 720€
Cyprus	610.71	17.9%
Slovenia	695.14	3.6%

Footnotes:

(1) For non Eurozone Member States, exchange rates used are those published in the Official Journal of the European Union - C 244 of 4/10/2005

(2) Member States national rates are those notified as at January 2006.

It should be noted, however, that not all these Member States will necessarily have difficulties in increasing their national rates to meet the revalorised minima as at the date of entry into force of the revalorised minima, 1 January 2008. Consequently, it is not proposed to provide for transitional periods where the required increases to meet the revalorised minima are less than 10% and for which sufficient time is already provided, i.e. between the adoption of the proposal and its coming into force. Therefore, for the Member States concerned (Spain, Portugal, and Slovenia) the necessary increases in the national rates should come into force on or before 1 January 2008. However, for those Member States that would need to increase their national rates by more than 10%, transitional periods up to 1 January 2010 are proposed. Namely, for those Member States that are required to increase their national rates by more than 10% but less than 20%, a transitional period to 1 January 2009 is proposed; for those Member States that are required to increase their national rates by more than 20%, a transitional period to 1 January 2010 is proposed.

- *to render the review procedure under Article 8 more flexible and less onerous and to prolong the review period from 2 years to 4 years.*

It is appropriate to make the review procedure more flexible and less onerous, in particular by allowing the Commission to judge whether a report is warranted or not. Moreover, a two-year period is too short to perform the necessary in-depth examination of the operation of the Internal Market and of 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. For the purposes of assessing all these aspects, a four-year period would be more appropriate than the presently applicable two-year period.

- **Legal basis**

Treaty establishing the European Community, and in particular Article 93 thereof.

- **Subsidiarity principle**

The proposal falls under shared Community and Member State competence. Therefore, the subsidiarity principle applies. In the light of the objective of the proposal for an amending Directive, which is to increase the minimum rates in order to restore their real value agreed by Council in 1992 as the minimum necessary to ensure the proper functioning of the Internal Market without fiscal borders, a Community approach is required.

- **Proportionality principle**

The proposal complies with the proportionality principle for the following reason(s).

The Directive increases the minimum rates in order to restore their real value agreed by Council in 1992 as the minimum necessary to ensure the proper functioning of the Internal Market without fiscal borders. A Community approach is, therefore required. Above the minima, Member States retain sovereignty to set excise duty rates on alcohol and alcoholic beverages at levels they consider appropriate according to their own national circumstances.

- **Choice of instruments**

Proposed instruments: Directive

Other means would not be adequate as the nature of the proposal is to amend certain Articles of the existing Directive 92/84/EEC. Therefore, it is appropriate that the proposed instrument should be a Directive amending Directive 92/84/EEC.

4) BUDGETARY IMPLICATIONS

The adoption of the proposal will not lead to budgetary implications.

5) ADDITIONAL INFORMATION

- **Repeal of existing legislation**

The adoption of the proposal will amend rather than repeal existing legislation.

- **Correlation table**

For the majority of Member States no action will be required in terms of implementing the Directive as their national rates already respect the revalorised minima. For several Member States, however, national rates will need to be increased in order to respect the revalorised minima. However, for the sake of good administration, the Member States are required to communicate to the Commission the text of national provisions transposing the Directive to confirm their respect of the revalorised minima.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Whereas:

- (1) Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages⁴ specifies minimum rates of excise duty, subject to which Member States are free to set their national rates at levels which they consider appropriate for pursuing national policy objectives, including those relating to health.
- (2) In accordance with Article 8 of that Directive, an examination of the rates of excise duty on alcohol and alcoholic beverages has been carried out.
- (3) The Commission's first report on the subject, of 13 September 1995⁵, drew attention to certain difficulties and subsequently, a consultation process took place involving national authorities, business representatives and interest groups.
- (4) Those consultations led to a second Commission report⁶, presented on 26 May 2004. The report concluded that more convergence of the rates of excise duty in the different Member States is needed so as to ensure the proper functioning of the internal market, in particular with regard to the potential for distortions of competition and fraud.

¹ OJ C [...], [...], p. [...].

² OJ C [...], [...], p. [...].

³ OJ C [...], [...], p. [...].

⁴ OJ L 316, 31.10.1992, p. 29.

⁵ COM(1995)285.

⁶ COM(2004)223

- (5) In this respect, it is necessary to compensate for the fall in the real value of the Community minimum rates of excise duty on alcohol and alcoholic beverages. The minimum rates should therefore be increased in line with inflation.
- (6) In order to ease the difficulties that may be faced by those Member States that would need to increase their national rates substantially in order to meet the new minima, it is appropriate to provide for transitional periods.
- (7) It is also necessary to make the regular review procedure more flexible and less onerous, and to adjust the frequency with which it is to take place. The present period of two years is too short for changes in the legislation of the Member States to be properly evaluated. Reviews should take place every four years.
- (8) Directive 92/84/EEC should, therefore, be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/84/EEC is amended as follows:

- (1) Article 1 is replaced by the following:

"Article 1

Not later than 1 January 2008, Member States shall apply minimum rates of excise duty in accordance with the rules laid down in this Directive."

- (2) In Article 3(1), the first subparagraph is replaced by the following:

"As from 1 January 2008, the minimum rate of excise duty on alcohol and alcohol contained in beverages other than those referred to in Articles 4, 5 and 6 shall be fixed at EUR 720 per hectolitre of pure alcohol."

- (3) Article 4 is replaced by the following:

"Article 4

As from 1 January 2008, the minimum rate of excise duty on intermediate products shall be fixed at EUR 59 per hectolitre of product."

- (4) Article 6 is replaced by the following:

"Article 6

As from 1 January 2008, the minimum rate of excise duty on beer shall be fixed at one of the following rates, by reference to the finished product:

- (a) EUR 0.98 per hectolitre/degree Plato;
- (b) EUR 2.45 per hectolitre/degree of alcohol."

(5) The following Article 7a is inserted:

"Article 7a

By way of derogation from Article 1, Member States which on 31 December 2007 applied excise duty at a rate such that an increase of 10% or more would be required in order to reach the minima laid down in Articles 3, 4 and 6 may postpone the application of the minimum rates of excise duty until 1 January 2009. Where an increase of 20% or more would be required, application of the minimum rates of excise duty may be postponed until 1 January 2010."

(6) Article 8 is replaced by the following:

"Article 8

Every four years, and for the first time not later than 31 December 2010, the Commission shall examine the rates of excise duty laid down in this Directive. Where appropriate, it shall adopt a report or a proposal. The Council, acting in accordance with Article 93 of the Treaty, shall adopt the necessary measures."

*Article 2
Transposition*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2007 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

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

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels, [...]

*For the Council
The President*

[...]