



The Brewers of Europe
Secretary General

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Brussels, 9 July 2020

Subject: Council Directive amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

Dear Minister and Chair of the ECOFIN,

The Brewers of Europe takes note of the provisional endorsement at COREPER level by EU Member State ambassadors on 24 June of the amendments to the EU excise duty structures Directive, and the intention for the text to be adopted by the Council by written procedure.

Europe's brewers call for a sustainable tax regime that recognises beer's positive impact throughout the value chain, from grain to glass. We therefore welcome the proposal in Article 5 to increase, from 2.8 to 3.5% abv, the threshold below which lower strength beer can benefit from a reduced rate of excise duty. To quote the Council text, this will encourage the development of lower strength beer and provides a tangible incentive for brewers to be innovative and create new lower strength products, promoting greater consumer choice.

However, we continue to oppose the amendment to Article 3(1), which states that ingredients added after fermentation are also to be taken into account for the purpose of measuring the degree Plato. The proposal should be amended as, if adopted and implemented, it would oblige around half of the Member States to unfairly over-tax flavoured beers.

The excise duty Directives lay down EU rules for taxing alcohol consumed, whilst Directive 92/83/EEC has as an objective to increase harmonisation. By their nature, any sugars added after fermentation have zero impact on the alcohol content of flavoured beers. By proposing to also include ingredients added after fermentation in the excise calculation under a Plato system, two beers of the same alcohol content - one a regular beer, one a flavoured beer - even if produced by a brewery of the same size, in the same country, would pay different rates of excise duty. It is no longer solely the alcohol being taxed, discriminating against the flavoured beer and inhibiting harmonisation.

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The Brewers of Europe has been consistent, ever since the publication of the Commission's proposal, in highlighting the inconsistency of the amendment with the underlying principles and purposes of the Directive. The amended text is in total contradiction to, and completely disregards, the [17 May 2018 CJEU ruling in the Case of Dyrektor Izby Celnej w Poznaniu v Kompania Piwowarska S.A. w Poznaniu \(Case C-30/17\)](#), which was specifically intended to clarify how Plato must be applied.

It stated that the ABV and Plato measurement systems for taxing beer must produce similar results, following the Advocate General's Opinion that there should be a "*concordance between those ratios [ABV and Plato]*". The proposal misses an opportunity to clarify and harmonise the differing interpretations of the Plato system by simply and uncontroversially following the Court ruling.

The essence of the Plato scale, as found by the Court, is to maintain the relationship between 1g of dry extract and 100g of original wort. It does this by using the Balling formula, which reflects unchallenged scientific observations. An amendment to the Directive cannot destroy the Plato scale or overrule the scientific laws upon which it is based, since the Plato scale would have no relevance if the science underlying it is undermined.

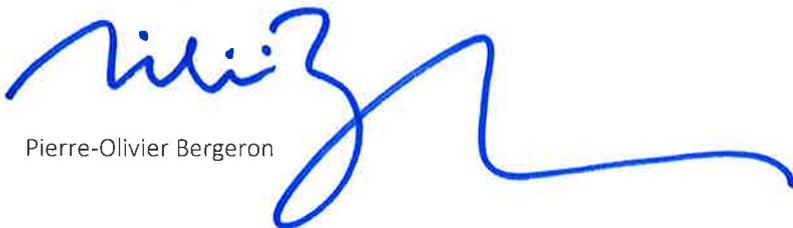
Having conducted laboratory testing and shared the methodology with the European Commission, The Brewers of Europe also contests the justification laid down in the provisional text that practical difficulties linked to the identification and measurement of the dry extract of the original wort of the finished product make the proposed amendment necessary. The Brewers of Europe puts this methodology at the disposal of all Member States.

The brewing sector in Europe has been hit hard by COVID-19. With one third of the beer, representing two thirds of the value, usually sold through bars, pubs, cafés and restaurants, the complete shutdown of the hospitality sector has been catastrophic. Brewers lost their most valuable, and for many their only, route to market. The bans on most other social gatherings and events ensured that there was no increase in retail sales to compensate for the elimination of hospitality sales. At times like this, policymakers need to ensure they are supporting European beer producers, not hindering them. The increase in the lower alcohol abv threshold is the right type of measure in this context. We certainly encourage the Council to adopt this provision and then, most importantly, request that individual Member States introduce the new provisions in their national excise legislation from January 2022.

On the other hand, the provisional Plato measurement rules are discriminatory and, citing an unsubstantiated practical challenge to measurement, increase the tax burden on certain beers. The basis on which the ECJ reached its ruling in 2018 has not changed. The proposal is discriminatory and completely contradictory to the harmonisation objectives of the Directives, ensuring neither a correct nor a harmonised application of excise duty for beer. To ensure concordance, harmonisation and fair treatment, the proposal must be amended, so that ingredients of beer added after fermentation should not be taken into account for the purposes of measuring the degree Plato.

Thank you for your consideration of our position.

Yours sincerely,



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