
Taxing Drinking and Smoking in Europe

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1. Introduction

Back in 1989, Han Kogels wrote a contribution in the papers offered to Jan Christiaanse to celebrate the 25th anniversary of his professorship at the Erasmus University in Rotterdam. The title was clear enough for any English-speaking reader: “Harmonisatie van Indirecte Belastingen in Europa”.² The article contained a survey of the major problems confronting the ambitious programme of abolishing all border controls in the internal market by 1 January 1993: the systems proposed for the abolition of border controls for intra-Community supplies in VAT, the introduction of common minimum tariffs for VAT and, last but not least, the harmonization of the rates for the major excise products.

At the occasion of the retirement from his professorship now almost a quarter of a century later, I felt that it would be a nice exercise to find out how much progress there has been made in rate harmonization in the area of excises and what the prospects are to abolish the most significant distortions in competition between these excise products that have their cause in rate differentials. The study will limit itself to two major excise products: tobacco and alcoholic beverages. Mineral oil, which was included in Kogel’s analysis, is excluded because the tax structure has been changed substantially³ with many complications. This change would merit a contribution of its own.⁴ Instead of the traditional excises on mineral oil per weight or volume, the scope of the tax has been changed into a more general tax on energy products and electricity. Limiting the contribution to taxing of drinking and smoking has its own complications in assessing the progress, because the legislative framework has also been changed by a series of excise directives in 1992.⁵ Also, at the time there were only 12

1. Academic Chairman, IBFD, Amsterdam; Director European Tax College.

2. Kogels, H. K., *Harmonisatie van Indirecte Belastingen in Europa, in Belastingbeschouwingen aangeboden aan Prof. Dr. J. H. Christiaanse*, Deventer: Kluwer, 1989, pp. 291-312.

3. Council Directive 2003/96 of 27.10.2003 restructuring the Community Framework for the taxation of energy products and electricity.

4. See the complexity of the structure in Excise Duty Tables, Part II Energy Products and Electricity.

5. The basic directive was Council Directive 92/12 EEC of 25.02.1992, on the general arrangements for products subject to excise duty and the holding, movement and

Member States, while now there are 27 and the new Member States that joined in 2005 have quite a different excise structure from the original 12.

2. Excises on manufactured tobacco

2.1. Situation in 1989

In the Kogels contribution, the situation in the Member States for tobacco was quite simple.⁶ Three Member States applied a combined tax burden of VAT and excises at a very high level: Denmark at ECU 2.80 per pack of cigarettes, and Ireland and the United Kingdom at about ECU 1.80. Six Member States applied a rather low combined tax burden: France ECU 0.55, Greece ECU 0.30, Italy, ECU 0.70, Luxembourg ECU 0.65, Spain ECU 0.10 and Portugal ECU 0.50. Three Member States were in the middle: Belgium ECU 0.90, Germany ECU 1.25 and the Netherlands ECU 1.00. In view of the huge discrepancy between the tariffs and the fact that rate harmonization would need unanimous approval of all 12 Member States, Kogels proposed to temporarily introduce three zones of harmonized excise rates: Denmark, Ireland and the UK in a high tax zone, Belgium, the Netherlands and Germany in a middle tax zone and southern Europe in a low tax zone.⁷ At that time the three zones could easily be distinguished on a geographical basis.

2.2. Situation in 2011: Deceptive harmonization of tax burdens

What about the situation today? Since Kogel's analysis, excise duties on tobacco have been subject to several directives.⁸ Prima facie, looking to the relative tax burdens on cigarettes a kind of remarkable rate harmoniza-

monitoring of such products, which has been repealed by Council Directive 2008/118/EC of 16.12.2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC.

6. Kogels, *op. cit.*, p. 306, scheme 9.

7. Kogels, *op. cit.*, p. 306.

8. Council Directive 92/79 of 19.10.1992 on the approximation of taxes on cigarettes; Council Directive 92/80 EEC of 19.09.1992 on the approximation of taxes on manufactured tobacco other than cigarettes, Council Directive 95/59 of 27 November 1995 on taxes other than turn over taxes which affect the consumption of manufactured tobacco, and Council Directive 2010/12/EU of 16.02.2010 amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco and Directive 2008/118/EC.

tion has been taking place in all 27 Member States.⁹ The total tax burden (specific excise, ad valorem excise and VAT) as a percentage of the tax-included retail selling price¹⁰ varied from a low of 70.26% in Luxembourg to a high of 90.14% in the UK, while all Member States, except Sweden, satisfied the minimum harmonization requirement that the total of the specific excise and the ad valorem excise amount to at least 57% of the tax-included retail selling price.¹¹

2.3. The real “unharmonized” picture

That “harmonized” picture is quite misleading, however. The true picture of the state of affairs in the internal cigarette market becomes much clearer when we look to the excise yield in euro per thousand cigarettes. It is immediately clear that, except for the old Member States, the relative positions have barely moved since 1989.¹² We still have three different areas of tax burdens. Ireland and the UK are still the leaders on excise yield, far ahead of the others, with EUR 260.71 and EUR 230.33 per 1,000 cigarettes respectively. Then there is a group with rather low excise yields below EUR 100 per 1,000 cigarettes, which includes all former communist Member States with Lithuania recording the lowest yield (EUR 65.24 per 1,000 cigarettes) and Slovakia the highest (EUR 86.24 per 1,000 cigarettes). In the middle there is the group of all the older Member States, plus Cyprus and Malta, of which Greece has the lowest yield (EUR 101.76 per 1,000 cigarettes) and France the highest (EUR 173.47 per 1,000 cigarettes). It is clear that with the exception of Ireland and the UK, the excise yield per 1,000 cigarettes has converged substantially among the 12 old Member States. While the differential (including VAT¹³) was 1:13 between Spain and Germany in 1989, it had been reduced to 1:1.72 between Greece and France in 2011. The overall differential in excise yield among the EU 27 (1:4 between Ireland and Latvia) was also substantially less than among the EU 12 (1:28 between Spain and Denmark).

9. See Excise Duty Tables Part III, Manufactured Tobacco, REF 1032 rev. 01.03.2011, TAXUD-C2-TABLES@ec.europa.eu, Cigarettes p. 6 in Annex I.

10. TIRSP.

11. The Swedish situation is very specific, because Sweden imposes on cigarettes the second highest specific excise of the EU (55.49% of TIRSP) and by far the lowest ad valorem excise (1%). As a consequence, the tax burden expressed in a percentage of TIRSP is easily eroded when the price of cigarettes increases.

12. See Excise Duty Tables, Part III, Manufactured Tobacco, REF 1032, 01.03.2011, TAXUD-C2-TABLES@ec.europa.eu, Cigarettes excise yields, table on p. 9 in Annex II.

13. The difference in VAT rates is minimal, however, compared to the difference in excise rates.

2.4. The importance of price differences

The tax differentials are not so much the result of differences in proportional tax burdens, but reflect substantial price differences between the Member States. These price differences are illustrated by the difference between the excise yield and the price including VAT. In Ireland this difference per 1,000 cigarettes is EUR 162.79, in France and Sweden, two average tax countries, this difference is EUR 96.53 and EUR 108.04 respectively, in Bulgaria and Latvia the difference is EUR 34.98 and EUR 42.79 respectively. This clearly indicates that the market for cigarettes has not yet been integrated and that this lack of integration is not only due to the relative tax burden on cigarettes, but also on the price differences and the resulting tax differentials as expressed in absolute amounts per volume. It is a well-known phenomenon that in countries where cigarettes are low-priced, the excise per volume is of course much lower even when the ad valorem excise is applied at rates that are similar to those of countries with higher-priced cigarettes.¹⁴

2.5. The importance of specific excises

Tax does play a role, however, because of the very different structure of the excise tax in the overall tax burden. The big difference is whether or not cigarettes are subject to a substantial specific excise. Take two countries with the same overall tax burden: Belgium (76.81% of TIRSP) and Sweden (76.49% of TIRSP). Belgium applies a specific excise of EUR 15.92 per 1,000 cigarettes, but Sweden a whopping EUR 137.77 per 1,000 cigarettes. That means that regardless of the price of the cigarettes each single cigarette in Sweden bears a tax burden of EUR 0.13777, while in Belgium the burden amounts to 0.01592. The corresponding rates for the ad valorem excise are 52.41 of TIRSP in Belgium and 1% of TIRSP in Sweden. The result is that cheap cigarettes are bearing a much higher tax burden in Sweden than in Belgium, while for cigarettes in the high end of the market the tax burden in Belgium is substantially higher. It means that the same brands of cigarettes are subject to quite substantial tax differences within the same market. It is interesting to note that there are six Member States with a specific excise of EUR 20 or less per 1,000 cigarettes.¹⁵ These Mem-

14. That was clearly illustrated in the case of excises on alcohol, in Case 171/78, *Commission v. Denmark*, 27.02.1980, at No. 27.

15. Belgium (15.92), Greece (19.65), Spain, (12.7), Finland (17.5), France (19.59), Italy (7.67), while Slovenia is just exceeding that threshold with an excise of EUR 20.40 per 1,000 cigarettes.

ber States put the bulk of the excise tax burden on the international brands of the more expensive cigarettes. This shift in tax burden is particularly significant because, with exception of Finland, all these Member States either have a significant domestic tobacco crop grown for manufacturing cigarettes and/or a national cigarette brand at the lower end of the market. In the UK, where international expensive brands are being manufactured, the specific excise is the highest in the EU 27 with EUR 178.6 per 1,000 cigarettes representing 63.20% of the total tax burden on cigarettes, thereby effectively guaranteeing that “Gauloises” are shut out from the British market. The final conclusion is that in 2011 national excise structures still matter to protect the national product and this in spite of decisions of the ECJ.¹⁶

2.6. Four different markets for cigarettes

Looking at the price levels for cigarettes including taxes one could state that basically we have now four different markets in the EU. Ireland and the UK are a separate market characterized by an extremely high price level. Hence an enormous pressure to smuggle cigarettes into the islands. The older Member States on the Continent fall into two zones: the Iberian peninsula, Greece, joined by newcomers Malta and Cyprus with relatively low prices for cigarettes and all the rest with relatively high prices, whereby Luxembourg is sucking sales from its neighbours and Austria is attempting to protect its market against a flood of cheaper cigarettes from Eastern Europe. Finally, there are the former communist countries which have low prices, because their overall price level is much lower than in the rest of Europe and cigarettes are no exception to this generally low price level.

2.7. Disparity in cigarillos

With respect to cigars and cigarillos, the situation is even less harmonized because of a substantial divergence in overall tax burdens. A large group of Member States is not applying an ad valorem excise but only a specific excise with considerable differences in rates: EUR 261.066 per 1,000 items in Ireland against EUR 16.90 per 1,000 items in Malta. Another large group is only applying an ad valorem excise with a high rate of 34% in Greece

16. In Case C-302/00, *Commission v. France*, ECR I-2055 (2002), the different tax rates between dark and light tobacco cigarettes were specifically held to protect the national product and therefore to violate Art. 95/1 of the EC Treaty.

and a low rate of 5% in the Netherlands and Slovenia. Finally, only Denmark and Germany are applying both types of excise taxes.

3. Excises on alcohol

3.1. The situation in 1989

For the excises on alcohol a distinction is made between beer, wine, other alcoholic beverages and ethyl-alcohol for multiple use. Back in 1989, the situation with respect to alcoholic beverages was the same as that for tobacco as far as the top-rate countries were concerned. Denmark, Ireland and the UK were taxing the three categories of alcoholic beverages at the level of another planet: at a ratio to the mathematical European average proposed by the European Commission of (8-14):1 for wine, (3.5-6):1 for beer and (2-2.5):1 for other alcoholic beverages. The idea that drinking booze was sinful and had to be punished had apparently utterly penetrated the British Isles. The other Member States were manipulating the excise system to protect their domestic industries. With the exception of Germany and Luxembourg, which were applying excises close to the proposed European average of ECU 0.18 per hectolitre, excises in the wine-producing countries were almost non-existent.¹⁷ With respect to beer, Belgium, the Netherlands and Italy were also applying excises close to the proposed European average of ECU 0.18 per hectolitre, while all other Member States were applying rather symbolic excises of ECU 0.1 per hectolitre or less.¹⁸ For stronger alcoholic drinks the six original Member States minus Italy were also taxing very closely to the European average of ECU 3.9 per bottle. Italy, however, and the freshly acceded Member States (Greece, Portugal and Spain) were taxing at less than ECU 1 per bottle.¹⁹ Thus the situation was far from harmonious.

3.2. 2011: The excises on beer

Today the situation is much more complicated than in the simplified analysis made by Han Kogels more than 20 years ago, because of the two excise

17. Kogels, *op. cit.*, p. 307, scheme 10.

18. Kogels, *op. cit.*, p. 308, scheme 11.

19. Kogels, *op. cit.*, p. 309, scheme 12.

directives²⁰ of 19.10.1992. In applying excise duties for beer most Member States use one of two alternative systems. Either excises are levied as a specific amount per degree Plato (°P) per hectolitre, or the excise is levied according to the effective percentage of alcohol per hectolitre. Only Portugal combines both systems. Taxation per °P taxes beer on a scale of clarity whereby the °P and the tax rate increase with the darkness of the beer. Light lager beer has a low score of °P, dark stout has a high degree Plato. The two tax scales are not entirely comparable, but basically the degree of alcohol also increases with the Plato scale and therefore the overall tendencies in the tax scales are more or less comparable.

The current situation is that for beer excises the EU market is segmented into four categories.²¹ Like in 1989, Ireland and the UK are still champions of virtue subjecting each hectolitre per degree of alcohol to a tax of EUR 15.71 and 19.96 respectively. However, they have been joined by the new Member States Finland (EUR 26.10) and Sweden (EUR 16.29), while Denmark has lost its position of virtue. These top Member States are followed by the Netherlands, Spain and Portugal, three Member States which use the °P scale within a wide range of EUR 5.50 per hectolitre to EUR 40.82 per hectolitre. Then there is a third group with moderate taxation²² ranging from EUR 3.07 to EUR 10 per hectolitre and finally 14 Member States with extremely low excise rates ranging from EUR 0.787 per hectolitre to EUR 2.71 per hectolitre.²³

There are special regimes for small breweries with limited production outputs of less than 200,000 hectolitre per year, which are intensively used in countries with an old brewing tradition.²⁴ This makes it possible for small or local brands to have their own excise regime. They are not taken into consideration here because their intra-Community trading is rather limited. There is also a special regime for low-alcohol beer, not exceeding 2.8%

20. Council Directive 92/83 EEC of 19.10.1992 on the harmonisation of the structures of excise duties and Council Directive 92/84 EEC of 19.10.1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages.

21. See table composed on the basis of Excise Duty Tables, Part I Alcoholic Beverages, REF 1.032, 01.01.2011, TAXUD-C2-TABLES@ec.europa.eu, Beer p. 7-9, Annex III.

22. Latvia (3.07), Cyprus (4.78), Estonia (5.43), Denmark (6.83), Slovenia (10) and Portugal (6.96 in addition to a levy per °P).

23. Germany (0.787), Romania (0.748), Luxembourg (0.793), Czech Republic (1.31), Malta (1.5), Slovakia (1.65), Belgium (1.71), Poland (1.98), Austria (2), Hungary (2.31), Italy (2.35), Lithuania (2.46), Greece (2.6) and France (2.71), Excise Duty Tables, Part I Alcoholic Beverages, TAXUD-C2-TABLES@ec.europa.eu, 01.01 2011.

24. Belgium, Czech Republic, Denmark, Germany, France, Luxembourg, the Netherlands, Austria, but also Portugal and Finland.

degrees in alcohol. Only a limited number of Member States tax this category of low-alcohol beer.

3.3. 2011: The excises on wine

As to wine there are two main tax schedules for still wine and sparkling wine.²⁵ A majority (15)²⁶ of the 27 Member States does not impose any duty on still wine and a substantial minority (11) does not tax sparkling wine.²⁷ The minimum rate in the EU for both categories of wine still stands at EUR 0. The champions of virtue for still wine are again Finland (EUR 283 per hectolitre), Ireland (EUR 262.24 and 380.52), Sweden (EUR 211.80) and the UK (EUR 259.33). Then there is a disparate group of Member States applying a wide-ranging variety of tax rates²⁸ from EUR 40.13 per hectolitre in Poland to EUR 123.45 per hectolitre in Denmark. France is closing the ranks with a low, rather symbolic excise of EUR 3.55 per hectolitre, which took effect as of 01.01.2011.

For sparkling wine the picture is somewhat different. Basically there are three distinct categories of Member States: those which do not tax sparkling wine,²⁹ a group of former communist states which apply the same rate for still wine and sparkling wine,³⁰ and those which apply substantially higher rates than for still wine, with Finland, Ireland, Sweden and the UK in the role of the usual champions, joined this time by the Netherlands.³¹ France closes the ranks with a symbolic tax of EUR 8.78 per hectolitre.

25. See graphs, Excise Duty Tables, Part I Alcoholic Beverages, TAXUD-C2-TABLES@ec.europa.eu, p. 12 excise duty rate still wine and excise duty rate sparkling wine, Annexes IV and V.

26. Bulgaria, Czech Republic, Germany, Greece, Spain, Italy, Cyprus, Luxembourg, Hungary, Malta, Austria, Portugal, Romania, Slovenia and Slovakia.

27. Bulgaria, Greece, Spain, Italy, Cyprus, Luxembourg, Malta, Austria, Portugal, Romania and Slovenia.

28. Denmark (EUR 123.45 per hectolitre), Estonia (73.11), the Netherlands (70.56), Latvia (63.45), Lithuania (57.34), Belgium (47.0998) and Poland (40.13).

29. See supra note 25.

30. Estonia (73.11), Latvia (63.45), Lithuania (57.34), Poland (40.13).

31. Ireland (524.48 per hectolitre), UK (332.18), Finland (283), the Netherlands (240.58), Sweden (211.80), followed at some distance by Belgium (161.13), Denmark (123.5-164.51), Germany (136), Czech Republic (95.82), Slovakia (79.66), Hungary (52.04) and Romania (34.05).

3.4. Protection of the domestic product?

One question that of course excites excise watchers is whether Member States attempt to protect their domestic industries by the structure of their national excises of beer, still wine and sparkling wine. About a quarter of a century ago this was a question that kept the legal service of the Commission quite busy.³² What is clear from the structure of the excise duties on beer and wine is that on the one hand, wine-producing countries generally do not tax their own products, and on the other, they do not attempt to keep beer out of their market by imposing prohibitive excises. There are two exceptions. Spain and Portugal apply quite substantial excise duties on high °P beer.³³

The reverse question is whether beer-brewing countries are preventing wine from flowing into their national markets. The specific amounts of taxes per hectolitre of still wine or sparkling wine imposed by Europe's virtuous champions are still impressive, and Ireland and the UK are of course major beer-brewing powers. So the structure on which the UK was condemned more than a quarter of a century ago is still in existence. Other beer-brewing powers like Belgium and Denmark tend to be more moderate in their rates in wine and they also do tax beer, but calculated per hectolitre wine undoubtedly is subject to a heavier burden. The major question here is whether the heavier burden makes any difference in competition because of the price difference between the products. Finally, other brewing powers like Austria, the Czech Republic, France and Germany do not tax wine or tax it only in a symbolic way, so that the only thing that counts is the real market price.

The conclusion is that according to the rules of the TFEU, there still may be cases of prohibited protection of the domestic product, but since the beer and wine cases we now have a tax structure imposed by the excise directives which all Member States are following. The problem seems to be that the directives leave too much discretion to the Member States, so

32. See the so-called beer and wine cases, Case 170/78, *Commission v. United Kingdom*, 27.02.1980, and 12.07.1983 in which the UK was condemned because its excise structure was protecting its domestic beer market to the detriment of imported cheap wines, but see also Case 356/85, *Commission v. Belgium*, 09.07.1987 in which it was decided that the VAT rate differential between beer and wine had no impact because there was no effective competition between beer and wine due to the substantial price differences.

33. Spain levying EUR 13.56 per hectolitre on beer in excess of 19 °P and Portugal EUR 24.45 per hectolitre on beer in excess of 15 °P.

that indirectly and without contravening secondary EU law, they can still protect their domestic products.

3.5. 2011: Excises on ethyl alcohol

Finally, there are the excises on ethyl alcohol, which are important for the manufacturing of strong alcoholic drinks. All Member States apply substantial excises to ethyl alcohol³⁴ because of the minimum rates imposed by Art. 3.1 of Directive 92/84 on the excise duty on alcohol and alcoholic beverages. There are two minimum levels: one of EUR 550 per hectolitre of pure alcohol and another of EUR 1,000 per hectolitre of pure alcohol. The first minimum applies to Member States which at the time of the directive, or at the time of joining the EU, were applying a specific excise of less than EUR 1,000 per hectolitre and the second minimum applies to Member States which at that time were applying an excise of more than EUR 1,000 per hectolitre. The same article provides that the first category of Member States may not reduce their excises, i.e. they can only increase their excises, while the second category of Member States may reduce their excise, but not below a floor of EUR 1,000 per hectolitre.

It is difficult to find a pattern in the excise structure for ethyl alcohol, but it is striking that many former communist countries, with the exception of Bulgaria and Romania, impose an excise somewhat in excess of the EUR 1,000 minimum.³⁵ Mediterranean Member States, with the exception of Greece and Malta, tend to apply lower taxes.³⁶ For all the other Member States, rates vary from single³⁷ to double,³⁸ with the exception of the usual virtuous champions Ireland,³⁹ Finland,⁴⁰ Sweden⁴¹ and the UK.⁴² Because the excise is calculated per hectolitre of pure alcohol it increases the tax burden with the degrees of alcohol. Because the excise is specific it puts

34. Excise Duty Tables, Part I Alcoholic Beverages, TAXUD-C2-TABLES@ec.europa.eu, p. XX, excise duty on ethyl alcohol, Annex VI.

35. Bulgaria (562.64), Czech Republic (1167.08), Estonia (1418), Latvia (1254.94), Lithuania (1278.96), Hungary (1008.22), Poland (1259.84), Romania (750), Slovenia (1000) and Slovakia (1080).

36. Spain (830.25), Italy (800.01), Cyprus (598.01), Portugal (1009.36). Greece, however, has drastically increased its rate to EUR 2,450 as of 01.07.2010, while Malta applies a substantial rate of EUR 1,250.

37. Austria (EUR 1,000).

38. Denmark (EUR 2,012.80).

39. EUR 3,113 per hectolitre pure alcohol.

40. EUR 3,940 per hectolitre pure alcohol.

41. EUR 4,921.09 per hectolitre pure alcohol.

42. EUR 2,743.19 per hectolitre pure alcohol.