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REPORT

drawn up on behalf of the Committee on Agriculture

on the taxation of wine

Rapporteur: Mr G. LIGIOS

PE 79.978/fin.

English Edition

On 13 March 1981, the European Parliament referred the motion for a resolution tabled by Mr SUTRA and others on the taxation of wine (Doc. 1-18/81) pursuant to Rule 47 of the Rules of Procedure to the Committee on Agriculture as the committee responsible.

At its meeting of 1/2 June 1981, the Committee on Agriculture decided to draw up a report and at its meeting of 20 October 1981 appointed Mr LIGIOS rapporteur.

It considered the draft report at its meetings of 24 September 1982 and 1/2 February 1984.

At the latter meeting it adopted the motion for a resolution by 26 votes to 2 with 2 abstentions.

The following took part in the vote: Mr Curry, chairman; Mr Früh, Mr Colleselli and Mr Delatte, vice-chairmen; Mr Ligios, rapporteur; Mr Abens (deputizing for Mr Woltjer), Mr Barbagli (deputizing for Mr Diana), Mr Bocklet, Mrs Castle, Mr Dalsass, Mrs Desouches, Mr Gatto, Mr Gautier, Mr Goerens (deputizing for Mrs Martin), Mr Helms, Mr Herman (deputizing for Mr Clinton), Mr Kaloyannis, Mr Kaspereit, Mr Kirk, Mr Maffre-Baugé, Mr Mertens, Mr Newton-Dunn (deputizing for Mr Hord), Mr d'Ormesson, Mr Papapietro, Mr Provan, Ms Quin, Mr Simmonds, Mr Stella (deputizing for Mr Tolman), Mr Thareau and Mr Vitale.

The report was tabled on 2 February 1984.

C O N T E N T S

A

The Committee on Agriculture hereby submits to the European Parliament the following motion for a resolution, together with explanatory statement:

MOTION FOR A RESOLUTION

on the taxation of wine

The European Parliament,

- having regard to the motion for a resolution tabled by Mr SUTRA, Mr GATTO, Mr FOTILAS, Mrs CRESSON, Mr ARFE', Mr CARIGLIA, Mr GEORGIADIS and Mr COUTSOCHERAS (Doc. 1-18/81),

- having regard to the judgment of the Court of Justice of 12 July 1983 in Case 170/78, Commission v. the United Kingdom[1],

- having regard to its resolution of 17 November 1983 on the harmonization of taxation in the Community[2],

- having regard to the report by the Committee on Agriculture (Doc. 1-1374/83),

A. whereas consumers in certain non-producer Member States are disadvantaged by the fact that wine is subject to indirect taxes which make it a luxury product and make its consumption prohibitively expensive by comparison with other nationally produced alcoholic beverages such as beer,

B. whereas some Member States use excise duties to discriminate against products from other Member States,

C. whereas this situation has unfavourable effects both on consumer choice and the functioning of the common organization of the market in wine, with significant consequences for the Community budget,

D. whereas in its judgment on Case 170/78, the Court of Justice of the European Communities stated that, by levying excise duty on still white wines made from fresh grapes at a higher rate, in relative terms, than on beer, the United Kingdom had failed to fulfil its obligations under Article 95(2) of the EEC Treaty,

E. whereas it is necessary to regularize the legal situation in the Community as soon as possible, by putting this judgment into effect throughout the Community through the introduction of appropriate legislative provisions by the Member States concerned,

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[1] OJ No. C 226, 24.8.1983, p. 3

[2] OJ No. C 342, 19.12.1983, p. 73

1. Notes that the difference in per capita wine consumption - which varies from between 2 litres a year in Ireland to about 90 litres a year in France and Italy - is due not so much to differences in taste as to the existence of obstacles to the spread of consumption, such as high excise duties;

2. Stresses that in some countries taxation often puts the price of even the most ordinary table wine beyond the reach of the average consumer;

3. Stresses that this policy cannot be justified even on budgetary grounds, since the revenue from excise duties on wine is insignificant as a result of its limited consumption;

4. Points out furthermore that this taxation of wine has unfavourable consequences for consumers, who are unable to purchase greater quantities of this product because of its high price, for producers, who are excluded by fiscal barriers from a large part of the Community market, and for the Community budget, which is burdened by surpluses caused by the restrictions on the free movement of the product;

5. Shares the Court of Justice's view that there is a close competitive relationship between wine and beer in that the two beverages are capable of meeting identical needs and there is a degree of substitution for one another;

6. Notes, however, that in some Community countries the tax burden on wine is greater than that on beer, whichever of the three possible methods of comparison is used - the volume, alcoholic strength or price of the product; in other Member States, however, beer is taxed more heavily than table wine;

7. Stresses that this system of taxation penalizes wine when, as the Court of Justice points out, the tax policy of a Member State must not crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to respond to them;

8. Welcomes the judgment of the Court of Justice of the European Communities on Case 170/78, Commission v. the United Kingdom, whose aim was to bring national laws governing excise duties on light still wines into line with Community law;

9. Stresses the importance of the authority of the Court of Justice of the European Communities and its fundamental role as regards the respect of Community law by the Member States, who joined the European Economic Community of their own free will;

10. Considers that the Court's judgment, and the numerous resolutions by Parliament condemning excise duties on wine, show the need to seek a solution to this problem in the harmonization of the various tax systems;

11. Calls therefore on the Commission to submit as quickly as possible new proposals for harmonizing the taxation of alcoholic products, taking account of the conclusions reached by the Court of Justice;

12. Calls on those Member States which levy high excise duties on wine to comply immediately with the judgment of the Court of Justice, by introducing provisions designed gradually to reduce these duties to a fairer level and one which does not discriminate against products in competition with wine;

13. Instructs its President to forward this resolution to the Council and Commission of the European Communities and the European consumer organizations.

B

EXPLANATORY STATEMENT

Introduction

Excise duties are an indirect tax levied on the production or sale of a commodity, which producers and retailers pass on by raising consumer prices.

Excise duties now represent one of the principal obstacles to the free movement of some goods, particularly when they are used as an indirect tax levied on certain products in order to favour other products. The most conspicuous instance of this discriminatory use of excise duties is without doubt that of wine.

The purpose of this report is to bring to the attention of the European Parliament and of European public opinion a problem which is serious not only in legal terms, but also, and above all, because of the consequences which for too many years have affected European producers and consumers.

The fact that per capita consumption of wine varies from 90 l a year in certain Member States (for example, France and Italy) to only 8 l a year in the United Kingdom and a mere 2 l in Ireland, that is between around twelve and more than fifty times less, is explained not only by the differing tastes and traditions of certain nations - tastes and traditions which are universally recognized and which no-one wishes to eliminate or change.

One of the causes of this substantial disparity in consumption must be sought in the excise duties which certain Member States use to give an excessive competitive advantage to beer (an alternative drink to wine) and hence to make wine prohibitively expensive.

In certain countries, in fact, excise duties increase the price of wine to such an extent that it becomes a luxury product that can be afforded only by the most well-to-do. This is one of the most questionable forms of discrimination, particularly when it is practised in certain major countries whose consumer associations are among the most powerful and highly organized in Europe, both within and outside the Community.

In addition to the high rate of excise duty the consumer price is further increased by VAT, which is levied at varying rates (from 5% to 25%) and leads to discrimination between products.

The Community has removed customs barriers and facilitated the free movement of most agricultural products but has failed in its objective in the case of wine, which does not circulate freely in the Community in the same way as the other products.

It is therefore rash to refer to wine surpluses, given that more than one hundred million European consumers are obliged to pay a price for wine which is between five and ten times higher than that obtained by the wine-growers.

This type of situation obviously creates surpluses, a term which would be appropriate only if the forces of supply and demand were allowed to interact freely.

The fact that it is precisely those Member States which boycott the sale of wine that oppose distillation measures - the only way of disposing of millions of hectolitres which are unsaleable - shows the absurd point that has now been reached in this sector.

A further consequence of the high level of excise duties is that, in order to lower the selling price, an attempt is made to squeeze the producer price, thus encouraging the marketing of poor quality wines and thwarting the Community's aim of improving quality.

The limited consumption in certain Community countries, resulting from the high price of wine, has, together of course with other factors, led to the formation of wine surpluses which can be disposed of only by means of expensive distillation operations.

The claim made by countries which levy high excise duties on wine that a reduction in these duties would elad to a fall in revenue is groundless, since revenue from wine represents a very small proportion of total revenue from the principal excise duties and a specific cut in the rate could lead to an increase in revenue encouraging higher consumption.

Excise revenue from wine and beer as a percentage of

total revenue (1977)

	D	B	F	I	DK	IRL	UK	L	NL
Wine	1	3	1	-	4	1	3	2	2
Beer	2	6	0.7	1	16	24	13	4	1

This shows clearly that the Member States which levy the highest excise duties on wine (United Kingdom, Ireland and Denmark) are those with the greatest revenue from beer, which is consumed in larger quantities. Hence a cut in the excise duty on wine could undoubtedly lead to an increase in revenue.

The European Parliament has frequently denounced this situation. Now it is for the first time since direct elections tackling it in a specific report devoted exclusively to the problem. This comes at a delicate point when a decision is awaited from the Court of Justice which should bring to a close a lengthy dispute - Case 170/78 - between the Commission and the United Kingdom.

TAXATION ON WINE

A - General considerations

Domestic fiscal legislation is one of those sectors which has remained completely under the control of the national authorities and over which the influence of the Community continues to be extremely limited.

The expansion in recent years of the national budgets has compelled the Member States to increase substantially both direct and indirect domestic taxation. All of them, moreover, are making increasing use of the fiscal levy as an instrument of economic policy.

Although all matters relating to taxation lie within the jurisdiction of the States, it should not be forgotten that the Community has a certain number of objectives, the realization of which depends in part on a measure of harmonization of the various taxation systems. Tax harmonization has a bearing on all the fundamental goals and objectives of the Treaty, especially those relating to:

- the establishment of a common market, in particular through freedom of movement for persons, goods, services and capital and the introduction of mechanisms to ensure that competition is not distorted within the common market,

- the progressive approximation of Member States' economic policies, and

- the establishment of a number of common policies. The Treaty provides for only three such policies (for external trade, agriculture and transport), but others have been adopted, at least in principle, by the Community institutions, notably in the energy, regional policy and environmental sectors.

The measures already taken and yet to be taken by the Community with a view to harmonizing tax legislation have to be considered in relation to the achievement of these objectives.

It is also worth noting the Council resolution of 22 March 1971[1], which specifies, inter alia, that:

'In order to expedite the effective relaxation of the rules applicable to the free movement of persons, goods, services and capital and the process of economic interpenetration, the Council, acting on a proposal from the Commission and with due regard for the need to achieve a just balance, shall decide on the following:

- the Community criteria for determining the uniform basis for assessing value added tax in conformity with the Decision of 21 April 1970 on the replacement of Member States' financial contributions with the Community's own resources,

- the harmonization of the sphere of application, the basic taxable amount and the procedures for the collection of excise duties, particularly those which have an appreciable influence on trade, and

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[1] OJ C 28 of 27.3.1971

- further measures for the harmonization of company taxation structures.

Before the end of the first stage, the studies and the Commission's proposals concerning the approximation of the rates of value added tax and excise duties shall be submitted to the Council.'

Some progress has been made towards tax harmonization, partly as a result of initiatives of the kind just mentioned, and despite the numerous difficulties created by the considerable reluctance of each State to discuss taxation matters except within the confines of national legislation.

The States have, for instance, reached agreement on a number of priority objectives such as:

- the free movement of persons, goods, services and capital,
- fiscal neutrality in trade,
- the introduction of mechanisms to guarantee that there is no distortion of competition, and
- the abolition of tax frontiers.

In practice, important results have been achieved on the basis of these objectives, particularly as the measures adopted to date mostly relate to the structure of taxation and basic taxable amounts.

Despite the progress made, major differences still remain which call into question the very principles on which the Community is founded. This report will from now on be concerned with one of those differences.

B - Excise duties and Community law

An excise duty is an indirect tax on the manufacture or sale of certain products. The highest excise duties are levied on mineral oils, alcohol, beer and wine.

Excise duties account for a substantial proportion of the tax revenue of all the Community Member States; in effect, they are taxes whose yield depends on a specific rate (a monetary amount) and on the quantity of the product on which tax is collected. But why do excise duties on wine create so many problems for the Community - a solution to which is urgently needed - when they represent an area of taxation for which the Member State is in principle responsible?

The answer to this question has been given by the Court of Justice on a number of occasions in its judgments in a series of cases involving the tax arrangements applicable to spirits in certain Member States[1].

'Within the system of the EEC Treaty, the provisions of the first and second paragraphs of Article 95 supplement the provisions on the abolition of customs duties and charges having equivalent effect. Their aim is to ensure free movement of goods between the Member States in normal conditions of competition by the elimination of all forms of protection which may result from the application of internal taxation which discriminates against products from other Member States. Article 95 must guarantee the complete neutrality of internal taxation as regards competition between domestic products and imported products.

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[1] Case 168/78 : Commission v France
Case 169/78 : Commission v Italy
Case 171/78 : Commission v Denmark
Case 172/78 : Commission v Ireland

The first paragraph of Article 95 must be interpreted widely so as to cover all taxation procedures which conflict with the principle of the equality of treatment of domestic products and imported products; it is therefore necessary to interpret the concept of 'similar products' with sufficient flexibility. It is necessary to consider as similar products those which have similar characteristics and meet the same needs from the point of view of consumers. It is therefore necessary to determine the scope of the first paragraph of Article 95 on the basis not of the criterion of the strictly identical nature of the products but on that of their similar and comparable use.

The function of the second paragraph of Article 95 is to cover all forms of indirect tax protection in the case of products which, without being similar within the meaning of the first paragraph, are nevertheless in competition, even partial, indirect or potential, with certain products of the importing country. For the purposes of the application of that provision it is sufficient for the imported product to be in competition with the protected domestic production by reason of one or several economic uses to which it may be put, even though the condition of similarity for the purposes of the first paragraph of Article 95 is not fulfilled.

Whilst the criterion indicated in the first paragraph of Article 95 consists in the comparison of tax burdens, whether in terms of the rate, the mode of assessment or other detailed rules for the application thereof, in view of the difficulty of making sufficiently precise comparisons between the products in question, the second paragraph of that article is based upon a more general criterion, in other words the protective nature of the system of internal taxation.

Whilst Community law, as it stands at present, does not prohibit certain exemptions or tax concessions, in particular so as to enable productions or undertakings to continue which would no longer be profitable without those special tax benefits because of the rise in production costs, the lawfulness of such practices is subject to the condition that the Member States using those powers extend the benefit thereof in a non-discriminatory and non-protective manner to imported products in the same situation.

The implementation of the programme of harmonization laid down by Article 99 of the EEC Treaty cannot constitute a preliminary to the application of Article 95. Whatever the disparities between the national tax systems, Article 95 lays down a basic requirement which is directly linked to the prohibition on customs duties and charges having an equivalent effect between the Member States in that it intends to eliminate before any harmonization all national tax practices which are likely to create discrimination against imported products or to afford protection to certain domestic products. Articles 95 and 99 pursue different objectives, since Article 95 aims to eliminate in the immediate future discriminatory or protective tax practices, whilst Article 99 aims to reduce trade barriers arising from the differences between the national tax systems, even where those are applied without discrimination.'

C - Excise duties on wine

The problem posed by the tax arrangements for spirits (excise duty on alcohol) also arises in the case of wine, which is subject to markedly different regulations in the Member States both in absolute terms and in comparison with beer, its main competitor.

Table 1: Comparison between the excise duties applicable to wine as at 1.4.1982 (ECU per hl)

	D	B	DK	F	IRL	I	L	NL	UK	GR
Still wines										
• alcoholic strength ≤ 10°										
wine of fresh grapes	-	12,43 - 24,86	91,56	3,52	268,59	-	0 o 11,47	15,55 - 31,11	191,37	0
fruit wine	-	0-24,86	59,21	excise duty on alcohol	255,59	-	0 o 11,47	0	130,98	?
• alcoholic strength < 12°										
wine of fresh grapes		12,43 - 24,86	91,56	3,52	268,59	-	0 o 11,47	15,55 - 31,11	191,37	0
fruit wine	-	24,86	59,21	excise duty on alcohol	255,59	-	0 o 11,47	0	185,99	?
• alcoholic strength ≤ 15°										
wine of fresh grapes	-	24,86+ 0,33 per for each 1° above 12°	91,56 - 170,31	3,52	268,59	-	11,47+0,20 for each 1/10° above 12°	31,11+ 0,28 for each 1/10° above 12°	191,37	0-2,6
fruit wine	-	•	59,21 - 94,01	excise duty on alcohol	255,59	-	•	•	185,99	?
• alcoholic strength > 15°										
wine of fresh grapes	-	24,86+ 0,35 for each 1/10° above 12°	170,31	3,52/ 8,77 or excise duty on alcohol	387 - 503,96+ 31,77 for each degree above 22°	-	11,47+ 0,33 for each 1/10° above 12°	31,11+ 0,44 for each 1/10° above 12°	247,10 - 290,82 + 25,93 for each degree above 22° GL	0,81 - 4,54
fruit wine	-	•	94,01 - 170,31	excise duty on alcohol	365,34 - 464,98 + 31,77 for each degree above 22° GL	-	•	•	228,99 + 25,93 for each degree above 18° GL	?
Sparkling wines										
• alcoholic strength ≤ 6°										
wine of fresh grapes	111,30	27,97	170,31	3,52	535,73	-	2,87	35	233,39	0
fruit wine	111,30	27,97	170,31	excise duty on alcohol	493,86	-	2,87	35	150,25	?
• alcoholic strength > 6°										
wine of fresh grapes	111,30	74,69 - 87,11	170,31	3,52	535,73	-	28,68 - 40,15	93,18 - 108,88	233,39 - 289,12	0
fruit wine	111,30	40,42	170,31	excise duty on alcohol	493,86	-	37,29	50,55	150,25 - 205,26	?
• with a registered designation of origin 'champagne'	111,30	87,11	170,31		535,73	-	40,15	108,88	233,39	0
1 EUA corresponds at 1.4.82 to	DM 2,3958	FB 52,2992	dkr 8,19101	FF 6,24701	£ Irl 0,692500	Lit	FL	Hfl 2,66028	£ Stg 0,558081	Dr 62,7889

Source : Commission of the EC

That there are considerable differences between the rates applied becomes immediately apparent from this table. More importantly, it will be seen that the Member States can be divided into three groups:

- group 1 : states applying zero-rated or very low excise duties (Italy, Germany, France and Greece)
- group 2 : states levying a moderate rate of duty (Belgium, Luxembourg and the Netherlands)
- group 3 : states levying very high excise duties (United Kingdom, Ireland and Denmark)

Looked at another way, it will be realized that of these groups the first comprises Community countries which are wine-producers but which also produce beer, the second, countries which, with very few exceptions, are beer-producers and the third, countries which are exclusively beer-producers.

Table 2: The average trend of excise duties on wine from 1.9.1979 to 1.4.1982 (1.9.1979 = 100)

D	B	DK	F	IRL	I	L	NL	UK	GR
-	84	89	230	302	-	77	104	168	not known

Source : Commission of the EC

This table reveals that over the past four years the United Kingdom and Ireland have further increased their excise duties on wine, with the result that the cost to the consumer has become extremely high - duty accounts for about 40% of the retail price of wine.

Clearly, such high rates of duty influence per capita consumption, so much so that, given the differences, it is possible to say that a direct relationship exists between the excise duty and consumption.

Table 3: Trends in per capita consumption of wine over the decade 1969 to 1979 (in liters)

Year	D	F	I	NL	B+L	UK	IRL	DK	GR
1969	16	111	111	5	11	3	2	5	not known
1979	25	96	82	12	19	7	3	12	not known

Source : Commission of the EC

On 5 December 1975 the Commission, aware of the repercussions on intra-Community trade in wine, addressed a recommendation to the Member States[1] calling for a reduction of the excise duties pending the adoption of a harmonization directive.

This recommendation had been disregarded, especially by the States belonging to the third, non-producing group.

D - The action brought by the Commission against the United Kingdom

On 7 September 1978 the Commission, faced with the continuation of an anomalous situation, initiated proceedings against the United Kingdom in pursuance of Article 169 of the EEC Treaty, the nature of the alleged infringement being that the national provisions relating to the excise duty on non-sparkling wines were contrary to the second paragraph of Article 95 of the Treaty.

On 27 February 1980 the Court of Justice reserved its right to study certain aspects of the case more thoroughly before giving a final ruling.

[1] 76/2 in OJ L 2 of 7.1.1976

Why does the Commission consider that the excise duty regulations may be in breach of the second paragraph of Article 95 of the EEC Treaty, which stipulates that 'no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products'?

The interpretation generally placed on Article 95 is that domestic tax regulations must not be created with a view to erecting obstacles to trade, not only in respect of imported products which are identical to the domestic product, but also in respect of products which are similar to or competitive with the domestic product.

The prohibition of fiscal discrimination in Article 95 suffers no exception, must be regarded as a fundamental principle of the customs union and permits no argument for either conditional application or for subordinating it to interpretative criteria outside Community rules.

The purpose of Article 95 is to guarantee the transparency of the market and the neutrality of taxation; it must be recognized that this imposes limits on the fiscal sovereignty of the Member States.

In the deposition submitted by the Commission in its action against the United Kingdom, the concept of competing product within the meaning of Article 95 must be understood as embracing a series of products which, without being identical or similar, are distinguished only by the degree and breadth of the differences separating them: the function and distribution of the products, their possibilities for use, the price differences between them and the economic link between the respective sectors of production are just some of the factors that must be considered when assessing the relationship between two potentially competitive products.

It is obvious that the substitution relationship may be real for certain consumers and only potential for others.

The Commission's contention, which should be supported by Parliament, is that this situation is confirmed particularly when the interpenetration of the markets is conditioned by fiscal systems which obstruct the free movement of goods; the obstruction is a major one when the taxation is so high that the imported products become luxury goods - which is what has happened in the case of wine - and their consumption is thus limited to the social strata of the population which are best off - which cannot be condoned.

Parliament should support the Commission's argument that the concept of 'substitutionproducts' must be defined at Community level. Such a concept cannot be defined in the light of individual preferences limited to selected regions or by reference to a market not yet fully benefiting from the free movement of goods, without the principles of uniformity and equality of treatment laid down by the EEC Treaty being respected.

E - The relationship between wine and beer

The highest rates of taxation on wine are applied by those countries which are not wine-producers but producers of beer, which explains why they seek to use the fiscal system to discriminate in favour of the consumption of beer to the detriment of wine consumption.

That a competitive relationship exists between wine and beer seems beyond dispute. The Commission maintains - and rightly so - that the question of different places of production is irrelevant:

'The geographical distribution of production of beer and wine in the various regions of the Community should facilitate and develop trade. The place of production may of course exercise an influence in favour of the consumption of local products but it does not prevent an evolution of consumer preference towards other products coming from other regions.

The habits of consumers vary in terms of the opportunities open to them to get to know and appreciate products other than beer.

Wine and beer share the same characteristics: not only are they alcoholic drinks obtained by fermentation but they have the same uses (table drinks and thirst-quenching drinks).'

As far as domestic consumption is concerned, wine may be considered a substitution product for beer.

Moreover, the taxation of beer poses fewer problems, especially since all the Member States are producers of beer, whereas only five are producers of wine.

Table 4: World output : wine and beer

Wine*	Beer*
Italy (1) France (2) Germany (9) Greece (13) Luxembourg (42)	Germany (2) United Kingdom (3) France (9) Netherlands (14) Belgium (15) Italy (20) Denmark (22) Ireland (27) Greece (39) Luxembourg (51)
*the figures in brackets indicate the position occupied by each State on the world production ladder.	

Source: Commission of the EC

The excise duties levied by each Member State on the various types of beer were as follows at 1 April 1982 (ECU/HECTOLITRE) :

BEER	B	D	DK	F	GB	IRL	I	L	NL	GR
- at 7°35 Plato	4.02-6.34	3.76-4,70	37.79	1,76	36,55	64.37	5.58	1.89-3,09	9.25-11.69	)
- at 11° Plato	6.02-9.49	5,01-6,26	47.19	1,76	53,61	94,42	8,35	2,82-4,62	13,83-17.48	) 23.24
- at 12°5 Plato	6,84-10.79	5,01-6,26	47.19	3,12	60,92	107.31	9.49	3,21-5.25	15,71-19,89	)
- at 13°75 Plato	7,53-11,87	5.01-6.26	56.01	3,12	67,02	118,03	10.44	3,53-5,78	17.29-21.88	)
- at 16° Plato	8.76-13.81	7.51-9.39	56,01	3.12	77,50	137,34	12.15	4,11-6,72	20,11-25,45	)

Source : Commission of the EC

A comparison in absolute terms would obviously be meaningless. The rate of duty per volume or the rate of duty per degree of alcoholic strength can form the basis of a comparative assessment, but in either case the results always show wine to be at a disadvantage.

In all its recent major reports, Parliament has consistently called for the harmonization of excise duties on wine.

F - The judgment of the Court of Justice

On 12 July 1983, the Court delivered its judgment on what may well be one of the longest cases it has ever dealt with. The procedure for the case was opened by a letter of 14 July 1976 from the Commission initiating proceedings for the violation of Article 95(2) of the Treaty. Following its first interlocutory judgment of 27 February 1980, the Court reached a final decision on 12 July 1983. This judgment is exemplary from several points of view and provides a clear and objective answer to all the questions raised during the hearings, which were summarized in the first part of this report.

Competitive relationship between wine and beer

With regard to the competitive relationship between wine and beer, the Court maintained that the two beverages in question were 'capable of meeting identical needs'. It must therefore be acknowledged that there is a degree of substitution for one another. 'For the purpose of measuring the possible degree of substitution, attention should

not be confined to consumer habits in a Member State ... the tax policy of a Member State must not therefore crystallize given consumer habits so as to consolidate an advantage acquired by national industries concerned to respond to them.'

Finally, after a detailed analysis of the various methods for comparing wine and beer, the Court decided in the final analysis that 'the decisive competitive relationship between beer, a popular and widely consumer beverage, and wine must be established by reference to those wines which are the most accessible to the public at large, that is to say, generally speaking, the lightest and cheapest varieties'; accordingly, that is the appropriate basis for making fiscal comparisons by reference to the alcoholic strength or to the price of the two beverages in question.

Determination of an appropriate tax ratio

Although this was the most delicate and most decisive aspect of the whole lengthy case, the Court, delivering its decision with great clarity, came to the conclusion that a considerably higher tax burden is placed on precisely those wines which, in view of their price, are most directly in competition with domestic beer production. The Court therefore reached the conclusion that 'the United Kingdom's tax system has the effect of subjecting wine imported from other Member States to an additional tax burden so as to afford protection to domestic beer production, inasmuch as beer production constitutes the most relevant reference criterion from the point of view of competition. Since such protection is most marked in the case of the most popular wines, the effect of the United Kingdom tax system is to stamp wine with the hallmarks of a luxury product, which, in view of the tax burden which it bears, can scarcely constitute in the eyes of the consumer a genuine alternative to the typical domestically produced beverage.'

On the basis of all these considerations, the Court found the United Kingdom guilty of having failed to fulfil its obligations under the second paragraph of Article 95 of the EEC Treaty, which was signed by the Government of the United Kingdom on 22 January 1972.

Conclusions

In concluding this report it was necessary to mention the judgment of the Court and we have done so without offering any particular comments. In any case, the judgment is exemplary in its clarity. There is now a significant legal gap which the Community must fill. The situation as regards this domestic taxation system, which acts as a barrier to the free movement of goods, has now changed. A solution must be found and to this end Parliament must press the Commission to pursue its efforts within the Council of Ministers to find an acceptable solution. Although it is improbable, given the strength of the beer lobby, that the price of wine will fall drastically in those countries in which it is over-taxed, it is vital to find a flexible and long-term solution in order to restore stability to the situation. The present report does not wish to take sides, only to see that justice, as expressed in the Court's reasoned judgment, is restored in the interests above all of the Community's consumers, between whom no discrimination should exist. Wine, which like beer is a popular beverage, should be accorded equal treatment in the various countries of the Community and should not be considered a popular drink in some countries as a result inter alia of aid from the Community's agricultural policy, while in others it is considered a luxury product practically inaccessible to all but the most affluent group of consumers.

In conclusion, in adopting this resolution Parliament must not only endorse the judgment of the Court of Justice but must also lay the foundations for a solution to this problem, not only in the legal interest, which requires the governments to comply with the rulings of the Court, but also in the interests of economic justice between the Member States of the Community.