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to the report drawn up by Mr J. BESSE

on behalf of the Committee on Economic and Monetary
Affairs and Industrial Policy

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Opinion of the Committee on Agriculture, Fisheries and
Food

UNIVERSITY OF PITTSBURGH

O P I N I O N

(Rule 101 of the Rules of Procedure)

of the Committee on Agriculture, Fisheries and Food

Draftsman: Mr LIGIOS

At its meeting of 18 September 1985, the Committee on Agriculture, Fisheries and Food appointed Mr LIGIOS draftsman.

The committee considered the draft opinion at its meetings of 18/19 November and 17/18 December 1985, adopting its conclusions at the latter meeting by 19 votes to 7, with three abstentions.

The following took part in the vote: Mr TOLMAN, chairman; Mr EYRAUD, Mr GRAEFE ZU BARINGDORF and Mr MOUCHEL, vice-chairmen; Mr BORG0 (deputizing for Mr Ligios, draftsman); Mr ADAMOU, Miss BROOKES (deputizing for Mr Battersby), Mr CLINTON, Mr EBEL (deputizing for Mr Dalsass), Mr ELLES (deputizing for Sir Henry Plumb), Mrs JEPSEN, Mr MALLET (deputizing for Mr Debatisse), Mr MAFFRE-BAUGE, Mr MAHER, Mr MERTENS, Mr MORRIS, Mr MUHLEN (deputizing for Mr Bocklet), Mr NIELSEN, Mr N. PISONI, Mr PRANCHERE, Mr PROVAN, Mr RAFTERY (deputizing for Mr Marck), Mr ROMEOS, Mr ROSSI, Mrs ROTHE, Mr SIMMONDS, Mr SPATH (deputizing for Mr Fruh), Mr STAVROU and Mr WOLTJER.

Introduction

This opinion concerns two Commission documents: the proposal for a Council directive laying down certain rules on indirect taxes which affect the consumption of alcoholic drinks¹; the proposal for a Council directive concerning the harmonization of excise duties on fortified wine and similar products².

Antecedents

1. The two proposals for directives form part of an overall package of proposals from the Commission to the Council aimed at implementing a number of measures to harmonize taxes which affect the consumption of various alcoholic drinks.
2. Compared to proposals presented in the past, they have the advantage of being able to draw on the legal precedents established by a now substantial body of case law on the subject handed down by the Court of Justice aimed at clarifying the restrictions imposed by the Treaty on the sovereignty of the Member States where fiscal matters are concerned.
3. However, they are based on the assumption, held by the majority of the Member States, that there are risks involved in referring to the Court of Justice without restriction matters which are tending to become more 'political' and, as such are rather the prerogative of the Council and Parliament on the basis of Commission proposals. Not to mention the fact that the Court's case law, which is based on a number of specific cases to which its validity is limited, is not capable of achieving the total harmonization urgently required to achieve the unified internal market (1992).
4. They are of central importance to the programme outlined by the Commission in its White Paper on the completion of the internal market presented to the European Council meeting in Milan on 28 and 29 June 1985 which, amongst other things, shows how the proposals can be implemented without any radical consequences for the fiscal budget of the Member States as regards indirect taxes and without any fundamental changes in the relationship between direct and indirect taxation.
5. The proposals are also consistent with the votes taken on the subject by the European Parliament which has continually and repeatedly expressed the view that harmonization of taxes on alcoholic drinks should be given high priority in view of the high costs - in terms of the distortion and artificial stifling of the volume of trade - associated with the indefinite prolongation of separate systems often inspired by protectionist motives.
6. The present proposals set the seal on the Commission's previous proposals and reflect, to a considerable extent, the compromise document proposed by the presidency of the Council in October 1981 which differs only in minor details. This should mean that the obstacles to the present proposals - even where, as is often the case, these are bound up with fiscal policy problems that are not easy to resolve - can be easily overcome.

¹ COM(85) 150/final

² COM(85) 151/final

Aims of the two proposals for directives

7. The aims of the proposal for a directive concerning indirect taxes which affect the consumption of alcoholic drinks are essentially as follows:

- (a) a single rate for excise duties on all wines, fixed by reference to volume, until such time as the conditions - which do not exist at present - for a genuine harmonization of the duties on wine arise;
- (b) fixing a maximum difference between the excise duty on wine and that on beer depending on the alcoholic content of the two beverages, with a view to reducing the excessive difference in taxation;
- (c) issuing suitable further provisions with regard to VAT to enable the rules governing excise duties to be harmonized.

8. The proposal for a directive concerning harmonization of excise duties on fortified wine and similar products provides for:

- (a) the harmonization of excise duties on fortified wines with reference also to the excise duties applied by Member States to purely distilled alcoholic beverages;
- (b) a specific regulation concerning the excise duties on wines to which alcohol has been added by establishing a class of 'intermediate products' between purely natural fermented alcoholic beverages and purely distilled alcoholic beverages and by including similar alcoholic beverages (fermented alcoholic beverages different from wine and to which alcohol has been added) under the heading 'intermediate products'.

Specific contents of the proposals for directives and relevant considerations

(a) Excise duties on wine (COM(85) 150-Art.1):

9. The proposal sets aside - during the first stage of harmonization in general - the directive concerning excise duties on wine, substituting a provision of limited scope on the establishment of a uniform rate of excise duty (fixed by reference to volume) in the Member States which apply excise duties on still wines.

10. While welcoming the Commission's extremely realistic approach to the problem, it is debatable whether isolating wine - albeit temporarily - from the harmonized fiscal framework really meets the long-term interests which are at stake in the wine industry and whether there is not, therefore, a case for exploring further the areas of negotiation still open for establishing, even in countries which have so far been opposed to the idea, an excise duty on wine which could be applied, for a limited period, at zero rate.

(b) Wine/beer: excise duty ratio (COM(85) 150-Art.2):

11. This involves applying the Court ruling in Case 170/78 (Commission/United Kingdom), throughout the Community as a whole. It is clear that, as far as Community law is concerned, the general application of the Court's judgment represents a fundamental step towards reestablishing the balance of one of the more macroscopic distortions to trade, even if the specific terms adopted by the Commission to implement this ruling are rather debatable such as the 'strength' taken as the measure of comparison or the figure of 11% which is

usually considered the alcoholic strength of still wine. These are details that could be revised and improved during the final negotiations in Council but, for all that, they do not appear to reduce the potential scope of the regulation in question for reestablishing such a balance.

(c) VAT (COM(85) 150-Art.3-4-5-6)

12. The extension beyond 1989 - accompanied by an immediate standstill - of the final phase of establishing a single structure of rates for the entire alcoholic beverages sector, preceded by a similar initial stage applicable to each of the categories of fermented beverages, intermediate products and spirituous beverages, may - allowing for any possible delays which may be necessary in the timing of the final phase - provide a climate of acceptance for a regulation which, whilst already implemented in several Member States, might have considerable traumatic effects for Member States where there is a different historical concept of VAT.

(d) Intermediate products (COM(85) 151)

13. This is a regulatory concept which is essential in understanding the overall approach adopted by the Commission to the complex problem of the proposed harmonization. This concept - enlarged, in the proposals under consideration by the inclusion of products under Heading 22.07 in addition to those under Heading 22.06 - reflects and clarifies the Commission's conviction, developed over many years as a result of enquiries and consultations with the Member States, that the process of approximating the excise duty structure cannot overlook, for the abstract purpose of rationalization - however progressive - the considerable imbalances between fermented alcoholic beverages and distilled alcoholic beverages established by the fiscal policies of the majority of the Member States such that 'the excise duties - if any - on those intermediate products are in all Member States lower than the excise duties on alcohol' and therefore 'in order to take into account the fact that a large amount of the alcohol contained in intermediate products is natural fermented alcohol the rate of excise duty applicable to these products must be reduced compared with the excise duties levied on spirits or distilled alcohol'.

14. The 'bracket' mechanism governing the minimum and maximum limits (20% - 65%) by which this rate may be reduced seems adequate for imposing reasonable limits within which each individual Member State may develop its own specific fiscal policy with regard to intermediate products.

At the present time, the regulation on harmonization is still vague about the excise duty structure which may be applied to numerous new products based on fermented alcohol (wine coolers and similar products which do not figure under Article 2.1). For the moment, individual Member States are free to decide on their definition, subject to the restrictions imposed by Article 95 of the Treaty.

15. It is obvious that certain problems are bound to arise when dealing with a harmonization process that entails delicate balances between beverages in direct competition and certain important aspects of social policy. In particular:

- (a) the problem of determining the upper limit of the 'bracket' which - to enable greater account to be taken of technological developments affecting the products and to safeguard the characteristics of wine as traditionally expected by the consumer and catered for in Member States' legislative policies - could be reduced from the present 65% to 50%-60%;
- (b) the political and legal problem of the French 'liqueur wines' is a case where it seems fair to apply, on French territory only, the derogation provided for under Article 4, on condition that their characteristics can be defined with absolute specificity, unless the regulatory description of these characteristics is inconsistent with Community law or, in particular, prevents similar products originating from other Member States from gaining access in practice to France on identical fiscal terms. There is, as a result, some confusion over certain conditions laid down in Article 4 (e.g. 'directly prepared by producers'). At the practical level, the reduction of the upper limit of the bracket referred to in the above paragraph (a) could - by decreasing the fiscal gap on similar beverages in direct competition - contribute to a negotiated solution of a problem which, from the legal point of view, is not completely clear.

Finally, the deadline (1.1.88) determining the length of time during which the French Republic would be totally exempt from applying the lower limits of the mechanism is far too long.

16. Despite the abovementioned problems, the overall classification of intermediate products proposed by the Commission - based on a view of a single fiscal structure for products derived, through the addition of distilled alcohol, from fermented beverages and on Community measures to formalize the relationship, albeit indirectly for the moment with the help of intermediate products, between fermented beverages and distilled beverages - undoubtedly constitutes the linchpin of the phased harmonization programme envisaged by the Commission and, as such, could, in the unfortunate event that the package as a whole is a failure, be extrapolated and employed by itself as the first component of future harmonization.

Implications for the agricultural sector

17. The unfair fiscal treatment to which wine has so far been subjected by comparison to other beverages in direct competition and which has hampered normal imports in non-producer Community countries, has been a major reason for the accumulation of surpluses and the subsequent high costs accruing to the budget for Community measures involving distillation and grubbing up.

18.. The CAP has not managed to extricate the wine-growing sector from the crisis. Even in the current marketing year, this sector must withdraw from the market 18 million hectolitres of wine out of an unsold total of approximately 40 million hectolitres, which is equivalent to five months consumption.

19. The Green Paper recently published by the Commission paid no attention to the wine sector considering it a closed book after the measures taken in February 1985. However, it suggests a number of social measures - in the form of direct income subsidies - that will have to be implemented as a result of the disinvestments in surplus production, including the Community wine-growing sector, which will have to give way to some alternative form of production.

It should not be forgotten that wine, with a vine-growing area in the Community of 2 341 000 hectares and an annual production of 140-170 million hectolitres, provides employment for about 3 million viticulturists, not to mention people employed upstream and downstream.

The new proposals for directives on the harmonization of excise duties on wine and on indirect taxes which affect the consumption of alcoholic drinks - which carry no financial implications for the Community budget - come at the right time in the Community's legislative programme and can establish further milestones in the process of completing the internal market.

CONCLUSIONS

The Committee on Agriculture, Fisheries and Food:

1. Welcomes the fact that the Commission has presented new proposals for the harmonization of taxes on alcoholic drinks in recognition of the European Parliament's desire to find a solution to the problem of the different fiscal systems in this field;
2. Considers that the proposals in question are consistent with the aims decided upon by the Council in 1972, with the CAP guidelines, especially in the wine-growing sector and, finally, with the vote taken by the committee on the opinion on the Hopper report¹ and the conclusions to the Ligios report on taxation on wine²;
3. Considers that the process of fiscal harmonization can bring benefits to the wine-growing sector which is heavily penalized by the current restrictive measures and under the threat of being abandoned in many regions of the Community as a result of the current policy of grubbing-up; considers that fiscal policy must not be allowed to distort consumer choice or inter-state trade in the alcoholic beverages market;
4. Considers that the Commission's proposals meet - through a balanced view of competing interests - the absolute need, already recognized by the committee in the past, for harmonization of the taxes on wine, beer and alcoholic products;
5. Considers that the process of phased approximation (structures/rates) provided for by the proposals meets the requirement for gradual adjustment by the Member States;
6. Hopes that the proposals do not preclude further and more advanced levels of harmonization (excise duty on wine, wine coolers, excise duty ratio between fermented beverages and distilled beverages) even if, for the moment, they are limited to what is currently practicable;
7. Considers the derogation laid down for French liqueur wines to be fair - having regard to the economic and social aspects involved in producing them - provided that, in practice, it does not prevent similar products originating in other Member States gaining access to France on identical fiscal terms, and on condition that there is a regulatory mechanism offering guarantees equivalent to those required for natural sweet wines with regard to production and marketing conditions;

¹Doc. 1-49/83 - Opinion by Mr Sutra De Germa

²Doc. 1-48/84

8. Stresses that 'similar products' must be understood to mean only natural sweet wines specifically and exclusively of agricultural origin, made by the harvesting grower(s), individually or in association, whose yields per hectare of vineyard shall be limited within areas of registered designation or origin, using vine varieties traditionally laid down by law and only slightly enriched during the wine-making process by the addition of 4.5 - 9% wine alcohol;
9. Recognizes that the proposals under consideration are a balanced reflection of the different fiscal policies of the Member States, including the new Member States as from 1 January 1986;
10. Considers, in view of the above, that it can give a favourable opinion to the adoption of the two proposals for directives.