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EXPLANATORY NOTES
ON
THE TOTAL ANNUAL PRODUCTION THRESHOLD APPLICABLE TO
INDEPENDENT SMALL PRODUCERS OF ALCOHOLIC BEVERAGES

(Commission Implementing Regulation (EU) 2021/2266 of 17 December 2021 laying down rules for the application of Council Directive 92/83/EEC as regards the certification and self-certification of independent small producers of alcoholic beverages for excise duty purposes)

Disclaimer: These explanatory notes are not legally binding and only contain practical and informal guidance on the basis of the views of the Commission's Directorate General for Taxation and Customs Union.

IMPORTANT PRELIMINARY REMARKS

These Explanatory Notes aim at providing a better understanding of EU excise duty legislation concerning the criteria of the annual production threshold applicable to independent small producers of alcoholic beverages.

The Explanatory Notes only serve as general guidance and their content does not have any legal force and does not bind the Commission in any way. The Notes provide a practical and informal guidance based on the views of DG TAXUD.

The Explanatory Notes are not exhaustive. It means that although the Notes provide detailed information on a given issue, there may be elements that are not included in this document.

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PART 1

GENERAL OBSERVATIONS

1.1. Background

Council Directive 92/83/EEC¹, as amended by Council Directive 2020/1151², on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages sets out provisions for classifying alcohol and alcoholic beverages, the tax structures for each category and reduced excise duty rates for specific products. Directive 92/83/EEC also provides for reduced rates, subject to certain conditions, for independent small producers of alcoholic beverages³. That possibility allows Member States to support the competitiveness of independent small producers without distorting competition in the internal market.

The legislation contains individual provisions for independent small producers for each category of alcoholic beverages. Each provision sets out qualitative conditions⁴ as well as a quantitative condition (annual production threshold) for each category of product. Those conditions are cumulative and should be assessed together.

To implement the recent amendments to Directive 92/83/EEC, the Commission adopted Implementing Regulation (EU) 2021/2266⁵ as regards the certification and self-certification of independent small producers of alcoholic beverages. The latter lays down the form of the certificate to be issued by Member States authorities as well as the references of certified and self-certified independent small producers in the administrative documents for the movement of alcoholic beverages. Both the certificate and the self-certification refer to the total annual production of the independent small producers.

1.2. Purpose of those Notes regarding the total annual production

Regarding the total annual production applicable to independent small producers of alcoholic beverages, the Notes clarify the production data to be declared in the applicable certificate or self-certification in view of a harmonised implementation across all the Member States.

¹ Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

² Council Directive (EU) 2020/1151 of 29 July 2020 amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

³ For abbreviation purposes, the term “independent small producer” jointly refers to independent small breweries, independent small producers of wine, independent small producers of fermented beverages other than wine and beer, independent small producers of intermediate products and independent small distilleries, as defined in Articles 4, 9a, 13a, 18a and 22 respectively of Directive 92/83/EEC.

⁴ The qualitative conditions are the legal and economic independence of the producer, the use of premises situated physically apart, and no operation under license.

⁵ Commission Implementing Regulation (EU) 2021/2266 of 17 December 2021 laying down rules for the application of Council Directive 92/83/EEC as regards the certification and self-certification of independent small producers of alcoholic beverages for excise duty purposes.

PART 2

TOTAL ANNUAL PRODUCTION THRESHOLD APPLICABLE TO INDEPENDENT SMALL PRODUCERS

2.1. General approach

In order to be eligible for a reduced rate, the total annual production of an independent small producer cannot exceed the thresholds as defined by the Member State of consumption in accordance with the thresholds set down by Directive 92/83/EEC.

The quantity threshold independently applies to each category of alcoholic beverages. For example, an independent small brewery can produce spirits above the applicable threshold and still be eligible to apply reduced tax rates for the beer it produces, if it fulfils all relevant criteria.

2.2. Definition of the total annual production

For the application of the Implementing Regulation (EU) 2021/2266 as regards the certification and self-certification of independent small producers of alcoholic beverages, the total annual production of a specific type of alcoholic beverage will be considered as the total production of the referred type of alcoholic beverage produced during **the previous calendar year** by an independent small producer.

However, Member States may be entitled in duly justified circumstances to refuse granting the reduced rate to a producer if the outcome during the given year exceeds the threshold.

2.3. Particular cases

2.3.1. Independent small producers of wine

In the case of independent small wine producers, the total annual production of wine will be considered as the average annual production over at least three consecutive wine years.

2.3.2. Start-up producers

In the case of start-up producers, the total annual production of a specific type of alcoholic beverage applicable to the first production year will be the estimated production of the specific type of alcoholic beverage as declared by the independent small producer.

2.4. Practical examples

2.4.1. Start-up producers

Company A, a producer of beer that has been established in year X, fulfils all qualitative conditions to be considered as an independent small brewery and it estimates a production outcome of beer of 60.000 hl for that first calendar year X.

The Member State of establishment should certify or allow self-certification to Company A as it fulfils all qualitative conditions and the estimated total annual production is below the threshold referred in Article 4 of Directive 92/83/EEC (200.000 hl).

Company A is eligible to be considered as an independent small brewery in the Member State of establishment and the quantity to be declared in the certificate or self-certification is 60.000 hl for all year X.

2.4.2. Production above the applicable threshold in the Member State of establishment

Company B is a producer of intermediate products which fulfils all qualitative conditions to be considered as an independent small producer of intermediate products.

At the end of year X, Company B produced 200 hl of intermediate products and the threshold of the Member State of establishment for that type of products is 150 hl.

The Member State of establishment should certify or allow self-certification to Company B as it fulfils all qualitative conditions and the total annual production is below the threshold referred to in Article 18a of Directive 92/83/EEC (250 hl).

The quantity to be declared in the certificate or self-certification for year X+1 is 200 hl. Irrespective of the fact that Company B will not be able to benefit from reduced duty rates in its Member State of establishment, Company B will still be able to benefit from reduced rates in those Member States where the applicable threshold is over 200 hl and not above 250 hl.

2.4.3. Production above the applicable threshold in the Member State of consumption

Company C is a producer of ethyl alcohol which fulfils all qualitative conditions to be considered as an independent small distillery.

At the end of year X, Company C produced 8 hl of ethyl alcohol and the threshold of the Member State of establishment for that type of products is 10 hl.

The Member State of establishment should certify or allow self-certification to Company C as it fulfils all qualitative conditions and the total annual production is below the threshold referred to in Article 22 of Directive 92/83/EEC for that Member State (10 hl).

The quantity to be declared in the certificate or self-certification for year X+1 is 8 hl. In year X+1, Company C will be able to benefit from reduced rates in its Member State of

establishment. However, Company C will not be able to benefit of reduced duty rates in a Member State of consumption where the threshold for that type of product is lower than 8 hl (e.g. a threshold of 5 hl).

2.4.4. Final production above the applicable threshold

Company D is a producer of cider which fulfils all qualitative conditions to be considered as an independent small producer of other fermented beverages. Company D is established in a Member State where the production threshold to be considered as an independent small producer is 10.000 hl.

At the end of year X, Company D produced 8.000 hl of cider. The Member State of establishment should certify or allow self-certification to Company D as it fulfils all qualitative conditions and the total annual production is below the threshold referred to in Article 13a of Directive 92/83/EEC for that Member State (15.000 hl).

The quantity declared in the certificate or self-certification for year X+1 was 8.000 hl and Company D benefited from reduced rates during year X+1.

At the end of year X+1, Company D produced 12.000 hl of cider (above the applicable threshold of the Member State of establishment).

For year X+2, Company D will not be eligible for a reduced rate as an independent small producer of cider, as its cider production during the previous calendar year (year X+1) was above the applicable threshold in the Member State of establishment.

That does not affect its eligibility as independent small producer in other Member States where the applicable threshold is over 12.000 hl and not above 15.000 hl.