COMMISSION
OF THE EUROPEAN COMMUNITIES

Proposals for harmonizing

CONSUMER TAXES OTHER THAN VAT

Bulletin of the European Communities
Supplement 3/72

COMMISSION
of the European Communities

Proposed Council directives on excise duties and similar taxes

(transmitted on 7 March 1972)

COM (72) 225 final
23 February 1972

Cover title: Proposals for Harmonizing Consumer Taxes other than VAT

Bulletin of the European Communities, Supplement 3/72

Brussels

CONTENTS

Proposed Council directive on excise duties and indirect taxes, other than value added tax, which are levied directly or indirectly on the consumption of products

EXPLANATORY NOTE

I. Introduction

The resolution passed by the Council and government representatives of the Member States on 22 March 1971[1] concerning the gradual achievement of Economic and Monetary Union states that when the procedure adopted for this purpose has been completed, the Community must "constitute an area within which persons, goods, services and capital move freely and with no distortion of competition". In order to speed up the effective free movement of goods and the interlinking of economies the resolution, on a proposal of the Commission, allows the Council, during an initial stage of three years beginning on 1 January 1971, to make a balanced decision on measures concerning the structures of excise duties, i.e. concerning "the harmonization of the field of application, the basis and methods of levying the excise duties, especially those having a definite effect on trade".

The harmonization of the structures of excise duties—at present being proposed by the Commission—also comes under this category. Its main aim, in fact, is to ensure a greater neutrality of the tax in the field of competition. Experience has shown that the existence among Member States of different structures of consumer taxes, including excise duties, can lead to significant distortions in conditions of competition.

However indispensable it may be, the simple harmonization of structures is still only one stage in the more general procedure which, with regard to economic and monetary union, is aimed at achieving free movement of goods between Member States without any distortion of competition.

In order to achieve this aim it will be necessary later on to align the rates. Differences between these have been found to be so great that they tend to affect the consumption of competing products and to favour producers of certain goods with an elastic demand who are based in those Member States applying a considerably lower rate. These negative effects concern particularly those agricultural products that are subject to a common market organization which lays down a common system of prices linked with Community financing.

The alignment of these rates is moreover essential in order to abolish compensatory measures (taxes on imports and tax rebates on exports and related checks and controls) at present being applied at borders. These constitute a considerable barrier to the free movement of goods.

---

[1] *Journal officiel* C 28, 27 March 1971.

II. Criteria and procedures to be followed in the harmonization of excise duties[1]

Preliminary remarks

The structures of excise duties must quite clearly be harmonized in order to achieve, within the framework of Economic and Monetary Union, free movement of goods between Member States and this without any distortion of competition. One must first of all decide which excise duties are to be maintained and harmonized at Community level. It does not seem advisable for all of the excise duties at present in existence in the Member States to be extended over the whole of the Community: indeed, the Member States concerned are of the opinion that many of these duties are no longer justified because they contribute very little to the budget.[2]

The question arises as to whether one should retain a very limited or a fairly large range of excise duties. Taxes which are to be retained and harmonized must, of course, be introduced into those Member States where they do not yet exist. It is advisable to determine the fate of the other taxes in the light of the final aim.

Choice of excise duties to be maintained

1. The main aim of an excise duty, generally, is to raise revenue. In principle, therefore, an excise duty is only valid if its yield is sufficiently great—bearing in mind, too, any expenses incurred in raising it. In other words, an excise duty should be levied on products with a large consumption rate. This does not mean, however, that it cannot also be used to reduce the consumption of products which are detrimental to health.

Forgetting this aim for the moment one should, when deciding which of the existing excise duties are to be maintained and harmonized at Community level, be pragmatic and, in this connection, the situation existing within the Member States is an important element which must be taken into consideration.

When making this choice it is advisable to bear in mind that within the Member States it is generally felt that an excise duty:

— should not affect essential products i.e. products that are virtually indispensable for living,

---

[1] In this chapter "excise duties" means all taxes which are levied, directly or indirectly, on the consumption of products, excluding VAT and taxes established by institutions of the Communities.

[2] In Annex I can be found a description of the situation in each Member State as regards excise duties.

— should avoid affecting, whenever possible, those products which are used as raw materials by industry, means of production or manufacturing agents.

Similarly, when one must decide whether or not a product should be subject to an excise duty it would seem to be of the greatest importance that one take into account individual criteria such as the need to maintain equal conditions of competition between competing products at Community level. In the same way, considerations regarding common economic policies may also play a decisive role.

2. One may well feel under these conditions that excise duties on mineral oils and manufactured tobaccos should be retained and harmonized at all costs. These duties are, in fact, levied in all Member States and, quite apart from the fact that they do in general comply with the principles raised, they also bring in so much revenue that it would be difficult, if they were removed, to replace them by an increase in other taxes. It would also seem to be essential, simply for reasons of public health, for the excise duties on alcohol to be maintained and harmonized. These, too, exist in all Member States.

Some of these excise duties have, moreover, already been the subject of Council proposals. Thus, as regards excise duties on mineral oils which are used as motor fuels, on 29 March 1971 the Commission forwarded to the Council a proposed decision on the establishment of a common system of rates to be charged for the use of transport infrastructures. It also forwarded a Memorandum on these rates[1] within the framework of the common transport policy in which it proposed that the excise duties levied on fuels be maintained and harmonized. This was to help achieve the aims of the rates which are charged for the use of road infrastructures. Similarly, as regards excise duties on mineral oils that are used as combustibles, the Commission forwarded to the Council on 28 December 1970 a proposed Council directive providing for a gradual alignment of specific consumer taxes levied on liquid hydrocarbons to be used as combustibles.[2] This proposal was based mainly on the need to avoid any distortion of competition between the various sources of energy and in trade within the Community. Lastly, on 20 November 1970 the Commission presented the Council with a proposed directive which provided for the gradual harmonization of excise duties on manufactured tobaccos.[3] The aim of this harmonization was to gradually remove from the present system those factors which are likely to hinder free movement and distort the conditions of competition.

---

[1] *Journal officiel* C 62, 22 June 1971.
[2] *Ibid.* C 14, 11 February 1971.
[3] *Ibid.* C 4, 18 January 1971.

3. The question as to whether one should maintain and harmonize the excise duties on beer, wine, non-alcoholic refreshing beverages, sugar, coffee and tea is more controversial. One might wonder, in fact, if, since one is trying to rationalize indirect taxation, it would not be a good idea to abolish them.

The answer to this question might be that there are a certain number of not insignificant reasons which favour the maintenance of not only certain large excise duties—and these in addition to VAT—but also certain other excise duties, even if the level of revenue from the latter is lower.

But first of all one must point out that in general excise duties make it possible to subject certain products not only to a fiscal burden which is different from that of other goods, but also to a burden which is adjusted in accordance with what the individual product can bear. This would not seem to be possible with VAT because this can only be levied at a small number of rates.

Moreover one must not forget that the revenue losses resulting from the abolition of these other excise duties would probably have to be recuperated in some countries by an increase in VAT rates. Thus it would seem preferable to let this financial burden be borne by a few products which are able to bear it without too great an inconvenience rather than by the economy as a whole. Indeed, increases in VAT rates contribute to the general increase in prices and thereby have an inflationary effect.

These other excise duties, together with the larger ones, help to make the whole of the tax structure more flexible. They can, in fact, be manipulated more easily than VAT, should there be a need for new tax revenue, for example. This flexibility will be very useful when abolishing taxes on imports, tax rebates on exports and border controls, because by a rearrangement of the excise duties it will enable revenue losses which may arise for some Member States from the harmonization of VAT, some excise duties or even other taxes, to be wholly or partly restored. Similarly, the excise duties, since they constitute isolated taxes, can be adapted far more easily to the different economic, social or agricultural needs.

One must also ensure that these excise duties do not constitute an obstacle to other policies such as social policy, public health policy, the policy towards developing countries etc. In this respect, the duties on coffee and tea, sugar and non-alcoholic refreshing beverages do not seem to be justified.

Coffee and tea are primarily products from developing countries. Were an excise duty to be levied on these products, this would only lead to a definite increase in price and thus reduce the rate of consumption. In addition, a Community excise duty on coffee and tea would have to be introduced in

three or four Member States (Belgium, France,[1] Luxembourg, Netherlands) where there is none at the present time. Such an excise duty would be contrary to the aims set out in the resolution from the Council on Trade and Development (UNCTAD) on 18 September 1970 and accepted by the Member States as guidelines. Paragraph B, 1, D of this resolution states, in fact: "As far as possible the developed countries should avoid instituting new fiscal measures which affect the primary foodstuffs produced entirely or mainly by developing countries, and governments should consider the possibility of reducing those taxes which constitute an effectieve barrier to the increase in consumption of these products and which affect them in particular."

It no longer seems desirable, either, to maintain the excise duty on sugar because this is affecting a product which is partly an essential product and partly a raw material for industry.

Although points can be raised in favour of non-alcoholic refreshing beverages being subject to an excise duty—especially because they may be competing with other beverages—social and public health reasons would seem to support the opposite view.

4. In conclusion, then, excise duties on the following products should be maintained and harmonized at Community level:

(a) mineral oils

(b) manufactured tobaccos

(c) alcohol

(d) beer

(e) wine[2].

Given the fact that the ultimate aim of harmonization is the free movement of goods between Member States, and this without any distortion of competition, the other excise duties should be gradually abolished unless they do not give rise, in trade between Member Sates, to compensations and border controls. Such taxes can, however, only be maintained if they affect one defined product or a group of defined products.[3]

It should be noted, however, that the fact that only five excise duties are to be maintained and harmonized at the present time should not constitute any

---

[1] There is an excise duty on unroasted coffee in France but this has been temporarily suspended. Only roasted coffee and imported coffee extracts were still taxed; this tax has not been levied since 1 July 1971. However, in France tea is subject to an excise duty.

[2] Individual arguments in favour of the maintenance of the excise duty on wine are set out in the explanatory note of the proposed directive on this matter presented by the Commission to the Council.

[3] In Annex 2 can be found a table showing the estimated receipts for each country from the excise duties which would, in principle, be abolished.

obstacle to the later establishment, at Community level, of other excise duties, should these be felt necessary—within the framework, for example, of the policy on protection of the environment. As pointed out above, however, one must ensure that these duties do not affect those products originating solely from developing countries.

Procedure to be followed in the harmonization of excise duties

1. It would seem to be a *sine qua non* for any further work on the harmonization of excise duties that one should give a detailed list of not only the excise duties which it would be advisable to maintain and harmonize, plus the aims of this harmonization (cf. Chapter 1), but also their different phases. Without a thorough knowledge of the aims and stages of harmonization, work in this field might well come up against some very great difficulties, and this not only for the Commission which must make proposals in good time on this subject, but also for the Member States who must be able to take the various steps in their own time which are made necessary by the realisation of these aims.

2. As was the case with VAT, the first stage in harmonization must be concerned primarily with the structures of the excise duties which are to be maintained and harmonized. The aim of this stage should be to harmonize the various aspects of the structures which directly or indirectly influence the conditions of competition. In this context special note should be made of the following: the taxable product, basis of taxation, the character of the excise duty (specific or proportional), exemptions, when the tax is payable, arrangements regarding imported or exported goods, levying methods, methods of payment, and, in the event of there being several rates, the possible Community relations between them. In some cases there will be other elements to be harmonized, too, such as controls, arrangements for deferment of payment of excise duties etc.

3. The harmonization of the structures of excise duties should make it possible to eliminate distortions of competition and also prepare the way for the free movement of goods between Member States. In order to achieve these aims it would be advisable, at a later stage, to harmonize the rates of excise duties which are to be maintained. In addition, all other excise duties and, more generally, all other indirect taxes which directly or indirectly affect the consumption of products (excluding VAT and taxes established by institutions of the Communities) should also be abolished—at the latest when border compensations are abolished. This would, of course, be except for individual taxes which do not give rise to compensations and controls at borders between Member States. In other words, taxes on the consumption of products could be maintained if there are no tax rebates for these products when they are exported to another Member State, if the excise duty on them is not payable

when they are imported from one Member State to another, and if the levying of the said taxes does not imply a border control. Amongst the latter taxes could be included the taxes on the consumption of beverages in public houses and the individual taxes levied at retail level.

4. Harmonization of rates, which need not necessarily always end in complete harmonization, must be carried out in several stages in order to avoid too harsh repercussions on the financial, economic and social situation in the Member States. Gradual harmonization will, in fact, enable the Member States to take suitable measures to counterbalance possible revenue losses or inadequate social or economic consequences. Industrial circles, too, that are directly affected by this harmonization, will thus have the chance to adapt themselves to the new situation created by harmonization.

In order to achieve this gradual alignment various solutions may be envisaged. However, in most cases it would seem expedient to provide for the gradual convergence of rates through forks which diminish in width from one stage to the next.

5. In the field of excise duties it is only the proposed Council directive on the alignment of specific taxes imposed on liquid hydrocarbons used as fuels which provides for an initial alignment of rates. This proposal is motivated essentially by reasons concerning the energy policy. This particular case apart, however, the Commission will not submit proposals for the alignment of excise duties until a later stage, mainly for the following reasons:

Such proposals must be preceded by a detailed examination of budgetary, economic and social repercussions of the alignment of excise duty rates. Provision is also made for this study in the resolution on the gradual achievement of Economic and Monetary Union.

Before the rates of certain excise duties can be fixed, basic decisions in fields apart from taxation must also be taken. Thus the level of excise duty rates on mineral oils must be fixed in the light of choices under the energy and transport policies which have not yet been established.

Finally, it is advisable to point out that for certain excise duties the level of the rates will itself be influenced by the harmonized structures which will be finally adopted and which are not yet known in full detail. Until these structures have been determined it will be impossible to make any decisions regarding the harmonized rates.

6. In order to prevent the harmonization of excise duties being made even more difficult than it is at present, it would be advisable to make sure that the only new taxes to be introduced will be indirect ones which do not hinder the effective achievement of free movement of goods, i.e. which do not require border compensations.

For the same reason it would appear that the changes in the rates of present indirect taxes, other than VAT, should be subject to consultation. Such a procedure could also help to reduce differences in rates before the actual stage of aligning the rates.

III. Proposal

It is evident from the above that the harmonization of excise duties is essential if one is to achieve free movement of goods between Member States, and this without any distortion of competition; it is also evident that the implementation of this harmonization means that one must stipulate the excise duties which must be levied in all the Member States on a harmonized basis, both with regard to structure and rates. In view of the abolition of taxes on imports and of tax rebates on exports, it is advisable to determine to what extent other excise duties, and more generally other indirect taxes, which directly or indirectly affect consumption, can still be levied by Member States after this abolition comes into force. It has already been pointed out in this respect that such taxes can only be levied if they affect just one defined product or a group of defined products and if they do not give rise to border compensations and controls in trade between Member States.

The aim of the enclosed proposed directive is to make these ideas more concrete. It constitutes a kind of outline proposal which lays down the conditions necessary for the ultimate achievement of the free movement of, and undistorted competition in, goods between Member States in the field of consumer taxes, and this excluding VAT and taxes established by the institutions of the Communities. It also introduces a form of "standstill" in this field in order to prevent any increase in the difficulties which will be raised by the implementation of harmonization.

Need for such a proposal

The need for such a proposal is justified by the following reasons:

1) It is essential that the Member States know as soon as possible the essential actions which must be taken in the field concerned in order to achieve the ultimate aim. It is advisable that they are able, in due time and within their own capabilities, to take the steps required by these actions.

2) If the actions necessary for achieving the ultimate aim are to remain as straightforward as possible, all increases in divergences between Member States with regard to the taxes in question must be avoided in the coming years.

3) If certain excise duties such as those on alcohol, beer, wine etc. are harmonized between the Member States, one must ensure that this harmonization cannot be brought into question at all. This might well be the case if, along

with the harmonized taxes, the Member States were to retain a completely free hand with regard to other indirect taxes which directly or indirectly affect the consumption of products. There would be no point, for example, in exempting from excise duty that alcohol which is used for making medicines if the Member States could introduce a new excise duty on medicines.

Comments

The enclosed proposed directive prompts the following few comments:

1. The proposal concerns the excise duties and, more generally, all taxes which affect the consumption of products, whatever their category, nature or form; the products may be affected directly or indirectly. Thus, those parafiscal taxes which directly or indirectly affect one product are also included.

The proposed directive, however, only deals with indirect taxes, except for those indirect taxes which could also be considered as having an indirect effect on products.

2. The proposed directive is not concerned, however, with either VAT or any taxes which have been introduced by institutions of the Communities.

3. Individual proposals for directives will lay down not only the field of application but also the basis and methods of levying each of the excise duties which are to be levied in all Member States on a harmonized basis. It should be remembered in this respect that the Commission has already presented the Council with proposed directives on the harmonization of excise duties on manufactured tobaccos and specific consumer taxes affecting liquid hydrocarbons which are to be used as fuels. The Commission also presented a proposed decision on the establishment of a common system of rates for the use of transport infrastructures.

4. The choice of excise duties to be maintained and harmonized was dealt with in great detail in Chapter II of this report. It should be noted, however, that the fact that the number of excise duties is to be limited to five in no way restricts the Commission, should the need arise, from proposing to the Council that further additions be made to this list.

5. In order to make it easier to achieve the ultimate aim it would be desirable, as has been emphasized, for the Member States to refrain from increasing the divergences which exist amongst them in the field of the consumer taxes in question. It would therefore seem necessary to request the Member States not to introduce any new consumer taxes, nor to extend the field of application of existing taxes, apart from the five excise duties to be harmonized, after the notification of the directive. New consumer taxes

could only be introduced if, since they did not call for border compensations in trade between Member States, they could be continued to be levied as they are after the abolition of taxes on imports and tax rebates on exports. For the same reason it would be advisable for the change in the rates of existing consumer taxes to be subjected to consulation. This would, in fact, make it easier to orientate and coordinate national measures in this field in accordance with the aims of the harmonization of consumer taxes.

ANNEX I

1969 revenue from the excise duties in the Six Member States[1]

	Italy			Germany			France		
	I	II	III[2]	I	II	III[2]	I	II	III[2]
Mineral oils and liquid petroleum gas	1 544 672	23.92	16.40	10 601	15.66	8.28	12 493	14,2	8.92
Tobacco and cigarette paper[3]	722 928	11.19	7.67	6 233	9.20	4.87	4 181[6]	4.8	3.0
Alcohol	62 562	0.97	0.66	2 142	3.16	1.67	2 145	2.5	1.5
Wines and fermented drinks	—	—	—	214[5]	0.32	0.17	468	0.5	0.3
Beer	27 542	0.43	0.29	1 179	1.74	0.92	145	0.2	0.1
Mineral waters	—	—	—	—	—	—			
Sugar	47 268	0.73	0.50	123	0.18	0.10	—	—	—
Sweeteners	750	0.00	0.00	—	—	—	—	—	—
Coffee	75 535	1.17	0.80	1 132	1.67	0.88	1.30	0.0015	0.0009
Tea	—	—	—	38	0.06	0.03	0.73	0.0008	0.0005
Coffee substitutes	674[4]	0.00	0.00	—	—	—	—	—	—
Cocoa	6 652	0.10	0.07	—	—	—	5.78	0.0067	0.004
Salt	21 885[4]	0.34	0.23	41	0.06	0.03	—	—	—
Oils from oleaginous grains	3 197	0.05	0.03	—	—	—	—	—	—
Other animal and vegetable oils and fats	52[4]	0.00	0.00	—	—	—	—	—	—
Margarine	634	0.00	0.00	—	—	—	—	—	—
Lighting equipment	5 231[4]	0.08	0.06	89	0.13	0.07	—	—	—
Fibres	21 107[4]	0.33	0.22	—	—	—	—	—	—
Electricity	56 324	0.87	0.60	—	—	—	—	—	—
Gas	338[4]	0.00	0.00	—	—	—	—	—	—
Methane gas	8 081	0.12	0.09	—	—	—	—	—	—
Matches	24 027	0.37	0.26	26	0.04	0.02	See tobacco.		
Playing cards	1 679[4]	0.03	0.02	4	0.01	0.00	—	—	—
Acetic acid	—	—	—	4	0.01	0.00	—	—	—
Bananas	27 199	0.41	0.27	—	—	—	—	—	—
Gramophone records	1 471[4]	0.03	0.02	—	—	—	—	—	—
Spices	—	—	—	—	—	—	2.05	0.0023	0.0014
Olive oil	6 236	0.10	0.07	—	—	—	—	—	—

[1] This table has been drawn up on the basis of data provided by the Member States. The latter did not indicate whether there were any other taxes in their countries which affected these products and would thus entail taxes on imports and tax rebates on exports One might, however, remember that in some Member States there are a number of parafiscal taxes which entail border compensations.
[2] I = In millions of units of national currency; II = As % of the revenue from indirect taxes; III = As % of the overall tax revenue.
[3] Of this, 721 066 was for tobacco and 1 862 for cigarette paper.
[4] Taxes whose abolition was decided by the fiscal reform law No. 825 of 9 October 1971.
[5] This sum reflects solely the revenue from the excise duty on sparkling wines (Schaumwein).

Belgium			Netherlands [7]			Luxembourg			
I	II	III [2]	I	II	III [2]	I	II	III [2]	
20 762	14.50	8.10	1 603	16.3	6.5	673	15.6	7.3	Mineral oils and liquid petroleum gas
8 112	5.66	3.20	852	8.7	3.4	442	10.4	4.8	Tobacco and cigarette paper[3]
2 437	1.70	0.96	414	4.2	1.7	102	2.4	1.1	Alcohol
795	0.56	0.31	48	0.49	0.19	42	0.9	0.4	Wines and fermented drinks
1 724	1.20	0.68	135	1.4	0.55	70	1.6	0.8	Beer
728	0.51	0.29	—	—	—	—	—	—	Mineral waters
198	0.14	0.08	71	0.72	0.28	0.6	0.01	0.006	Sugar
—	—	—	—	—	—	—	—	—	Sweeteners
—	—	—	—	—	—	—	—	—	Coffee
—	—	—	—	—	—	—	—	—	Tea
—	—	—	—	—	—	—	—	—	Coffee substitutes
—	—	—	—	—	—	—	—	—	Cocoa
—	—	—	—	—	—	—	—	—	Salt
—	—	—	—	—	—	—	—	—	Oils from oleaginous grains
—	—	—	—	—	—	—	—	—	Other animal and vegetable oils and fats[8]
—	—	—	—	—	—	—	—	—	Margarine
—	—	—	—	—	—	—	—	—	Lighting equipment
—	—	—	—	—	—	—	—	—	Fibres
—	—	—	—	—	—	—	—	—	Electricity
—	—	—	—	—	—	—	—	—	Gas
—	—	—	—	—	—	—	—	—	Methane gas
—	—	—	—	—	—	—	—	—	Matches
—	—	—	—	—	—	—	—	—	Playing cards
—	—	—	—	—	—	—	—	—	Acetic acid
—	—	—	—	—	—	—	—	—	Bananas
—	—	—	—	—	—	—	—	—	Gramophone records
—	—	—	—	—	—	—	—	—	Spices
—	—	—	—	—	—	—	—	—	Olive oils

This sum includes the revenue from the match making monopoly (S.E.I.T.A.).

In addition to the above taxes there is a special consumer tax in the Netherlands on private passenger cars („bijzondere Verbruikselasting op personenauto's"). Receipts from this totalled 350 million guilders in 1969. This tax is not included in the table although would appear to be a kind of excise duty.

In Italy this category covers the following taxes:

a) tax on animal oils and fats which solidify at or below 12°C;

b) tax on liquid vegetable oils which solidify at or below 12°C;

c) tax on animal or vegetable fatty acids which solidify at below 48°C.

ANNEX II

Revenue from excise duties to be abolished[1]

(estimated on the basis of 1969 revenue)

	I in millions of units of national currency (and u.a.)	II as % of the revenue from indirect taxes	III as % of the total tax revenue
Italy	253 878[2] (u.a. 406.204 m.)	3.93	2.69
Germany	1 457[3] (u.a. 398.087 m.)	2.15	1.14
France	9.86[4] (u.a. 1.775 m.)	0.01	0.007
Belgium	926[5] (u.a. 18.520 m.)	0.65	0.37
Netherlands	71[6] (u.a. 19.613 m.)	0.72	0.28
Luxembourg	0.6[6] (u.a. 0.012 m.)	0.01	0.006

[1] This table shows the total revenue from the excise duties included in Annex I which would have to be abolished if they involved border compensations and controls (cf. Article 4 of the enclosed proposed directive).
[2] This amount includes revenue from excise duties on the following products: sugar, sweeteners, coffee, cocoa, margarine, matches, methane gas, olive oil, bananas, oils from oleaginous seeds, other animal and vegetable oils and fats, gas, lighting equipment, coffee substitutes, fibres, playing cards, gramophone records, salt and cigarette paper. Since the abolition of excise duties on the last nine products has been decided by the fiscal reform law, this amount should be deducted from the revenue from the excise duties: i.e. 54 299 000 000 lire (this represents 0.84% and 0.57% respectively of the revenue from indirect taxes and the total tax revenue).
[3] This amount includes the revenue from excise duties on the following products: sugar, coffee, tea, salt, lighting equipment, matches, playing cards, acetic acid.
[4] This amount includes the revenue from excise duties on coffee, tea, cocoa and spices (pepper, vanilla, cinnamon, etc). It does not include revenue from excise duties on mineral waters and lemonades.
[5] Revenue from the excise duty on sugar, mineral waters and lemonades.
[6] Revenue from the excise duty on sugar.

PROPOSED DIRECTIVE

The Council of the European Communities,

Having regard to the provisions of the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas the creation of a Common Market with characteristics similar to those of an internal market implies that the conditions of competition shall not be distorted, and that persons, goods, services and capital may move about within it without hindrance of any kind; whereas this aim has also been explicitly confirmed by the Council resolution of 22 March 1971 on the gradual achievement of Economic and Monetary Union and whereas the achievement of this aim has been recognised as being necessary for the establishment of this Union,

Whereas divergences between Member States in indirect taxes which are levied directly or indirectly on the consumption of products often affect competition, and whereas they usually mean that taxes on imports and tax rebates on exports and border controls must be maintained,

Whereas this situation constitutes a barrier to the free movement of, and undistorted competition in, goods between Member States, and whereas it is therefore contrary to the achievement of the Common Market and Economic and Monetary Union and whereas there is therefore every reason to take the necessary measures to eliminate these obstacles.

Whereas the measures to be taken for this purpose in the field of VAT will be the subject of separate proposals and whereas the present directive must, as a result, be limited to other indirect taxes which are levied directly or indirectly on the consumption of products;

Whereas free movement between Member States and arrangements to ensure that conditions of competition are not distorted can only be achieved, with regard to other taxes, by means of very advanced harmonization of the latter; whereas this harmonization should, however, be progressive;

Whereas, however, whilst implementing this progressive harmonization one must take into account the ultimate aim and whereas one must also prevent in the course of this progressive harmonization any new barriers being created to the achievement of this aim by the introduction of new taxes or any unsuitable changes in existing tax rates;

Whereas in this aim it is essential to determine straightaway the measures which will be implied by the achievement of this aim with regard to the harmonization of these indirect taxes other than VAT;

Whereas for this purpose it is important to determine the indirect taxes bearing directly or indirectly on the consumption of products which must be levied in all Member States and harmonized, and this by prejudicing as little as possible the later establishment of other taxes at Community level; whereas the other existing taxes can still be levied in the present ways and this until the abolition of taxes on imports and tax rebates on exports; whereas changes in the rates of these various taxes should be subject to consultation; whereas other indirect taxes can be created as long as they affect one defined product or a group of defined products and do not involve border controls and compensations in trade between Member States;

has adopted this directive:

Article 1

This directive lays down the arrangements for excise duties and other indirect taxes which are levied directly or indirectly on the consumption of products, hereinafter called duties and taxes, except for VAT and taxes established by the institutions of the European Communities.

Article 2

The Member States may maintain the duties and taxes that they levy at the time of the notification of this directive, subject to the following reservations.

Article 3

By 1 January 1974 at the latest the Member States shall subject the following products to harmonized excise duties:

— mineral oils
— manufactured tobaccos
— alcohol
— beer
— wine

Methods of harmonizing these excise duties shall be the subject of directives adopted by the Council, on a proposal of the Commission.

Article 4

By the time that taxes on imports and tax rebates on exports have been abolished, the duties and taxes other than those mentioned in Article 3 will also be abolished, unless these affect only one product or a group of products and are so arranged that, if necessary, they involve, in intra-Community trade, neither taxes on imports and tax rebates on exports nor border controls.

Article 5

1. When, after the date of notification of this directive, a Member State intends to change the rates of the duties and taxes in force on that date, with the exception of the duties and taxes fulfilling the conditions of Article 6, it must inform the Commission of its intention at a suitable date.

2. Concerning this matter the Commission will, if necessary, consult the Committee on Excise Duties established by Council decision No. .... of....

3. The Commission may recommend to the Member States concerned the appropriate measures which will prevent the envisaged changes making it any more difficult to achieve the aims of this directive or altering the conditions of trade to an extent which is contrary to the common interest.

4. The Member States concerned may only bring the changes into force when the Commission has adopted its recommendations or, failing this, when the period of two months has elapsed.

Article 6

The Member States shall retain the ability to introduce new duties and taxes provided that these only affect one product or a group of products and that they do not involve, in trade between Member States, either taxes on imports and tax rebates on exports or border controls.

Article 7

The Member States shall inform the Commission of provisions which may have to be adopted in applying Articles 4 to 6 of this directive.

Article 8

This directive shall not constitute a barrier to the introduction by the Council, on a proposal of the Commission, of harmonized duties and taxes other than those listed in Article 3.

Article 9

This Directive is addressed to the Member States.

Proposed Council directive on the harmonization of excise duties on alcohol

EXPLANATORY NOTE

Need for harmonization

Since the creation of a common market with characteristics similar to those of an internal market and the implementation of Economic and Monetary Union imply, among other things, that the conditions of competition shall not be distorted and that goods may move about within the market and Union without hindrance of any kind the achievement of such aims involves, with regard to excise duties on alcohol, both the establishment of neutral conditions of competition and the abolition, in trade between Member States, of taxes on imports and tax rebates on exports and controls at borders.

It was in order to achieve these conditions of neutrality in competition that the Commission, as soon as the Treaty of Rome came into force, requested several Member States to remove, in the field of excise duties on alcohol, numerous discriminations which were upsetting intra-Community trade in ethyl alcohol, both in its natural state or contained in other products. In fact, the imported alcohol often had a larger tax on it than the equivalent national product, either because the level of taxation for the imported product was higher than that for the national one, or because the tax basis was different. The majority of these differences in taxation have been eliminated by means of Articles 12 and 95 of the Treaty.

The elimination of the differences in excise duties on alcohol is not, however, sufficient in itself to achieve fiscal conditions in the alcohol sector with a neutral effect on competition. Quite apart from the level of the excise duties, numerous fiscal elements may have various effects on the competitivity of companies in the Member States. Thus, differences in the field of application of the excise duty or in the granting of reduced rates, in the method of levying the excise duty, in the time when it is payable, in the way in which the taxable product is kept under observation by the tax authorities, and in the time allowed for payment of the excise duty—all of these differences can favour the companies of some Member States as regards conditions of competition far more than those of others.

If one wants to achieve equivalent conditions of competition between the companies of the various Member States, an initial harmonization of the structures of the excise duty on alcohol would seem to be essential.

Coupled with this is the fact that the harmonization of these structures is the essential preliminary step towards harmonization of the rates; this will become necessary later on in order to abolish compensations and checks at internal borders and to thereby ensure the effective free movement of alcohol between the Member States.

Main divergences between Member States as regards structures of the excise duty on alcohol

The divergences between Member States as regards structures of the excise duty on alcohol are apparent at every stage from the production of alcohol to the final consumption. The following are a few examples of marked divergences:

1. In all Member States ethyl alcohol is subject to excise duty as a chemical substance (C_2H_5OH), the amount of the excise duty varying generally according to the use to which the alcohol is put. The highest rate is applied to beverages, whilst industrial uses are generally exempt from taxation. However, French legislation also applies different rates to alcoholic beverages, according to how these beverages are consumed. The excise duty is higher for apéritifs than for digestifs. In Italy, methylated spirits for use in industry is not exempt but is subject to a very low rate of taxation.

In several Member States, the alcohols which are homologous to ethyl alcohol (propyl, isopropyl, methyl, amyl alcohol, etc.) are usually subject to an excise duty when they are used in place of ethyl alcohol and put to taxable uses; such a substitution is often forbidden. In Germany, on the other hand, isopropyl alcohol is never subject to an excise duty even if it is substituted for ethyl alcohol and put to a use in which the latter would be taxed; this is mainly the case when used in cosmetic products.

2. The most unusual excise duty structure is in force in Italy where the excise duty, which consists of two parts (manufacturing tax and State tax) ensures not only the traditional role of the tax, which is to supply fiscal revenue (this is the role of the manufacturing tax), but also the functioning of the agricultural policy as regards alcohol (basically the role of the State tax). The State tax varies, in fact, according to the raw material used to produce the alcohol. It is inversely proportional to the cost of the raw material. Thus, for one hl of pure alcohol produced from cereals, a relatively cheap product, it is 60,000 lire, whereas there is no State tax on alcohol produced from wine, a relatively expensive product. The application of this State tax is supposed to have an equalizing effect on the prices of alcohol, irrespective of the raw material used in its production.

3. Control of the production, holding and movement of the alcohol also differs from one Member State to another. Thus, in France alcohol may be held in warehouses which are subject to official supervision carried out by means of reference to the stock accounts. In other Member States, however, officials from the Authorities must be there all the while. The movement of the alcohol is kept under careful supervision in all Member States, even when the excise duty on the alcohol has been paid. The latter is not the case, however, in Germany.

4. The methods of paying the excise duty also vary from one Member State to another. The Belgian tax system, for example, except in certain cases, provides for the excise duty to be paid when the alcohol leaves the distillery. In other Member States, however, the excise duty is paid, in different ways, of course, when the alcoholic product is put onto the open market.

Lastly, in some Member States those who must pay the tax profit from fairly generous payment deadlines (five months in Germany, four in France), whilst in other Member States the tax must be paid within a very short time (15 days on average in Italy).

From this short description it is quite clear that, irrespective of the level of the excise duty on alcohol, the structures of this duty may have a considerable influence on the cost price of alcoholic products and distort the conditions of competition between Member States.

General concept of the draft

This proposed directive, which is only a first step in the process of harmonization, is aimed at harmonizing the structures of the excise duty on alcohol in order to make it possible to establish neutral conditions of competition between similar products that are competing with each other within one Member State and between producers from various Member States.

The second stage in harmonization will be the alignment of national rates with harmonized rates at Community level.

1. *Taxable products*

The product subject to the excise duty is ethyl alcohol as a chemical substance (C_2H_5OH). It does not, however, come within the field of application of the directive when it is contained in drinks which naturally contain alcohol (beer, cider, wine etc.), as long as these drinks remain of the quality which excludes them from the field of application of the directive. This quality shall be defined in accordance with Community or, failing this, national standards. If such drinks were to lose this quality they would be considered, from the point of view of the excise duty, as alcoholic dilutions and the excise duty would therefore have to be paid on the alcohol contained in them.

Alcohols other than ethyl alcohol, especially propyl and isopropyl, do not come under this proposed directive. There seems little possibility, in fact, of their being used in place of ethyl alcohol in the production of beverages, the only case in which alcohol is subject to excise duty.

2. *Establishment of the excise duty*

The proposed directive does not harmonize the rates of excise duty which must be applied by the Member States to ethyl alcohol. Nevertheless, it does lay down a certain number of common points:

a) in principle, all ethyl alcohol is subject, within each Member State, to one single rate of excise duty. This is called the full rate. Reduced rates and exemptions are only granted after the alcohol has been put to the effective uses for which these reduced rates and exemptions are laid down. The full rate is always the same, irrespective of which raw material is used, the method of obtaining the alcohol, and the producer or size of the production company.

The aim of this uniform system of rates in each Member State is to make the excise duty as neutral as possible from the economic point of view. Thus, one given product should not be in a more favourable position as regards taxes than a similar one.

It is up to each Member State to fix this full rate at the level it desires.

b) Reduced rates of excise duty are envisaged for alcohol contained in aromatized wines, liqueur wines and similar products. In these cases, the amount by which the rate is reduced is determined as a percentage of the full rate.

There were two possible ways of taxing aromatized wines and liqueur wines: by taxing just the alcohol which is added, or by taxing all of the alcohol contained in the finished product. The first method favours the use of basic wines containing a large quantity of alcohol, since the amount of alcohol to be added is less and thus the tax on the product is also less; the second method comes out slightly in favour of basic wines with a low alcoholic content since the latter are less expensive than those containing a large amount of alcohol. The second method was preferred because of its neutrality as regards the use of basic wines when combined with a measure to compensate for the economic advantage that this method gives to users of wines with a low alcoholic content. Such compensation could be achieved by fixing the price of alcohol at an adequate level. The second method also makes it possible to take into greater consideration, by means of the set of reduced taxes, competitive relationships between wine-based products and alcohol-based products. It is also very simple to apply, whereas the first method is complex and uncertain.

Reduced taxes in relation to full rates can, however, vary within a fork. If a fork has been envisaged, this is so that the conditions of competition between the various products to which the rates apply may be taken into greater consideration. At present, these conditions vary greatly from one Member State to another. The fork is also for facilitating the transition at a later date to harmonised reduced rates by aligning the limits of the fork.

c) Exemption from excise duty is envisaged in all cases where the alcohol is put to uses other than human ones.

Alcohol is then, in fact, either a means of production (especially when used for synthezing purposes), a manufacturing agent, or a simple solvent. It is important in all these cases not to overburden the industry in question with excise duties.

As regards alcohol which is used for human purposes, that alcohol which is used in making vinegar—the alcohol disappears as a result of acetic fermentation—will be exempt from taxes, as will alcohol which is used for medical purposes, whether it is contained in medicines or used in its natural state. For social reasons there would be little point in taxing medical alcohol.

The exemption envisaged for the perfume—cosmetics sector—at present the majority of Member States apply a reduced tax—would see to be necessary if one is to enable this sector to improve its outlets, especially in the field of popular products. Given the fact that alcohol figures largely in the prices of these products, even a low excise duty would have a considerable effect on prices and therefore on outlets. This exemption should also make it possible to avoid ethyl alcohol being replaced by untaxed substitutes; a tendency for this to happen has already become apparent.

The luxury character of products in this sector is becoming less and less apparent; they constitute for the main part articles for personal hygiene, except for certain perfumes which are grand luxury products and which, as regards alcoholic content, only represent the smallest fraction of alcohol used in this sector. But it is virtually impossible to make any positive technical distinction between these luxury perfumes and toilet waters. Budget revenue from an excise duty on alcohol contained in perfumes alone would in any case be virtually nil.

The exemption envisaged for the whole of the perfume-cosmetics sector would only lead to very small revenue losses in relation to the total revenue from the excise duty on alcohol, losses which could soon be compensated for by an increase in revenue from VAT as a result of the rapid expansion foreseen for this sector.

An exemption is also envisaged when the alcohol is completely denatured since then it can only be used for industrial purposes, as a solvent, for example, or for burning.

3. *Controls*

Alcohol is subject to official control from production through to consumption. The aim of this control is to enable the authorities to make sure that the excise duty is effectively levied.

Alcohol can only be produced under permanent control (real warehouse system), whether this involves officials being placed permanently on the

production site or whether means are used which provide the same guarantee e.g. meters. The use and holding of the alcohol are also subject to official control. But this control can be less rigid than that of production, it being carried out on the basis of accounts (fictitious warehouse system). The movement of the alcohol is also controlled; this is carried out by means of tax documents which must accompany the alcohol.

The holding of alcohol under the fictitious warehouse system, and the movement of alcohol on which the excise duty has not been paid, are subject to the payment of a surety, a guarantee for the authorities that the excise duty will be paid. Although this proposed directive stipulates that a surety must be paid, it does not harmonize the methods of payment. It is, however, quite clear that the system of sureties, considering the effect it may have on the competitivity of companies in the Member States, will have to be harmonized at a later date.

These different controls cease when it has been decided that the alcohol is to be put to a non-taxable use or when the excisé duty has been paid. Even in the latter case, however, the movement of beverages is still subject to a slight degree of control, at least when the amount of alcohol which is placed on the open market is fairly large.

4. *Recovery of the excise duty*

The fiscal debt arises when the alcohol is produced or when an alcoholic product, normally excluded from the field of application of the proposed directive, comes under this field of application because it is used in the manufacturing of products which are subject to an excise duty on the alcohol they contain (wines transformed into aromatized or liqueur wines) or when certain other products leave the production company (lees of wine, marcs of grapes etc.).

However, actual payment of the excise duty may be deferred until clearance for home use (delivery to the retailer or final consumer). Such a deferred payment of the tax is necessary since the level of the excise duty is very high and the producers must be prevented from having to pay the tax too far in advance of sales. Alcoholic beverages, in fact, such as brandy, require prolonged maturing so they are not consumed until a long while after being produced. Levying the tax when the beverage is produced would make the maturing process very expensive (immobilisation of capital) and would favour imported products on which the excise duty is paid when they are imported. Since the rate of excise duty depends on the future use of the alcohol it would be a good idea if payment of the excise duty could be postponed until a later stage in production.

This deferment of payment is made possible by the system of the real or fictitious warehouse and by the system of moving the goods under the cover of

special documents enabling the authorities to retain that alcohol under their control on which the excise duty has not yet been paid (see point 3 above).

Payment of the tax can therefore be deferred until the alcohol, or the alcoholic product, is made available to the consumer. Then, the person paying the tax (i.e. the wholesaler in a normal trade channel consisting of manufacturer, wholesaler, retailer, consumer) can still profit from payment credit, so that in actual fact he only pays the excise duty when he himself has been paid for the goods. The time limits laid down correspond more or less to the commercial uses in question.

These different deferments of payment are granted by the Member States on certain conditions, the main one being that some form of surety is handed over to the authority to guarantee payment of the tax.

5. *Committee on Excise Duties*

This proposal for a directive either does not set out all of the details on the application of the provisions contained in it, especially as regards the field of controls (form of the documents etc.), or leaves it to the Member States to decide on them. If Community implementing measures prove to be necessary these will be adopted in accordance with a simplified and accelerated Community procedure, within the framework of a Committee on Excise Duties.

6. *Exclusion of all taxes other than excise duty and VAT*

The proposed directive prohibits any direct or indirect tax other than excise duty or VAT being put on alcohol. This is to prevent the introduction of new taxes being able to bring into question the harmonization of excise duties or VAT.

However, Member States will be able to subject alcohol to other taxes as long as these do not involve taxes on imports or tax rebates on exports or border controls in trade between Member States. These taxes may be in the form of taxes on alcohol which is consumed in public houses or sold by retailers. Obviously they may not discriminate against imported alcohol nor be such that they will prejudice the markets for the alcohol and so indirectly protect a competing national beverage that is also subject to an excise duty; otherwise they will be contravening the provisions of Article 95 of the Treaty of Rome.

When aligning the rates of excise duties on alcohol one will no doubt have to lay down the criteria to be met by these taxes and the limits within which they can be fixed (by limiting, for example, their level or by laying down their application in the same proportion to competing beverages), so that there is no distortion of competition between the different beverages subject to one excise duty.

7. *Conditions peculiar to certain Member States*

Some Member States (Germany, France, Luxembourg) have special systems, such as the system of home distillers and contract distilleries which, for primarily psychological reasons, it would be extremely difficult to suddenly change or abolish. In these cases a transitional period is envisaged to enable these systems to be gradually adapted to the principles of the directive. The measures which will have to be taken to ensure that some of these systems are properly dealt with will be determined at a later date.

PROPOSED DIRECTIVE

The Council of the European Communities,

Having Regard to the provisions of the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having Regard to the proposal from the Commission,

Having Regard to the Opinion of the European Parliament,

Having Regard to the Opinion of the Economic and Social Committee,

Whereas the creation of a Common Market with characteristics similar to those of an internal market implies that the conditions of competition shall not be distorted, and that persons, goods, services and capital may move about within it without hindrance of any kind; whereas this aim has also been explicitly confirmed by the Council resolution of 22 March 1971 on the gradual achievement of Economic and Monetary Union and whereas the achievement of this aim has been recognised as being necessary for the establishment of this Union,

Whereas the excise duties that are levied on the consumption of alcohol are not always neutral from the point of view of competition and whereas the differences in tax burdens resulting from them from one Member State to another make it necessary to maintain taxes on imports and tax rebates on exports and border controls,

Whereas this situation constitutes a barrier to the free movement of and undistorted competition in alcohol and alcoholic products between Member States and whereas it is therefore contrary to the achievement of the Common Market and Economic and Monetary Union, and whereas it is therefore necessary to eliminate these obstacles,

Whereas free movement between Member States and a system ensuring that the conditions of competition are not distorted can only be achieved by means of the harmonization at Community level of excise duties which are levied on the consumption of alcohol; whereas it is, however, advisable to harmonize these excise duties gradually and whereas it is therefore opportune to apply this harmonization during a preliminary stage mainly to the structure of the excise duties,

Whereas in order to ensure an efficient levying of the tax all ethyl alcohol must be liable to the excise duty; whereas the rate of this excise duty must be uniform within each Member State,

Whereas a large amount of the alcohol contained in wine-based beverages comes from the wine and whereas in order to take this fact into account the rate of the excise duty applicable to the alcohol contained in these beverages must be reduced,

Whereas the ethyl alcohol must be exempt from tax each time it forms the raw material for industry or is used for medical purposes and in the production of vinegar; whereas it is important for there to be no barrier to the development of the perfume-cosmetics sector which may well be an important market for alcohol and whereas therefore alcohol used in this sector should be exempt from tax; whereas the Member States must adopt every measure to make sure that exempted alcohol cannot be recuperated and used fraudulently for the production of products which are subject to the excise duty,

Whereas in order to ensure the correct levying of the tax, control of the production, holding and movement of the alcohol is necessary,

Whereas in order to ensure equal conditions of competition at Community level, the methods of levying and controlling the excise duty must be harmonized as much as necessary between the Member States,

Whereas it is important for the coordinated application of the provisions of this directive to be guaranteed, and whereas it is therefore essential for an effective procedure to be laid down which, whenever necessary, can enable the necessary implementing to be adopted, and whereas the procedure of the Committee on Excise Duties is such that such measures can be adopted simply and rapidly,

Whereas to prevent any questioning of this harmonization, the Member States shall not be authorized to subject alcohol directly or indirectly to any indirect tax other than the harmonized excise duty and value added tax, unless these taxes do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls,

Has adopted this directive:

I. Field of application and establishment of the excise duty

Article 1

The Member States shall subject ethyl alcohol in its natural state or contained in other products to a harmonised excise duty in accordance with the provisions of this directive.

Article 2

This directive shall not apply:

1) to beers which come under Heading 22.03 of the Common Customs Tariff;

2) to wine, i.e. the product that is obtained by alcoholic fermentation of fresh grapes or the musts of fresh grapes:

a) with a maximum total alcoholic strength of 15° G.L., or

b) with a total alcoholic strength of above 15° G.L., but not above 17° G.L., obtained without enrichment and no longer containing residual sugar, harvested from wine-growing areas laid down by Commission Regulation No 1503/70 of 28 July 1970,[1] or

c) with a total alcoholic strength of above 15° G.L., and the characteristics of Quality Wine produced in Specified Regions as defined by Council Regulation No. 817/70 of 28 April 1970,[1] except for:

— those having the characteristics of liqueur wines, as defined by Council Regulations No. 816/70 of 28 April 1970 (Annex II)[2] and No. 948/70 of 26 May 1970,[3]

— and those not having the characteristics of liqueur wines but which come from the following wine varieties: Muscat (wine grapes), Grenache, Maccabeo, Vermentino and Tourbat;

3) to cider, perry, mead and other fermented beverages which come under Heading 22.07 of the Common Customs Tariff and have a maximum total alcoholic strength of 15° G.L.;

4) to fruit juices and similar beverages included in Council Regulation No. ... of ...[4], with a maximum increase in alcoholic content of 1% obtained by fermentation. This directive shall not apply to the concentrates of these products, either.

Article 3

The excise duty shall become payable:

— when ethyl alcohol is produced;

— when products are used which are excluded from the field of application of this directive by virtue of Article 2 because ethyl alcohol in its natural state or contained in other products has been added to them, and when anything else is done to these products to exclude them from exemption from the field of application of this directive;

— when the following leave the production company:

  — products obtained exclusively by alcoholic fermentation of fresh grapes or musts of fresh grapes with a total alcoholic strength of

[1] *Journal officiel* L 166, 29 July 1970.
[2] *Ibid.* L 99, 5 May 1970.
[3] *Ibid.* L 144, 27 May 1970.
[4] *Ibid.* C 39, 22 March 1969.

above 15° G.L. and not fulfilling any of the conditions laid down in Article 2, Paragraph 2, Sub-Paragraphs b and c,

— cider, perry, mead and other fermented beverages with a total alcoholic strength of above 15° G.L.;

— when ethyl alcohol in its natural state or contained in other products is imported.

Article 4

The amount of excise duty shall be fixed per hectoliter of pure alcohol at a temperature of 15° C.

Article 5

Within each Member State ethyl alcohol shall be subject to one single excise duty, hereinafter called the full rate.

The rate of the excise duty cannot differ according to the material used, the size of the production company or any other criteria.

Article 6

Article 5 notwithstanding, the excise duty on the ethyl alcohol contained in the following products shall be paid at a reduced rate, and this not below 20% and not above 50% of the full rate:

— grape musts made into alcohol (including mistelle) which comes under Heading 22.05 of the Common Customs Tariff;

— quality wines produced in Specified Regions—other than liqueur wines—as defined by Council Regulation No. 817/70,[1] with a total alcoholic strength of above 15° G.L., made from the following wine varieties: Muscat (wine grapes), Grenache, Maccabeo, Vermentino and Tourbat;

— liqueur wines produced on the Community and imported liqueur wines, as defined by Council Regulation No. 816/70 of 28 April 1970 (Annex II)[1] and No. 948/70 of 26 May 1970[2] respectively;

— vermouths and other wines from fresh grapes prepared with the help of plants or aromatic materials, with an increase in alcoholic content of no more than 22°, coming under Heading 22.06 of the Common Customs Tariff.

[1] *Journal officiel* L 99, 5 May 1970.
Ibid. L 144, 27 May 1970.

Article 7

The following shall be exempt from the excise duty:

1. Ethyl alcohol used under fiscal control:

a) to obtain products for uses other than human ones,

b) for the manufacture of perfumes, toiletries and cosmetics,

c) for the production of vinegar,

d) for production of medicines as defined by Council Directive 65.65 EEC of 26 January 1965[1];

2. Ethyl alcohol for external medical purposes, denatured or un-denatured;

3. Ethyl alcohol completely denatured in accordance with national provisions;

4. Ethyl alcohol in its natural state or contained in other products, exported from a warehouse.

Article 8

1. The Member States shall adopt all necessary provisions so that the ethyl alcohol contained in the products included in Article 7, Paragraph 1, Sub-Paragraphs *a)*, *b)* and *d)* cannot be regenerated under economically profitable conditions and so be used to make products which are subject to the excise duty.

2. For the application of the provisions of Article 7, paragraph 2, the Member States shall adopt all necessary provisions so that ethyl alcohol for external medical purposes is not put to any other use.

II. Control of production and holding

Article 9

1. Control of the production of ethyl alcohol, of the rectification and holding of ethyl alcohol on which the excise duty has not yet been paid, and of the manufacture and holding of products containing ethyl alcohol on which the excise duty has not been paid, shall be carried out by means of the warehouse system.

[1] *Journal officiel* 22, 9 February 1965.

2. The warehouse system shall involve the deferment of payment of the excise duty until the ethyl alcohol is cleared for home use, or placed under another system deferring payment of the excise duty, or exported.

3. The warehouse is said to be real when it is either placed under constant official supervision or controlled by equivalent means, in such a way that none of the following may take place outside the control of officials of the authorities:

— the use of raw materials containing alcohol,

— the entry into and departure from the warehouse of ethyl alcohol and products containing ethyl alcohol.

4. The warehouse is said to be fictitious when it is placed under the supervision of the authorities, especially by means of the stock accounts and movement certificates described in Article 15.

Article 10

1. The following shall be obligatory under the system of the real warehouse:

— the production of ethyl alcohol, including its rectification;

— the distillation of raw materials to obtain brandy.

2. The following shall be carried out under the system of the real warehouse or the fictitious warehouse:

— the rectification of ethyl alcohol carried out independently of its production;

— the manufacture of products containing ethyl alcohol,

— the maturing of brandies,

— the holding of ethyl alcohol in its natural state and of products containing ethyl alcohol.

3. However, as regards alcohol in its natural state or contained in other products, which is imported from non-member States, the provisions of Council directive 69/74/EEC of 4 March 1969 on the harmonization of legislative, statutory and administrative provisions on the system of customs warehouses[1] shall apply and shall have the same effect as regards excise duties as regards custom duties.

When leaving the customs warehouses the alcohol may be placed under one of the systems deferring payment of the excise duty laid down in this directive.

[1] *Journal officiel* L 58, 8 March 1969.

Article 11

1. A new warehouse can only be established after the person concerned has requested and obtained permission from the Authorities and as long as he:

a) is by profession a distiller, rectifier, manufacturer or wholesaler of ethyl alcohol or products containing ethyl alcohol,

b) has at his disposal premises which comply with the national legislative, statutory or administrative regulations concerning warehouses.

2. The establishing of a fictitious warehouse shall be subject to the payment of a surety.

The Member States may also subject the warehousing system to additional conditions as long as these apply both to national products and to imported ones.

3. For the purpose of applying Article 10, Paragraph 2, the person depositing the request must decide whether the warehouse is to be real or fictitious.

Article 12

Losses which are actually confirmed and duly established may be deducted from the quantities of ethyl alcohol in its natural state or contained in other products which are held in a real warehouse.

Article 13

1. Actual losses from rectification, manufacture, ulling, racking, evaporation and handling may be deducted from the quantities of ethyl alcohol in its natural state or contained in other products which are held in fictitious warehouses, to the following limits:

a) rectification of the ethyl alcohol: 1.5% of the pure alcohol used,

b) manufacture of alcoholic products:

— excluding maceration, distillation or other heat processes: 1% of the pure alcohol used,

— including one maceration, one distillation or one other heat process: 3% of the pure alcohol used,

c) bottling or putting into special containers ready for retailing: 0.5% of the pure alcohol used,

d) storing of ethyl alcohol and alcoholic products in vessels other than bottles and wooden casks that are not coated on the inside or outside: 1% per annum of the average annual stock,

e) maturing of alcoholic products in wooden casks that are not coated on the inside or outside: 4% per annum of the average annual stock.

2. For the purpose of applying Paragraph 1, the Member States shall take an inventory of stock at least once a year.

Article 14

Losses resulting from a duly established fortuitous event or case of *force majeure* may be deducted by the Member States from the quantities of ethyl alcohol in its natural state or contained in other products that are being held in fictitious warehouses.

III. Control of movement

Article 15

1. In order for any ethyl alcohol, in its natural state or contained in other products, to move about within a Member State with payment of the excise duty deferred, it must be covered by a movement certificate.

2. This certificate shall accompany the products everywhere.

3. The movement certificate shall entail the obligation to present the goods intact within the set period of time and at the given destination, so that the Authorities at the place of destination may recognise them, and to pay the necessary excise duty on the ethyl alcohol that has been put on to the open market, should this not be presented.

Article 16

In order to ensure payment of the necessary excise duty on the ethyl alcohol that has been put on to the open market in accordance with Article 1, the subscriber to the movement certificate must pay a surety.

Article 17

Article 15, Paragraph 3 notwithstanding, the Member States may allow duly established losses which occur during transportation to be deducted from the amount of ethyl alcohol, in its natural state or contained in other products, that is put on to the open market.

Article 18

1. Movement of ethyl alcohol in its natural state or contained in beverages, which is for home use within the territory of the Member States, shall be subject to the presentation of a document testifying payment of excise duty. This document shall accompany the products everywhere.

2. When the alcohol in its natural state or contained in beverages is presented in bottles the movement certificate described in Paragraph 1 may be replaced by a fiscal stamp.

3. The Member States shall draw up the conditions under which ethyl alcohol, in its natural state or contained in beverages, which is put on to the open market and which is collected by individuals for their personal consumption, is not subject to the presentation of the document described in Paragraph 1.

IV. Recovery of the excise duty

Article 19

1. The excise duty on ethyl alcohol is payable and shall be paid when the alcohol is cleared for home use. It is paid on the basis of the actual quantity of pure alcohol that is cleared for home use or considered as being lost.

Alcohol in its natural state or contained in other products which is put at the disposal of one person outside any arrangement deferring payment of the excise duty shall be considered as being cleared for home use.

2. However, when fiscal stamps are used as a means of paying the tax, the excise duty may become payable and be paid when the fiscal stamps have been obtained or affixed.

Article 20

The rate of the excise duty to be taken into consideration shall be the one that is in force when the excise duty becomes payable.

Article 21

At the request of the debtor, and Article 19 notwithstanding, the excise duty which shall be payable during one calendar month must be paid at the earliest on the 15th, and at the latest on the 25th of the second succeeding month.

By the 25th of each month, therefore, the warehousemen shall present the competent authorities with a declaration showing the amounts of alcohol that have been cleared for home use during the previous month.

2. This period for payment shall be granted without any interest being demanded. It shall be subject to the payment of a surety.

3. However, the Member States may introduce different methods of payment when using fiscal stamps.

Article 22

As regards products imported from non-member States, the rules governing the payment of customs duties shall also apply to the excise duty when the latter is payable at the same time as the customs duties.

V. Exporting and importing

Article 23

When ethyl alcohol in its natural state or contained in other products is exported, the Member States refund the excise duty on it at the rate that is in force at the time of exporting. The excise duty is refunded in accordance with the actual amount of ethyl alcohol contained in the exported products.

Article 24

In this directive "importing" means the introduction into the territory of one Member State of ethyl alcohol, in its natural state or contained in other products, which has come from another Member State or from a state which is not a member of the European Communities, regardless of the final destination of the ethyl alcohol.

Article 25

Should ethyl alcohol that is contained in other products be imported, the Member States shall levy the excise duty on the amount of actual ethyl alcohol contained in the imported products.

Article 26

1. Ethyl alcohol contained in the products listed in Article 7, Paragraph 1, Sub-Paragraph *a)*, *b)* and *d)* which are imported from other Member States shall be subjected by the Member States to the same tax system as ethyl alcohol that is contained in similar products manufactured on their own territory.

2. Should there be any grave suspicion of fraud, however, the Member States may satisfy themselves that the ethyl alcohol contained in these products cannot be regenerated under favourable economic conditions and so be used to make products that are subject to the excise duty.

Article 27

Ethyl alcohol contained in the products listed in Article 7, Paragraph 1, Sub-Paragraph *a)*, *b)* and *d)* which are imported from non-member States shall be subjected by the Member States to the same conditions as are set out in Article 26, subject to confirmation that this ethyl alcohol cannot be regenerated under favourable economic conditions and so be used to make products that are subject to the excise duty.

VI. Committee on Excise Duties

Article 28

Where necessary, Community measures for the application of Articles 7 to 27 inclusive shall be determined in accordance with the procedure laid down by Council decision No. ..... of ..... setting up a Committee on Excise Duties.

VII. Provisions peculiar to certain Member States

Article 29

1. The provisions of Articles 5 and 7 shall not hinder the application:

— of the arrangements for home distillers in France as defined in Article 317 of the General Code on Taxes,

— of the arrangements for small distilleries in the Federal Republic of Germany as defined in Article 79, Paragraph 2, Sub-Paragraph 1, and Article 79*a* of the *Branntweinmonopolgesetz*.

2. The provisions of Article 19 shall not hinder the application:

a) of the arrangements for contract distilleries in the Federal Republic of Germany, as defined in Article 57 of the *Branntweinmonopolgesetz* together with Articles 114 and 116 of the *Brennereiordnung*;

b) of the arrangements for contract distilleries in the Grand Duchy of Luxembourg, as defined by the Act of 27 July 1925 on tax arrangements for brandies, amended by the Belgo-Luxembourg Agreement of 23 May 1935 which set up a special community for revenue from excise duties on alcohols.

Article 30

The provisions of Article 10, Paragraph 1, shall not hinder the application:

a) of the arrangements for contract distilleries in the Federal Republic of Germany, as defined in Article 57 of the *Branntweinmonopolgesetz* together with Articles 114 and 116 of the *Brennereiordnung;*

b) of the arrangements for home distillers in France, as defined in Articles 315, 316 and 318 of the General Code on Taxes;

c) of the arrangements for contract distilleries in the Grand Duchy of Luxembourg, as defined by the Act of 27 July 1925 on the tax arrangements for brandies, amended by the Belgo-Luxembourg Agreement of 23 May 1935 which set up a special community for revenue from excise duties on alcohols.

Article 31

Within two years of the implementation of this directive, the Council, on a proposal of the Commission, shall adopt the measures necessary for the abolition or rearrangement at Community level of the derogations listed in Article 30.

Article 32

The derogations laid down in Article 29 shall be abolished within 5 years of the envisaged date of implementation of this directive.

VIII. Transitional provisions

Article 33

1. At least one month before the implementation of this directive the Member States shall fix the full rate provided for in Article 5 and the reduced rates described in Article 6.

2. The Member States shall reduce the gap between these excise duty rates and the rates that they will apply before the implementation of this directive by:

— 40% at the time of the implementation of this directive;

— 30% one year after the implementation of this directive;

— 30% two years after the implementation of this directive.

3. The Member States shall make sure that the gap between the excise duty rates resulting from the application of Paragraph 1 and 2 above does not widen if the full rate is altered.

Article 34

For the purpose of applying Article 21, Paragraph 1, the Member States may adopt such measures for gradual adaptation that the provisions of the said article shall apply within two years of the implementation of this directive.

IX. Final provisions

Article 35

1. The Member States shall not, directly or indirectly, subject ethyl alcohol in its natural state or contained in other products to any indirect tax other than the excise duty described in Article 1 and value added tax laid down in the Council directive (67-227 EEC) of 11 April 1967[1].

2. The Member States may, however, subject ethyl alcohol in its natural state or contained in other products to other indirect taxes, provided that these do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls.

Article 36

1. On January 1 1974 the Member States shall implement the legislative, statutory and administrative provisions which are necessary for them to conform to the provisions of this directive and shall inform the Commission immediately of their actions.

2. As soon as this directive has been notified the Member States shall also make sure that the Commission is informed—and in ample time for it to present any comments—of any later drafts of essential provisions of a legislative, statutory or administrative nature which they intend to adopt in the area covered by this directive.

Article 37

This Directive is addressed to the Member States.

[1] *Journal officiel* 71/67, 14 April 1967.

Proposed Council directive on a harmonized excise duty on wine

EXPLANATORY NOTE

The functioning of the Common Market as a single internal market and the implementation of Economic and Monetary Union imply amongst other things that the conditions of competition shall not be distorted and that the free movement of goods within them shall be fully guaranteed. As regards excise duties on wine, the achievement of these aims includes the creation of neutral conditions of competition and the abolition in trade between Member States of taxes on imports and tax rebates on exports and border controls.

Apart from turnover tax, wine is at present only subject to an excise duty in Benelux and France. Sparkling wine, however, is also subject to an excise duty in the Federal Republic of Germany.

The first question, therefore, regarding future taxes on wine is whether, in order to create neutral conditions of competition in the drinks sector, one must generalize and harmonize the excise duty on wine.

Need to levy an excise duty on wine

It would seem necessary to generalize the excise duty on wine for the following reasons:

a) In the drinks sector, wine and beer compete with each other. This competition differs from State to State according to the different customs and climatic conditions. Similarly, wine and certain spirits may also compete with each other.

In addition to VAT, beer and spirits are also subject in all Member States to an excise duty which has a big effect on their price. These drinks, therefore, would be at a fiscal disadvantage in relation to wine if the latter, a competitor, were not also subject to an excise duty. In other words these different drinks should be subject to harmonized taxes in order to avoid any distortion of the conditions of competition between wine, on the one hand, and beer in particular on the other.

Similarly, it should be pointed out that, because of the climate, wine is mainly produced in the south, whereas beer is produced primarily in the northern parts of Europe. It would hardly be advisable, therefore, at Community level, to give fiscal encouragement in northern areas to the consumption of a beverage that cannot be produced there, and this to the detriment of beer which is a local product. If, therefore, beer is subject to a high excise duty, as is the case, it would seem only fair for wine to be subject to an excise duty, too, although the rates of these excise duties need not necessarily be the same. Conversely, if wine need not be subject to an excise duty, it may prove necessary to exempt beer, too.

b) The levying of an excise duty is especially useful in those sectors where different kinds of products compete with each other and where it would be advisable to adapt their respective tax burdens according to the contributive capacity of each one. Such is the case in the drinks sector where many of the beverages, including wine and beer, are in direct or indirect competition with each other.

The excise duty may, in fact, be adapted according to the burden that can be borne by the products affected by them or according to economic and social needs, etc. It would be difficult to achieve this aim with VAT.

VAT, in fact, lacks flexibility because it is a general consumer tax and the rate cannot be varied according to the individual product.

c) The excise duty on wine, a product with a very high consumption rate, is such that it brings in considerable revenue for the Member States. This revenue may prove to be particularly useful for some Member States when, within the framework of the general harmonization of consumer taxes they may have to abolish or modify certain existing excise duties.

d) The levying of an excise duty on wine would not seem to entail any difficulties from the point of view of control. In fact, the common organisation of the wine market already provides for a series of extremely strict controls extending from the production stage right through to retailing. The excise duty may be levied by using these economic controls which even provide for a collection of more comprehensive and more detailed data than those which will be necessary to establish an excise duty and avoid tax evasion. On the other hand, an excise duty based on these economic controls will be such as to ensure a better application of the agricultural regulations.

Need for a harmonized excise duty

It is not sufficient for wine to be subject in every Member State to an excise duty in order for neutral conditions of competition to be ensured at fiscal level. Differences between Member States in the field of excise duty structures and rates can also be a source of distortion.

Thus, in those Member States where the excise duty is already in existence, methods of taxing the wine vary considerably. In France, the wine is taxed independently of its alcoholic content, whereas in the Benelux countries the excise duty on wines of more than 12° is increased by an excise duty on alcohol; this can, of course, distort competition between the wines. Moreover, there is great difference between these countries in the system of levying the tax. These divergences may lead to differences in the burden imposed by the excise duty, irrespective of the level of the excise duty itself. In order to prevent these distortions of competition it would seem essential for the structures of the excise duty to be harmonized.

Harmonization of the structures of the excise duty on wine is all the more essential since if this excise duty is to be introduced into Germany and Italy it is better for it to be introduced on harmonized bases right from the start rather than on different bases that would have to be harmonized later on.

However, one should not forget that, as with the other excise duties, the ultimate aim of harmonizing the excise duty on wine is the abolition of taxes on imports, tax rebates on exports, and border controls. Preparations can be made for this by harmonizing tax structures; this is necessary before one can begin to harmonize the rates.

Methods of harmonizing the excise duty.

The structure of the harmonized excise duty on wine is very similar to that envisaged for alcohol. This similarity is justified if one remembers that the wine and alcohol trades have many similar characteristics and are often practised by the same people.

a) The product that is subject to the excise duty is wine, a product obtained by alcoholic fermentation of grapes. The definition is very similar to the one that is kept in the vine-products market[1] for table wines and wines produced in Specified Regions. Wines that are normally consumed with a meal come under the tax arrangements for wine, whereas wines used as apéritifs or liqueur wines come under the tax arrangements for alcohol since they compete with spirits.

The distinctions between sparkling wine and non-sparkling wine are also those that are retained on the agricultural level. However, wines which fall between semi-sparkling wines (pressure not above 2.5 atmospheres) and sparkling wines (3 atmospheres), which cannot be marketed under the agricultural regulations, are included with sparkling wines because it is advisable, from the fiscal point of view, to settle the arrangements for these products.

b) The rate of the excise duty on wine must be the same for all wines belonging to the one category, i.e. to the category for sparkling wines or the one for the other wines. This rate, however, may not be lower than 1 u.a. per hectoliter. The reason for this minimum rate is that it would seem advisable for the Member States who are to introduce the excise duty on wine to do this by keeping in line straightaway with what may be considered a minimum levy for the excise duty at Community level. Also, in order to obtain some degree

[1] Cf. Council Regulation (EEC) 816/70, 28 April 1970, with supplementary provisions concerning the common organization of the vine-products market.

of flexibility, it seemed a good idea to make it possible for the Member States to apply a higher rate to quality wines. Problems arising from this concession may be reexamined at a later stage.

c) Since it is wine used as a beverage that is subject to the excise duty, wine that is made into vinegar and into an alcoholic product that is subject to the tax arrangements for alcohol is exempt. Similarly, wine is exempt if it is made into sparkling wine; this avoids double taxing.

It also seemed a good idea to make it possible for the Member States to exempt that wine which is consumed by the producer himself.

d) Wine that is covered by a common market organization is subject to a whole series of controls extending from the production stage to marketing. In accordance with this proposed directive, the formalities inherent in these controls shall also be used, as far as possible, for tax purposes (declarations of production, accompanying documents, etc.).

Control of the movement of the wine is provided for in all cases. If the excise duty has not been paid a surety shall be demanded in order to guarantee presentation of the wine at the place of destination and, if necessary, payment of the excise duty.

The holding of wine on which the payment of the excise duty has been deferred is also subject to a control, the latter being very flexible when the wine is held by the producer and more strict when it is held by the merchant. In the latter case a surety is also demanded to guarantee payment of the excise duty.

These different forms of control cease when it has been decided that the wine is to be put to a non-taxable use or when the excise duty has been paid. Even in the latter case, however, the movement of the wine is still subject to a slight degree of control, at least where a large amount of wine is concerned.

Although in certain cases this proposed directive stipulates the payment of a surety, it does not harmonize the methods of doing this. It is quite clear, however, that the surety system, considering the effect the latter may have on the competitivity of companies in the Member States, will have to be harmonized later on.

e) The fiscal debt arises when the wine is produced. However, actual payment of the excise duty may be deferred until the wine is cleared for home use (delivery to the retailer or final consumer). Such a deferment of payment is necessary in the case of wine since wine may often have to mature in casks. Payment of the excise duty nearer to the date of production would sometimes compel the merchants to pay the tax too far in advance of sales and thus make the maturing process very burdensome. Within the framework of the organization of the vine-products market, however, there are plans to give aid

to wine storage under certain conditions; it is important, therefore, that storage is not made any more onorous. This would be the case if the excise duty were levied at the time of production.

Payment of the tax can therefore be deferred until the wine is made available to the consumer. Then, the person who must pay the tax (i.e. the wholesaler in a normal marketing channel consisting of producer, wholesaler, retailer, consumer) may still profit from payment credit, so that in actual fact he does not pay the excise duty until he himself has been paid for the goods. In order to simplify this the envisaged deadlines and methods of payment have been determined taking into account the regulations already in existence regarding VAT.

f) This proposed directive does not give details regarding the application of provisions contained in it. If Community measures prove to be necessary they shall be adopted in accordance with a simplified and speeded-up Community procedure within the framework of the Committee on excise duties.

g) The proposal for a directive prohibits any direct or indirect tax other than excise duty or VAT being put on wine. This is to prevent the introduction of new taxes being able to bring into question the harmonization of excise duties or VAT.

However, Member States will be able to subject wine to other taxes as long as these do not involve taxes on imports and tax rebates on exports or border controls in trade between Member States. These taxes may be in the form of taxes on wine which is consumed in public houses, or sold by retailers. Obviously they may not discriminate against imported wine nor be such that they will prejudice the markets for the alcohol and so indirectly protect a competing national beverage that is also subject to an excise duty; otherwise they will be contravening the provisions of Article 95 of the Treaty of Rome.

When aligning the rates of excise duties on wine one will no doubt have to lay down the criteria to be met by these taxes and the limits within which they can be fixed (by limiting, for example, their level or by laying down their application in the same proportion to competing beverages), so that there is no distortion of competition between the different beverages subject to one excise duty.

PROPOSED DIRECTIVE

The Council of the European Communities,

Having regard to the provisions of the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas the creation of a Common Market with characteristics similar to those of an internal market implies that the conditions of competition shall not be distorted, and that persons, goods, services and capital may move about within it without hindrance of any kind; whereas this aim has also been explicitly confirmed by the Council resolution of 22 March 1971 on the gradual achievement of Economic and Monetary Union and whereas the achievement of this aim has been recognised as being necessary for the establishment of this Union.

Whereas the creation of conditions of healthy competition at Community level implies that beverages, that are in competition with each other, are not treated differently at fiscal level,

Whereas wine competes especially with beer, and whereas beer, in addition to value added tax, is also subject in all Member States to a high excise duty which affects its rate of consumption and whereas therefore wine, too, should be subject at Community level to such a tax,

Whereas the excise duties that are at present levied on the consumption of wine are not always neutral from the point of view of competition and whereas the differences in tax burdens resulting from them from one Member State to another make it necessary to maintain taxes on imports and tax rebates on exports and border controls,

Whereas these distorsions of competition, including those resulting from the absence of excise duties on wine in some Member States, and the maintenance of these compensations and controls at borders between Member States constitute an obstacle to the free movement of and undistorted competition in wine between these States; whereas they are therefore contrary to the achievement of the Common Market and Economic and Monetary Union and whereas there is therefore every reason to adopt the necessary measures to eliminate these obstacles;

Whereas free movement between Member States, and arrangements to ensure that the conditions of competition are not distorted, can only be achieved by introducing an excise duty on the consumption of wine in those Member States where there is no such duty already, and by harmonizing these excise duties at

Community level; whereas it is, however, advisable to harmonize these excise duties gradually and therefore apply this harmonization during a preliminary phase mainly to the structure of the excise duties,

Whereas the excise duty on wine must affect only those wines that are normally consumed at the table, with the exception of those that are consumed as apéritifs of liqueur wines,

Whereas, since several Member States must introduce this excise duty, it would seem advisable for a minimum levy rate to be fixed straightaway,

Whereas in order to ensure the correct levying of the excise duty, the control of the production, holding and movement of the wine is necessary,

Whereas in order to ensure equal conditions of competition at Community level the methods of control and levying of the excise duty must be harmonized whenever necessary between the Member States,

Whereas it it is important to guarantee the coordinated application of the provisions of this directive and whereas it is therefore essential to provide for an effective procedure which, whenever necessary, can enable the necessary implementing measures to be adopted; whereas the procedure of the Committee on Excise Duties is such that such measures can be adopted simply and rapidly,

Whereas to prevent any questioning of this harmonization the Member States must not be authorized to subject wine, directly or indirectly, to any indirect tax other the harmonized excise duty and value added tax, unless these taxes do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls,

has adopted this directive:

I. Field of application and establishment of the excise duty

Article 1

The Member States shall subject wine to a harmonized excise duty in accordance with the provisions of this directive.

Article 2

In applying this directive, the term " wine " means that product which is obtained exclusively by alcoholic fermentation of fresh grapes or the musts of fresh grapes:

— with a total maximum alcoholic strength of 15° G.L. or

— with a total alcoholic strength of above 15° G.L., but not above 17° G.L., obtained without enrichment and no longer containing residual sugar, harvested from the wine-growing areas laid down by Commission Regulation No. 1503/70 of 28 July 1970,[1] or

— with a total alcoholic strength of above 15° G.L. and with the same characteristics as Quality Wine produced in Specified Regions as defined by Council Regulation No. 817/70 of 28 April 1970,[2] with the exception of :

- those which do not display the characteristics of liqueur wines as defined by Council Regulations No. 816/70 (Annex II)[2]) and No. 948/70 of 26 May 1970[3]
- and those not displaying the characteristics of liqueur wines, but coming from the following wine varieties: Muscat (Wine grapes), Grenache, Maccabeo, Vermentino and Tourbat.

Article 3

In this directive the following terms are defined as follows:

(a) sparkling wine: wine containing carbon dioxide and displaying, when kept at 20°C in closed containers, an over pressure of at least 3 atmospheres.

Included with sparkling wine is that wine which contains carbon dioxide and displays, when kept at a temperature of 20°C in closed vessels, an over pressure of more than 2.5 atmospheres but less than 3 atmospheres.

(b) other wine: wine that is neither sparkling nor included with sparkling wine.

Article 4

1. The excise duty shall become payable when the wine is produced or imported.

2. In this directive the term "importing" means the introduction onto the territory of a Member State of a wine from another Member State or from a non-member State, regardless of the ultimate destination of the wine.

---

[1] *Journal officiel* L 166, 29 July 1970.
[2] *Ibid.* L 99, 5 May 1970.
[3] *Ibid.* L 144, 27 May 1970.

Article 5

1. The Member States shall fix the rate of excise duty per hectoliter of wine. They shall apply the same rate to all wines in any one of the categories laid down in Article 3. This rate may not, however, be less than 1 u.a. per hectoliter.

2. However, the Member States may apply to quality wine produced in Specified Regions and to quality sparkling wines produced in Specified Regions a rate of excise duty which is higher than that applied to sparkling wine and other wine that does not meet with these criteria of quality.

3. For the purpose of applying Paragraph 2, the terms "quality wine produced in Specified Regions" and "quality sparkling wine produced in Specified Regions" shall refer to those products as defined by Council Regulations No. 817/70 of 28 April 1970[1] and No. ... of ...[2] respectively and those that are imported from non-member States that fulfil similar criteria.

Article 6

1. The following shall be exempt from excise duty:

(a) wine used in the production of all products coming under the tax arrangement for alcohol;

(b) wine used in the manufacture of sparkling wine;

(c) wine used in the manufacture of vinegar;

(d) wine exported from a production company or a fictitious warehouse.

2. The following may be exempt from excise duty:

(a) wine consumed on the premises of production companies which make their own grapes into wine, by the producer, members of his family living under his roof, and by his employees;

(b) wine consumed on the farm by the farmer who delivers all of his grapes to a wine-making company, by members of his family living under his roof, and by his employees, and which is retroceded to him by the said wine-making companies.

For the purpose of applying the provisions of Sub-Paragraphs *(a)* and *(b)*, the Member States shall fix the amounts of wine that may be exempt from excise duty.

3. When wine on which the excise duty has been paid is exported, the Member States may refund the excise duty at the rate which is in force when the wine is exported.

---

[1] *Journal officiel* L 99, 5 May 1970.
[2] *Ibid.* C 60, 14 June 1971.

Article 7

For the purpose of applying this directive, fresh grapes, with the exclusion of table grapes, and grape musts shall be considered, unless there is any proof to the contrary, to have been used in the production of wine which has been cleared for home use.

The Member States shall therefore determine the amount of grapes and grape musts necessary to produce one hectoliter of wine.

II. Measures of control

Article 8

For the purpose of applying this directive the Member States shall inspect the grapes, and the liquid at the various stages through which the product of the grapes may pass, up to and including the lees of wine.

The inspection shall be carried out by means of accompanying documents laid down under the agricultural regulation. For the purpose of levying the excise duty, these documents shall be of a fiscal nature.

A. *Control of production and holding*

Article 9

In order to determine the amounts of wine that are to be subject to the excise duty, the Member States shall use the annual declarations of production and stock, as instigated by Commission Regulation No. 134/62 of 25 October 1962,[1] amended by Regulation No. 1136/70 of 17 June 1970.[2] These declarations shall also be of a fiscal nature.

Article 10

1. Producers who use only their own grapes in making wine, even if they make this wine into sparkling wine, shall hold the wine in their cellars, with payment of the excise duty deferred.

This holding shall be subject to neither previous authorization nor to the payment of a surety.

2. It shall not be considered an interruption of the holding by a production company of wine on which payment of the excise duty has been deferred to

[1] *Journal officiel* 111, 6 November 1962.
[2] *Ibid.* L 134, 19 June 1970.

transport the wine from one cellar to another when these cellars belong to the same producer, or from a cellar of a wine-producing cooperative to the cellar of a member of the cooperative unless the wine is not recorded at the place of destination.

The Member States shall subject this transportation to the formalities laid down in Article 15.

Article 11

Producers of wine made partly of entirely from bought grapes shall hold the wine under the system of the fictitious warehouse.

Article 12

1. The following may also be carried out under the system of the fictitious warehouse:

— holding of wine with a view to its being made into sparkling wine, without prejudice to the provisions of Article 10, Paragraph 1;

— holding of wine with a view to its being made into vinegar;

— holding of wine with a view to using it to produce any product coming under the tax arrangements for alcohol;

— holding of wine by wholesale merchants.

2. The fictitious warehouse shall make it possible for wine to be held with deferment of payment of the excise duty until it is either cleared for home use, or placed under another deferrment system, or exported. It shall also enable all operations of vinification to be carried out, as well as the blending and conditioning of the wine.

3. The fictitious warehouse shall be subject to official control especially by means of stock accounts and movement documents described in Article 16.

4. As regards wine imported from non-member States, however, the provisions of Council directive (EEC) No. 69/74 of 4 March 1969 on the harmonization of legislative, statutory and administrative provisions concerning the arrangements for customs warehouses[1] shall apply and shall have the same effects with regard to the excise duties as with regard to customs duties.

When it leaves the customs warehouses the wine may be placed under one of the systems provided for in this directive by which payment of the excise duty is deferred.

[1] *Journal officiel* L 58, 8 March 1969.

Article 13

1. A new warehouse can only be established after the person concerned has requested and obtained permission from the Authorities and as long as he has at his disposal premises which comply with the national legislative, statutory or administrative regulations concerning warehouses.

2. The establishing of a fictitious warehouse shall be subject to the payment of a surety.

The Member States may also subject the warehousing system to additional conditions as long as these apply both to national products and imported ones.

Article 14

1. Actual losses up to the following limits may be deducted from the amounts of wine held in cellars on which payment of the excise duty has been deferred:

— losses from evaporation from storage in wooden casks not coated on the inside or outside: 1% of the average annual stock;

— losses from various handling: 0.5% of the amounts which went into the warehouse.

2. Duly verified losses resulting from cold concentration may also be deducted from the amounts of wine held with deferment of payment of the excise duty.

3. Member States may also allow losses resulting from a duly verified fortuitous event or case of *force majeure* to be deducted from the quantities of wine held with deferment of payment of the excise duty.

4. For the purpose of applying Paragraph 1, Member States shall draw up an inventory of wine held in storage under the fictitious warehouse system at least once a year.

B. *Control of movement*

Article 15

1. Wine that is transferred under the conditions laid down in Article 10, Paragraph 2, must be accompanied by a movement certificate.

2. No surety need be paid before the wine is put on the open market.

3. However, Member States may fix territorial limits beyond which the provisions of Article 16 shall apply.

Article 16

1. In order for any wine to move about within one Member State with a payment of the excise duty deferred, it must be covered by a movement certificate.

2. The movement certificate shall accompany the wines everywhere.

3. The movement certificate shall entail the obligation to present the products intact, within the arranged period of time and at the agreed place of destination, so that the Authorities at the place of destination may recognise them, and to pay the excise duty on the wine that has been put on the open market should this not be presented.

4. In order to ensure payment of the excise duty on the wine that has been put on the open market, the subscriber to the movement certificate must pay a surety.

Article 17

Article 16, Paragraph 3 notwithstanding, Member States may allow duly established losses which occur during transportation to be deducted from the amount of wine that is put on to the open market.

Article 18

1. Wine which has been cleared for home use may only move about within the territory of the Member State if it is accompanied by a document to testify that the excise duty has been paid. The said document must accompany the products everywhere.

2. When wine which is put on to the open market is presented in bottles, the movement certificate described in Paragraph 1 may be replaced by a fiscal stamp.

3. Member States shall draw up the conditions under which the placing on the open market of wine which is collected by individuals for their personal consumption shall not be subject to the presentation of the document described in Paragraph 1.

III. Recovery of the excise duty

Article 19

1. The excise duty on wine shall become payable when the latter is cleared for home use or when the losses have been established.

Wine which is consumed in production companies or put at the disposal of one person outside any procedure deferring payment of excise duties shall be considered as being cleared for home use.

2. However, when fiscal stamps are used as a means of paying the tax, the excise duty may become payable and be paid when the fiscal stamps have been obtained or affixed.

Article 20

The rate of the excise duty to be taken into consideration shall be the one that is in force when the excise duty becomes payable.

Article 21

For the purpose of levying the excise duty the producers and warehousemen shall, by the 25th of each month, present the competent authorities with a list of the quantities and qualities of wine that have been cleared for home use during the previous month.

Article 22

1. The excise duty that is payable during one calendar month shall be paid when the declaration described in Article 21 is presented.

2. This period for payment shall be granted without any interest or surety being demanded. However, should there be any risk of the excise duty not being paid, the authorities may subject the granting of this payment period to the payment of a surety or demand payment of the excise duty at an earlier date.

3. However, the Member States may introduce different methods of payment when using fiscal stamps.

Article 23

As regards wine that is imported from non-member States, the rules governing the payment of customs duties shall also apply to the excise duty when the latter is payable at the same time as the customs duties.

IV. Committee on Excise Duties

Article 24

Where necessary, Community measures for the application of Articles 6 to 23 inclusive shall be determined in accordance with the procedure laid down by Council decision No. ..... of ..... setting up a Committee on Excise Duties.

V. Final provisions

Article 25

1. The Member States shall not subject wine directly or indirectly to any indirect tax other than the excise duty described in Article 1 and value added tax laid down in the Council directive (67-227 EEC) of 11 April 1967.[1]

2. The Member States may, however, submit wine to other indirect taxes, provided that these do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls.

Article 26

1. On 1 January 1974 the Member States shall implement the legislative, statutory and administrative provisions which are necessary for them to conform to the provisions of this directive and shall inform the Commission immediately of their actions.

2. As soon as this directive has been notified the Member States shall also make sure that the Commission is informed—and in ample time for it to present any comments—of any later drafts of essential provisions of a legislative, statutory or administrative nature which they intend to adopt in the area covered by this directive.

Article 27

This directive shall not prejudice the provisions that may have to be drawn up by the Council on the proposal of the Commission in applying Article 2, Sub-Paragraph 2 of Council Regulation (EEC) No. 541/70 of 20 March 1970.[2]

Article 28

This directive is addressed to the Member States.

[1] *Journal officiel* 71/1967, 14 April 1967.
[2] *Ibid.* L 68, 25 March 1970.

Proposed Council directive on the harmonization of excise duties on beer

EXPLANATORY NOTE

1. Need to harmonize excise duties on beer

The creation of a Common Market with characteristics similar to those of an internal market and the achievement of Economic and Monetary Union imply, in the field of excise duties on beer, a very advanced harmonization of these excise duties, because:

— harmonization of the structures and rates of these excise duties is essential if one is to achieve neutral conditions of competition between Member States, and,

— harmonization of the rates is necessary if one wants to achieve complete freedom of movement of beers within the Common Market, this free movement implying that these products are no longer subject, in trade between Member States, to taxes on imports and tax rebates on exports and border controls.

Different structures of excise duties may, in fact, result in the companies of one Member State being less competitive than those of other Member States.

Amongst differences in structure that influence competition one must make special mention of those affecting taxable goods: musts in Italy and the Benelux countries; beer in France and the Federal Republic of Germany. As shown below, each of these two systems has a different effect as regards the actual burden borne by the beer.

Moreover, the fact that the excise duty must be paid before the beer is produced can put the companies concerned in a less favourable position regarding competitivity than companies in those countries where the excise is paid afterwards and where time is allowed for this payment to be made. Similarly, the existence of a permanent control in the companies can put these companies at a disadvantage in relation to those where the control is carried out by means of accounting procedures.

2. Choice of the taxable product (musts or beer)

A. *Taxation of the musts*

This method is used in the Benelux countries and Italy where calculation of the tax payable is based on the musts.

In practice the brewers usually file a preliminary declaration stating the quantity and alcoholic content of the musts used. This declaration is checked in the Benelux countries by means of sampling; in Italy, on the other hand, tax officials keep a permanent check on the brewery.

The Italians take production losses into account by deducting a standard amount from the musts used in the brewing. The rate of losses is fixed at 14%, apart from the variable losses which occur during hopping. By this method one can calculate on a standard basis the number of hectoliter/percentage proof of beer.

In the Benelux countries production losses are not taken into account; the excise duty rate is fixed, therefore, per hectoliter/percentage proof of musts. In order to calculate the excise duty which is to be levied on imported beer, one must determine the original amount of the musts used, taking into account their alcoholic content. In order to do this a standard percentage is added to the imported product in order to take production losses into account. Similarly, tax rebates on exports are calculated on the basis of standard quantities of musts.

B. *Taxation of beer*

The method used in Germany and France of taxing beer consists in basing the tax on the amount of beer that is produced by the brewery and cleared for home use. The beer is divided into different classes which correspond to the commercial categories found on the market, each class being subject to a different rate of tax.

This method provides for controls which are based essentially on accounting methods (although there is also the possibility of carrying out physical controls by means of samples). In the Federal Republic of Germany, for example, these controls cover the whole production process, from the raw material to the finished product.

C. *Reasons for the Commission's choice*

The enclosed proposed directive provides for beer being kept as a taxable product. This choice is justified especially by the following reasons:

— in such a system the fiscal burden borne by the beer is completely independent of the conditions of production in the different breweries, whereas when the musts are taxed the beer may be taxed differently according to the conditions of production in companies where it is produced. In fact, mainly as a result of the varying degree of productivity of the production equipment, the amount of beer that is produced from the musts can vary greatly from one brewery to another. Losses occuring during the transformation of musts into beer can in fact vary from 6 to 25%;

— the basis of taxation on imports (beer) is the same as that on home production. This avoids any possible discrimination between home produced beers and imported ones. Similarly, tax rebates on exported

beer are calculated with great accuracy. If the musts are taxed, however, taxes or tax rebates on imported or exported beer can usually only be calculated by using flat-rate methods, with all the disadvantages which these methods imply from the point of view of fiscal neutrality.

If the Commission proposes, therefore, to retain beer as a taxable product, it is mainly because, of the two systems of taxation envisaged, only the one affecting beer makes it possible to establish real neutrality of competition between the different national breweries and in international trade.

3. The main points of the proposed directive

Of the points in the proposed directive meriting special attention, the following would seem to be especially worthy of note:

A. *Field of application*

There are beverages on the market which, although similar to beer, are not considered as such by commercial legislation. In order not to distort the conditions of competition, however, it would be advisable to subject these products to the same tax system as is applicable to beers proper. It therefore seemed necessary to refer in the proposed directive to the definition of beer which appears in the Common Customs Tariff (Heading 22.03) and which covers a larger field and also includes these products.

B. *Classification of beers*

An examination of the situation shows that there are different commercial categories of beer on the market, it being possible to consider all beers from one category as being similar to each other.

A proposed Council directive on the alignment of national legislation on beer (within the framework of the abolition of technical obstacles to trade) provides for the harmonization of these categories at Community level.[1]

This proposed directive provides for the same categories to be retained for tax purposes as those planned under this proposal for harmonization and for one single excise duty to be applied to the beers in each of these categories, since each of the latter contains similar products.

C. *Structure of the rates*

Although the proposed directive does not deal with the level of the rates, it seemed essential that certain problems concerning the structure of the tax scale be settled.

[1] *Journal officiel* C 105, 15 August 1970.

a) Relations between the rates applicable to the different categories of beer

In the enclosed proposal for a directive the basic rate is that rate which is planned for Category I (beers of 11 to 13.5 degrees Plato).

Rates applicable to other categories are calculated from this basic rate.

Although beers which belong to different categories cannot be considered as being similar products, this does not prevent these beers from competing with each other. One must therefore prevent taxation favouring or prejudicing the beers of one category in relation to the beers of another. Taking into account the competition which exists between the different categories of beer, it seemed essential for a link to be established between the rates which are applicable to these different categories.

b) Progressive rates which favour small and medium-sized breweries

The proposed directive provides for the ultimate abolition of systems of progressive rates linked with the annual production of each brewery. These systems are used in the Benelux countries and the Federal Republic of Germany, and are essentially aimed at taxing those beers that are produced by small and average-sized breweries less heavily.

On the economic level and as regards fiscal neutrality, there does not seem to be any justification for the same product to bear a different consumer tax, depending on the size of the company in which the product is produced.

D. *Control of levying*

The excise duty systems in which the taxable product is beer (finished product), as applied at present in France and the Federal Republic of Germany, provide for controls which are essentially based on accountancy.

In order to increase the efficiency of these controls, the enclosed proposed directive provides for:

— both an obligatory monthly declaration stating in particular the beer that has left the premises of the brewery

— and an obligatory preliminary declaration of brewing.

However, the Member States remain free to adopt the practical provisions which they consider the most suitable for ensuring that the correct amount of tax is levied.

Should any problems arise in this field, the proposal enables them to be solved in accordance with a simplified and accelerated Community procedure within the framework of the Committee on Excise Duties.

E. *Payment of the excise duties*

The excise duties must be paid when the declaration stating the beer that has left the premises of the brewery is filed. This declaration must be filed before the 25th of each month. This system of declaration and payment is based on plans for the payment of VAT.

F. *Levying of other taxes*

The proposal does not provide for any indirect taxes other than the excise duty and VAT to be levied directly or indirectly by the Member States, unless these taxes do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls.

These taxes may be in the form of taxes on beer which is consumed in public houses or sold by retailers. Obviously they may not discriminate against imported beer nor be such that they will prejudice the markets for the beer and so indirectly protect a competing national beverage that is also subject to an excise duty; otherwise they will be contravening the provisions of Article 95 of the Treaty of Rome.

When aligning the rates of excise duties on beer one will no doubt have to lay down the criteria to be met by these taxes and the limits within which they can be fixed (by limiting, for example, their level or by laying down their application in the same proportion to competing beverages), so that there is no distortion of competition between the different beverages subject to one excise duty.

PROPOSED DIRECTIVE

The Council of the European Communities,

Having regard to the provisions of the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas the creation of a Common Market with characteristics similar to those of an internal market implies that the conditions of competition shall not be distorted, and that persons, goods, services and capital may move about within it without hindrance of any kind; whereas this aim has also been explicitly confirmed by the Council resolution of 22 March 1971 on the gradual achievement of Economic and Monetary Union and whereas the achievement of this aim has been recognised as being necessary for the establishment of this Union,

Whereas the excise duties that are levied on the consumption of alcohol are not always neutral from the point of view of competition and whereas the differences in tax burdens resulting from them from one Member State to another make it necessary to maintain taxes on imports and tax rebates on exports and border controls,

Whereas this situation constitutes a barrier to the free movement of, and undistorted competition in, beer between Member States and whereas it is therefore contrary to the achievement of the Common Market and Economic and Monetary Union and whereas it is therefore necessary to take measures to eliminate these obstacles,

Whereas free movement between Member States and a system ensuring that the conditions of competition are not distorted can only be achieved by means of the harmonization at Community level of excise duties which are levied on the consumption of beer; whereas it is, however, advisable to harmonize these excise duties gradually and whereas it is therefore opportune to apply this harmonization during a preliminary stage mainly to the structure of the excise duties,

Whereas the neutrality of competition, both at national and Community level, can be best ensured by a system of excise duties based on the finished product,

Whereas similar beers must be taxed in the same way; whereas on the commercial level beers are divided into categories; whereas each category contains only those beers that are similar to each other; whereas the rate that is applicable to the beers of each of these categories must therefore be the same,

Whereas the beers belonging to different categories, since they are not similar products, are often in competition with each other; whereas in order to respect the principle of fiscal neutrality the excise duty on beer must not favour the beer of one category in relation to the beers of other categories; whereas it is therefore essential for a link to be established between the rates applicable to these different categories, taking into account the competitivity existing between the different categories of beers,

Whereas in order to ensure equal conditions of competition at Community level the methods of control and levying of the excise duty must be harmonized whenever necessary between Member States,

Whereas it is important to guarantee the coordinated application of the provisions of this directive and whereas it is therefore essential to provide for an effective procedure which, whenever necessary, can enable the necessary implementing measures to be adopted; whereas the procedure of the Committee on Excise Duties is such that such measures can be adopted simply and rapidly,

Whereas to prevent any questioning of this harmonization the Member States must not be authorised to subject beer, directly or indirectly, to any indirect tax other than the harmonized excise duty and value added tax, unless these taxes do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls,

has adopted his directive:

I. Field of application and establishment of the excise duty

Article 1

The Member States shall subject beer to a harmonized excise duty in accordance with the provisions of this directive.

Article 2

For the purpose of applying this directive, the term " beer " refers to those products included under Heading 22.03 of the Common Customs Tariff.

Article 3

1. The excise duty shall become payable when beer is produced or imported.

2. In this directive, the term " importing " means the introduction onto the territory of a Member State of beer which comes from another Member State or a non-member State.

Article 4

The excise duty shall be payable when:

— the beer leaves the premises of the brewery,

— the beer is consumed on the premises of the brewery,

— beer is imported (except when it is imported with a view to immediate reexportation).

Article 5

For the purpose of applying the rates provided for in Article 6 of this directive, beer shall be divided into the following 4 categories:

Category S : beers with an original extract of 15.5 % by weight or more (according to the Plato method);

Category I : beers with an original extract of 11 to 13.5 % by weight (according to the Plato method);

Category II : beers with an original extract of 7 to 9.5 % by weight (according to the Plato method);

Category III : beers with an original extract of 1 to 4 % by weight (according to the Plato method).

Beer which falls between two categories shall be taxed according to the higher category. Beer with an original extract of less than 1 % by weight shall be taxed at the rate of category III.

Article 6

1. The basic rate of the excise duty shall be the rate of category I. This rate shall be calculated per hectoliter of beer.

2. The basic rate shall be :

— increased by 50 % for beers in category S,

— decreased by 30 % for beers in category II,

— decreased by 70 % for beers in category III.

3. The rate of the excise duty shall be the same for all beers in the same category.

Article 7

The excise duty on beer which is returned to a brewery or delivered to another brewery shall be refunded or removed.

Article 8

1. Beers that are exported from a brewery shall be exempt of excise duty.

2. Beers that are made available to people working in the breweries for their own consumption may be exempt of excise duty.

3. If beer on which the excise duty has been paid is exported, the Member States may refund the excise duty at the rate that is in force when the beer is exported.

II. Recovery of the excise duty

Article 9

Who ever should desire to establish a new brewery shall first of all inform the competent tax authorities of this intent. The Member States may subject such a venture to special conditions.

Article 10

1. Whoever should desire to produce beer shall first of all present the competent tax authorities with a declaration of brewing.

2. By the 25th of each month each brewer shall present the tax authorities with a declaration of the amount of beer in each category which, during the preceeding month, has left the premises of the brewery or arrived there, as well as the amount of beer that has been consumed within the brewery, and the destination of the beer leaving the brewery.

3. Member States shall adopt all necessary provisions for checking the declarations described in Paragraphs 1 and 2.

Article 11

1. The excise duty which is payable during one calendar month shall be paid when the declaration described in Article 10, Paragraph 2 is presented or, in the case of beer that is imported from other Member States, by the 25th of the month following importation.

2. This period for payment shall be granted without any interest or surety being demanded. However, should there be any risk of the excise duty not

being paid, the authorities may subject the granting of this payment period to the payment of a surety or demand payment of the excise duty at an earlier date.

3. As regards beers imported from non-member States, the rules governing the payment of customs duties shall also apply to the excise duty.

III. Committee on Excise Duties

Article 12

Where necessary, Community measures for the application of Articles 7 to 11 inclusive shall be determined in accordance with the procedure laid down by Council decision No . . . . of . . . . . setting up a Committee on Excise Duties.

IV. Provisions peculiar to certain Member States

Article 13

The provisions of Article 6 shall not hinder the application of the system of progressive rates linked to the volume of production, provided for:

a) in the FRG, by Article 3, Paragraph 1), Sub-Paragraph 1 of the *Biersteuergesetz* of 14 March 1952 (*Bundesgesetzblatt* I.S.149);

b) in Belgium, by Article 1 of the Act of 11 May 1967 (*Moniteur belge* of 22 December 1968), and in the Grand Duchy of Luxembourg by the ministerial regulation of 14 December 1968 (*Mémorial* No. A/65 of 30 December 1968);

c) in the Netherlands, by Article 2 of the Act of 30 May 1963 (*Staatsblad* 241).

Article 14

The provisions of Article 6 shall not prevent the FRG from subjecting beer, which is for the personal consumption of owners of agricultural companies, to the special arrangements provided for in Article 3, Paragraph 1, Sub-paragraph 2 of the *Biersteuergesetz* of 14 March1952 (*Bundesgesetzblatt* I, Page 149), amended by the Act of 23 April 1963 (*Bundesgesetzblatt* I, Page 197).

Article 15

The provisions of this directive shall not prevent the FRG from applying the system of levying the excise duty in return for a subscription, provided for in Article 16 of the *Biersteuergesetz* of 14 March 1952 (*Bundesgesetzblatt* I, Page 149), amended by the Act of 10 May 1968 (*Bundesgesetzblatt* I, page 349).

Article 16

On the proposal of the Commission, the Council shall adopt, within two years of the implementation of this directive, the necessary measures for rearranging at Community level the derogation provided for in Article 15.

Article 17

Within five years of the implementation of this directive, the Member States shall abolish the derogations provided for in Article 13.

V. Final provisions

Article 18

1. The Member States shall not subject beer, directly or indirectly, to any indirect tax other than the excise duty described in Article 1 and value added tax provided for in the Council directive (67-227 EEC) of 11 April 1967.[1]

2. The Member States may, however, subject beer to other indirect taxes provided that these do not give rise, in trade between Member States, to either taxes on imports and tax rebates on exports or border controls.

Article 19

1. On 1 January 1974 the Member States shall implement the legislative, statutory and administrative provisions which are necessary for them to conform to the provisions of this directive and shall inform the Commission of their actions.

2. As soon as this directive has been notified the Member States shall also make sure that the Commission is informed—and in ample time for it to make any comments—of any later drafts of essential provisions of a legislative, statutory or administrative nature which they intend to adopt in the area covered by this directive.

Article 20

This Directive is addressed to the Member States.

[1] *Journal officiel* 71/1967, 14 April 1967.

Proposed Council directive on system of excise duties to be applied to mixed beverages

EXPLANATORY NOTE

Beverages are subject to excise duties in the majority of Member States. Some of these excise duties are the subject of harmonization proposals; these deal with spirits, beer and wine. This harmonization will mean in some cases that the excise duty will have to be introduced into the Member States where it does not already exist. As regards excise duties on other beverages (cider, perry, mead, coffee, tea etc.), these can always be maintained until taxes on imports and tax rebates on exports are abolished. They can then be either abolished, retained as they are as long as they do not give rise to border compensations, or rearranged so that they comply with this condition.

There will then be for a certain time within the Community excise duties which are common to the Member States, and whose structures have been harmonized, and some national excise duties which may ultimately have to be abolished.

Each of these excise duties affects specified beverages and complies with precise definitions, even though they may sometimes differ from one Member State to another. But the mixtures of these beverages themselves do not necessarily comply with these definitions and could, especially when being imported, quite easily avoid all excise duties. Moreover, the harmonized excise duties on beverages do not provide for the taxing of such mixtures; the latter may therefore not be subject to taxation when they are imported (unless any alcolhol has been added). Thus a mixture of beer and sparkling wine that is imported does not comply with the common definition of either beer or sparkling wine and would therefore escape any excise duty on beer or sparkling wine if there were no taxes for such a mixture and if, as is proposed in the proposed general directive on the harmonization of consumer taxes, new excise duties could not be created in a similar event. These mixtures, however, cannot be allowed to escape the excise duty.

It is therefore proposed that methods of taxing these mixtures be drawn up. This is the aim of the enclosed directive.

The products in question are those beverages that are obtained by mixing other beverages—including at least one beverage that is subject to an excise duty. The excise duty in question may be either one of those constituting the subject of a harmonization proposal, or a national excise duty.

It is proposed that the mixtures in question be taxed in accordance with the excise duties on the various components: this method is already used in Germany for the mixture of beer and sparkling wine. In practice, moreover, the excise duty is paid on the individual beverages before they are mixed together.

When, however, the mixture is obtained by adding alcohol (irrespective of the quantity), it automatically comes under the tax system for alcohol; this is

simply a matter of confirming a rule already provided for in the proposed directive on the harmonization of excise duties on alcohol.

When the mixed beverages are imported they are subject to the same tax system as goods on the internal market; that is to say, each of the beverages contained in the mixture will be taxed separately. This presupposes, however, that the nature and amounts of each beverage in the mixture are known. When the exact composition of the product is not known it shall be taxed in accordance with the most heavily taxed beverage contained in it. The sole aim of this last solution is to enable a tax to be put on mixed beverages when the first solution is not possible. It will be up to the producer or importer to escape this by supplying sufficient facts about the beverages contained in the mixture.

Should difficulties of implementation arise in intra-Community trade, it is proposed to settle them within the framework of a Committee on Excise Duties.

Measures of practical implementation may be adopted within this Committee in accordance with a simplified and accelerated Community procedure. Statutory measures may also be adopted which prove to be necessary to enable mixtures imported from other Member States to be taxed effectively in accordance with the various beverages contained in them.

PROPOSED DIRECTIVE

The Council of the European Communities,

Having regard to the provisions of the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the Opinion of the European Parliament,

Having regard to the Opinion of the Economic and Social Committee,

Whereas the creation of a Common Market with characteristics similar to those of an internal market implies that the conditions of competition shall not be distorted, and that persons, goods, services and capital may move about within it without any hindrance of any kind; whereas this aim has also been explicitly confirmed by the Council resolution of 22 March 1971 on the gradual achievement of Economic and Monetary Union and whereas the achievement of this aim has been recognised as being necessary for the establishment of this Union,

Whereas the excise duties on alcohol, beer and wine are to be harmonized amongst the Member States and whereas other beverages are also subject to an excise duty in some Member States,

Whereas it is advisable for the tax on mixed beverages to be levied in the form of an excise duty as soon as one of the beverages in the mixture becomes subject to an excise duty, harmonized or not; whereas it is advisable to tax these beverages according to the excise duty on each of the beverages contained in the mixtures, except when the beverages contain alcohol, in which case they must be subject to the tax arrangement for alcohol; whereas it is, however, necessary to allow the Member States to tax those mixed beverages whose ingredients are not known in accordance with the excise duty on the most heavily taxed ingredient.

has adopted this directive:

Article 1

The tax system to which the mixed beverages shall be subjected by the Member States shall be determined in accordance with the provisions of this directive.

Article 2

In this directive, the term "mixed beverages" means those beverages containing at least one beverage that is subject to an excise duty.

Article 3

When mixed beverages have been obtained by adding ethyl alcohol in its natural state or contained in other products, irrespective of the quantity, they shall be subject exclusively, in accordance with the total amount of ethyl alcohol contained in them, to the excise duty on alcohol, harmonized in accordance with Council directive No . . . . . of . . . . .

Article 4

1. When mixed beverages are obtained other than by adding ethyl alcohol, they shall be subject to the excise duty on each of the beverages contained in them.

2. When the nature of the ingredients of the mixed beverages, or their exact proportions, cannot be determined, the Member States shall tax these beverages in accordance with the excise duty on the most heavily taxed ingredient.

Article 5

The Member States shall subject imported mixed beverages to the same tax system as is applied to similar national products.

Article 6

Where necessary, Community measures for implementing this directive shall be determined in accordance with the procedure laid down by Council decision No . . . . . of . . . . . setting up a Committee on Excise Duties.

Article 7

1. On 1 January 1974 the Member States shall implement the legislative, statutory and administrative provisions which are necessary for them to conform to the provisions of this directive and shall inform the Commission immediately of their actions.

2. As soon as this directive has been notified the Member States shall also make sure that the Commission is informed—and in ample time for it to present any comments—of any later drafts of essential provisions of a legislative, statutory or administrative nature which they intend to adopt in the area covered by this directive.

Article 8

This directive is addressed to the Member States.

Proposed Council decision establishing a " Committee on Excise Duties "

EXPLANATORY NOTE

The Council is presented with proposed directives on the harmonization of the structures of excise duties on alcohol, beer, wine and mixed beverages. Particularly in the field of checking and levying the excise duty, these proposals make provision for a number of common general principles. However, the methods of applying these common principles remain the responsibility of the different Member States. When these directives are being applied it may prove necessary to harmonize some of these implementing measures in order to create neutral conditions of competition between the Member States and to facilitate the free movement of goods between these Member States.

These implementing measures may have to be drawn up urgently. This could not be done if they had to be adopted in accordance with the usual procedure of the directive, which is very lengthy. Moreover, since these measures are of a purely technical nature, they are normally produced by the statutory procedure and not by the legislative one. It is therefore advisable to provide for a simplified and accelerated Community procedure for adopting these implementing measures. This proposed decision provides for the creation of a Committee on Excise Duties for this purpose.

The Committee on Excise Duties shall be able to deal with implementing measures for the directives on the harmonization of excise duties. It will therefore also be able to deal with implementing measures for directives on the harmonization of excise duties which the Commission would later submit to the Council for adoption if these directives refer to this decision.

The role of the Committee on Excise Duties is that of a regulatory committee, it being agreed that the implementing measures which will have to be drawn up by either the Commission or the Council will not be able to change in any way the principles established by the harmonization directive drawn up by the Council.

A qualified majority shall be necessary for the adoption of these implementing measures. The measures are adopted by the Commission if they are in accordance with the Opinion of the Committee or, if not, by the Council and, if there is no decision from the Council, by the Commission.

PROPOSED DECISION

The Council of the European Communities,

Having regard to the Treaty setting up the European Economic Community, especially Article 99 thereof,

Having regard to the proposal of the Committee,

Whereas the aim of harmonizing the excise duties is to create neutral conditions of competition between the Member States and to allow the free movement of goods between Member States,

Whereas for this purpose it may prove necessary for some implementing measures for directives on the harmonization of excise duties to be harmonized themselves, and whereas it would appear advisable for these measures to be established in accordance with a rapid and effective procedure,

Whereas it is therefore advisable for the Commission to adopt these measures in accordance with a procedure involving a Committee on Excise Duties,

has adopted this decision:

Article 1

1. A Committee on Excise Duties shall be set up, hereinafter called the "Committee", which shall be made up of representatives of the Member States and presided over by a representative of the Commission.

2. The Committee shall establish its own rules of procedure.

Article 2

1. The Community implementing measures for directives on the harmonization of excise duties, where these directives are to be adopted in accordance with this decision, shall be adopted in accordance with the procedure described in Paragraphs 2 and 3.

2. The representative of the Commission shall submit to the Committee a copy of draft provisions which are to be taken. The Committee shall express its Opinion on this matter within a period to be fixed by the Chairman depending on the urgency of the matter in question. The required majority shall be 12 votes, the votes of the Member States being weighted in accordance with Article 148, Paragraph 2, of the Treaty. The Chairman shall not take part in the voting.

3. *a)* The Commission shall adopt the planned provisions when they are in agreement with the Opinion of the Committee.

b) When the planned provisions do not agree with the Opinion of the Committee, or if there is no Opinion, the Commission shall immediately submit to the Council a proposal on the provisions to be adopted. The Council shall give a ruling on this by a qualified majority.

c) If, after three months of being presented with the proposal, the Council has not passed any ruling, the proposed provisions shall be adopted by the Commission.

Article 3

The Committee can examine all other questions concerning the application of these directives on the harmonization of excise duties, which may be brought up by the Chairman either on his own initiative or at the request of a Member State.

Article 4

This decision shall enter into force on 1 January 1974.

Article 5

This decision is addressed to the Member States.

SALES OFFICES

GREAT BRITAIN AND THE COMMONWEALTH

H.M. Stationery Office
P.O. Box 569
London S.E 1

UNITED STATES OF AMERICA

European Community Information Service
2100 M Street, N.W.
Suite 707
Washington, D.C., 20 037

BELGIUM

Moniteur belge — Belgisch Staatsblad
Rue de Louvain 40-42 — Leuvenseweg 40-42
1000 Bruxelles — 1000 Brussel — Tel. 12 00 26
CCP 50-80 — Postgiro 50-80

Agency:
Librairie européenne — Europese Boekhandel
Rue de la Loi 244 — Wetstraat 244
1040 Bruxelles — 1040 Brussel

GRAND DUCHY OF LUXEMBOURG

Office for official publications of the European Communities
Case postale 1003 — Luxembourg 1
and 29, rue Aldringen, Library
Tel. 4 79 41 — CCP 191-90
Compte courant bancaire: BIL 8-109/6003/200

FRANCE

Service de vente en France des publications des Communautés européennes
26, rue Desaix
75 Paris-15e — Tel. (1) 306.5100
CCP Paris 23-96

GERMANY (FR)

Verlag Bundesanzeiger
5 Köln 1 — Postfach 108 006
Tel. (0221) 21 03 48
Telex: Anzeiger Bonn 08 882 595
Postscheckkonto 834 00 Köln

ITALY

Libreria dello Stato
Piazza G. Verdi 10
00198 Roma — Tel. (6) 85 09
CCP 1/2640

Agencies:
00187 Roma — Via del Tritone 61/A e 61/B
00187 Roma — Via XX Settembre (Palazzo Ministero delle finanze)
20121 Milano — Galleria Vittorio Emanuele 3
80121 Napoli — Via Chiaia 5
50129 Firenze — Via Cavour 46/R
16121 Genova — Via XII Ottobre 172
40125 Bologna — Strada Maggiore 23/A

NETHERLANDS

Staatsdrukkerij- en uitgeverijbedrijf
Christoffel Plantijnstraat
's-Gravenhage — Tel. (070) 81 45 11
Giro 425 300

IRELAND

Stationery Office
Beggar's Bush
Dublin 4

SWITZERLAND

Librairie Payot
6, rue Grenus
1211 Genève
CCP 12-236 Genève

SWEDEN

Librairie C.E. Fritze
2, Fredsgatan
Stockholm 16
Post Giro 193, Bank Giro 73/4015

SPAIN

Libreria Mundi-Prensa
Castello, 37
Madrid 1

OTHER COUNTRIES

Sales Office for official publications of the European Communities
Case postale 1003 — Luxembourg 1
Tel. 4 79 41 — CCP 191-90
Compte courant bancaire: BIL 8-109/6003/200

Subscription and single copy prices in 1972

	FB	FF	DM	Lit.	Fl.
	Annual supscription				
Bulletin of the European Communities (11 numbers + Index)	300.–	33.–	22.–	3 750	22.–
Supplement to the Bulletin of the European Communities (7/8 issues per annum)	120.–	13.–	9.–	1 500	9.–
Bulletin + Supplement + Index	420.–	47.–	31.–	5 250	30.50
	Price per single copy				
Bulletin of the European Communities	30.–	3.50	2.50	400	2.50
Supplement of the Bulletin of the European Communities					
① 1-32 pages	10.–	1.10	0.75	120	0.75
② 33-64 pages	20.–	2.50	1.50	250	1.50
③ 65 or more pages	30.–	3.50	2.50	400	2.50

NB. Subscriptions are annual and run from 1 January to 31 December of each year;

— Payment to be made only to the agents in the countries listed on page 3 of the cover (see below for reduced-rate subscriptions);

— These are surface mail rates; for air subscription rates, please apply to the agents;

— A 50 % reduction is obtainable for subscriptions by students, teachers, workers' and employers' organizations, study and research centres. Applications should be made to the Office for official publications, Case postale 1003, Luxembourg 1.

4001

OFFICE FOR OFFICIAL PUBLICATIONS OF THE EUROPEAN COMMUNITIES
Case postale 1003 — Luxembourg 1

5741