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Private cross-border acquisition of alcoholic beverages – Public consultation on Directive 2008/118/EC

Explaining Directive 2008/118/EC's negative impact on public health

Article 32 of Directive 2008/118/EC sets out the levels of alcohol that private individuals can transport across EU borders without paying excise duty in the country of destination. The Directive has clear negative impacts on public health.

Alcohol is not an ordinary commodity. The more it is treated like other goods on the single market the stronger the negative externalities of alcohol become. Member States need to be able to adopt policies that reduce alcohol consumption to limit alcohol harm, such as restrictions to alcohol marketing, regulating prices and reducing the availability of alcohol.ⁱ Directive 2008/118/EC recognises that excisable goods, such as alcoholic beverages, have to be treated differently from other goods. However, the provisions for private acquisition in article 32 miss the mark.

In many Member States, there is undeniable evidence of a strong economic incentive for individuals to use the rules laid out in article 32 to purchase and transport alcoholic beverages across borders. This effect becomes stronger the closer to the border in question people live. Taking Sweden as an example, the regions with the easiest access to Denmark, a country where alcohol is significantly cheaper, are the ones with the greatest share in Sweden of alcohol acquired through private cross-border acquisition.ⁱⁱ

This economic incentive, in turn, has detrimental effects on public health. The most serious of which is the fact that it exerts downwards pressure on excise duties by allowing individuals to evade domestic alcohol prices through purchases in other EU countries. In brief: high-price countries are pressured to adjust their excise duty levels downwards to keep sales in their country, thus increasing consumption. The positive public health effects of excise duty increases are also reduced as some citizens will opt to purchase alcohol in bordering countries instead of reducing their consumption. This negative pressure on excise duties has repeatedly been highlighted by the Nordic Councilⁱⁱⁱ and its effect on public health scientifically shown by Mäkelä and Österberg (2009)^{iv}. Harold Holder summarises the effect well:

“... the liberal travel allowances did not in themselves stimulate higher alcohol-positive deaths, they did stimulate a domestic response which lowered alcohol prices and thus increased alcohol-related deaths.”^v

The effects of article 32 in the Directive on excise duty levels have also been noted by Rabinovich, Brutscher, et al. (2009) in their report to the European Commission on the affordability of alcoholic beverages in the EU:

“EU policies on alcohol (notably high travellers’ quotas for cross-border alcohol purchases) can infringe on a MS’s ability to set their own alcohol policies independently.”^{vi}

The effects on excise duty levels aside, Rabinovich, Brutscher, et al. (2009) also concluded that the provisions in article 32 in Directive 2008/118/EC can serve to increase consumption and thus alcohol harm in “higher-price countries” just through high tax and price differentials.

The provisions in article 32 in Directive 2008/118/EC also enable fraud and organised crime. In Sweden, these effects became clear in 2004, immediately after the guide levels in article 32 became applicable to the country. Two reports on organised crime by the Swedish police’s intelligence agency KUT from 2004/2005 conclude that:

“Instead of smuggling in large quantities of alcohol, thousands of litres, the criminal groups are now on a large scale bringing in legal travel rations and store these in depots.”^{vii}

The provisions in article 32 hence directly increase the availability of illegally sold alcohol in Sweden. Illegal sales of alcohol, in turn, circumvent alcohol control policies such as age limits and restrictions to opening hours, which are crucial to protecting public health.

A hands-on example of such large-scale fraud is the prevalence of so called ‘Spritbussar’ [liquor busses] in Sweden. These busses enter the country with large amounts of alcohol, sometimes mixing normal paying passengers with paid ‘goal-keepers’ that will claim the alcohol is for personal use in case of a customs check. Once in Sweden, the alcohol is stockpiled and sold illegally to private individuals and companies.^{viii} The Swedish Economic Crime Authority even points to such practices increasingly having replaced the fraudulent use of the ‘lost and damaged goods’ provision under excise duty-suspension arrangements as the modus operandi for criminals.^{ix} An investigative piece from the news site Corren.se looked into this practice in 2014. They noted that just the ten bus companies they examined could be looking at illegal profits of 120 million SEK a year.^x

Recent coordinated actions by the Swedish police, Swedish customs, Swedish tax authority and the Swedish economic crime authority have been successful in stopping many of these illegal busses.^{xi} In addition, the Swedish government is giving direct attention to this problem with a new proposal to increase sanctions for transgression^{xii} as well as a decision to have the Swedish police, Swedish customs, Swedish tax authority and the Swedish economic crime authority take stock of and suggest ways in which the fight against illegal movement of excisable goods can be made more efficient^{xiii}. However, despite this, the provisions in article 32 of Directive 2008/118/EC remain the core issue preventing more effective legal action by the Swedish government and relevant authorities. A testament to this is the fact that the national alcohol specialist at the Swedish Customs Authority, when asked what changes were needed to combat such crime more effectively, pointed to the need to revise the guide levels in article 32 of the Directive.^{xiv}

In addition to large scale fraud by organised criminals the Directive has also given rise to small-scale fraud by private individuals. This was noted as early as 1998 in the Report of the High Level Group on Fraud in the alcohol and tobacco sector. However, this was before the indicative guide levels applied to Sweden and Finland and before the EU enlargement to the east. The monetary incentive of such small-scale fraud can thus be expected to have increased since. Small scale fraud is difficult for customs and the police to stop and also impacts public health negatively.

IOGT-NTO's position on the options for improvement of Directive 2008/118/EC

IOGT-NTO recognises that all Member States are not affected in the same way by this Directive. However, it is important to note that the current provisions in article 32, with minimum guide levels concerning cross-border private acquisition, disproportionately interfere with the sovereignty of front-runner Member States who have democratically opted for the highest level of public health protection.

The aim of the revision of Directive 2008/118/EC must be to return sovereignty to Member States to set excise duties that correspond to the desired level of public health protection. IOGT-NTO has identified two main options for achieving this.

Grant Member States the freedom to decide on the legal quantities for cross-border private acquisition nationally, including on whether these should be indicative or absolute. This would ensure that Member States have the tools to set their own alcohol policy independently. It is the preferable option from a public health point of view.

From a single market point of view, such a change would not prevent EU-citizens from buying alcoholic beverages in other EU countries. Instead, it would respect the fact that alcohol is no ordinary commodity and that some countries choose to insist more strongly that citizens pay excise duty in the country of consumption when they move alcohol across borders. It could also potentially create an incentive for upward convergence of excise duty levels in the EU. This because national quotas will be adjusted to match price differentials with neighbouring countries.

Increased flexibility for Member States to set quotas for private acquisition can be expected to impact economic operators positively. The current rules distort competition between operators on different sides of a border and between law abiding economic operators and smugglers/fraudsters. Removing the negative pressure on excise duty would also allow Member States to increase prices in order to reduce alcohol consumption. This would mean that individuals would increasingly shift their consumption to alcohol-free alternatives whilst the burden of death and disease in the workforce would go down, impacting economic operators positively.

Lower the indicative guide levels in article 32 of the Directive and make the levels absolute. These two changes are needed together in order to stop the situation of alcohol excise duty dumping between countries. This is an option in case the Commission identifies a need to continue with the current EU-wide minimum approach for private acquisition levels.

For the average Swedish citizen, today's minimum guide levels represent approximately 2.5 years of personal consumption. Even if today's levels are made absolute, the high amount would still put negative pressure on Member States' excise duty rates by incentivising citizens to transport alcohol across borders. IOGT-NTO thereby stresses that legal certainty could be improved by specifying the concept of personal use in the Directive. However, this must result in significantly lower guide levels than today, through, for example, using average weekly personal consumption. This would make the concept of personal use meaningful from a public health perspective.

In addition to public health benefits, having absolute levels instead of indicative would simplify enforcement for customs authorities and improve legal certainty for citizens. Today's rules create a need to ask personal and potentially intrusive questions about the intent of the individual crossing the border with large amounts of alcohol. This is done to determine whether the beverages are for private use or not. However, such practices

create legal uncertainty and leave room for subjective decisions on whether the individual is telling the truth or not. It is also in many cases impossible for customs authorities to verify that all the beverages are indeed intended for that which the individual claims. For the individual, this legal uncertainty enables fraud and abuse of the rules. Having a maximum absolute quantity of alcoholic beverages that can be moved across EU borders without paying excise duty at the level of the country of destination would eliminate such legal uncertainty. In that situation, enforcement would simply be a matter of establishing how much alcohol the individual is transporting.

In summary, IOGT-NTO stresses that from a public health, economic as well as law and order perspective there is a need to lower the current indicative guide levels in article 32 of Directive 2008/118/EC and make them absolute. IOGT-NTO believes that this is easiest and best achieved by giving the Member States who deem it necessary the possibility to do this themselves. Nonetheless, EU minimum rules can also be a way forward as long as the quantities are absolute and set at a significantly lower level than today.

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ⁱ WHO (2017) Updated Appendix 3 of the WHO Global NCD Action Plan 2013-2020.
http://who.int/ncds/governance/technical_annex.pdf?ua=1 P. 17

ⁱⁱ Trolldal, B., Guttormsson, U & Leifman, H. (2017) Registrerad och oregistrerad alkohol i Sveriges län 2001–2016. CAN: rapport 165.
<<http://www.can.se/contentassets/a51de8d741604e99a7fc8c117a68e733/registrerad-och-oregistrerad-alkohol-i-sveriges-lan-2001-2016.pdf>>

ⁱⁱⁱ Nordic Council Welfare Committee (2012) Nordic alcohol and tobacco policies in a public health perspective. <<http://www.norden.org/en/nordic-council/cases-and-documents/a-1566-velferd>>

^{iv} Mäkelä, P., & Österberg, E. (2009) Weakening of one more alcohol control pillar: a review of the effects of the alcohol tax cuts in Finland in 2004. *Addiction*, 104(4), 554-563.

^v Holder, H. D. (2007) What we learn from a reduction in the retail alcohol prices: lessons from Finland. *Addiction*, 102: 346–347. P. 347

^{vi} Rabinovich, L., Brutscher, P. B., de Vries, H., Tiessen, J., Clift, J., & Reding, A. (2009). The affordability of alcoholic beverages in the European Union: understanding the link between alcohol affordability, consumption and harms. Cambridge, UK: RAND Europe.

<http://ec.europa.eu/health/ph_determinants/life_style/alcohol/documents/alcohol_rand_en.pdf> P. 94

^{vii} RKP/KUT (2004) Organiserad brottslighet i Sverige 2004. Rapport – 2004:5c. p.21 // RKP/KUT (2005) Organiserad brottslighet i Sverige 2005. Rapport – 2005:2b p. 22

^{viii} Ekobrottsmyndigheten (2016) Ekobrottsmyndighetens lägesbild om ekonomisk brottslighet i Sverige 2016.
<<https://www.ekobrottsmyndigheten.se/Documents/Rapporter/EBM%201%C3%A4gesbild%202016.pdf>>
p. 25

^{ix} Ibid. P. 25

^x Corren.se (2014) Spritsmugglarnas vinst: 120 miljoner varje år.
<<http://www.corren.se/nyheter/spritsmugglarnas-vinst-120-miljoner-varje-ar-6847276.aspx>>

^{xi} Polisen (2017) Framgång mot spritbussar. <<https://polisen.se/Aktuellt/Nyheter/Gemensam-2017/Maj/Framgang-mot-spritbussar/>>

^{xii} Finansdepartementet (2017) Höjt transporttillägg samt deklarationstidpunkten för mervärdesskatt i vissa fall. Fi2017/01208/S2
<<http://www.regeringen.se/493e52/contentassets/cb15dbac2268497eb6bde4834b1f049d/hojt-transporttillagg-samt-deklarationstidpunkten-for-mervardesskatt-i-vissa-fall>>

^{xiii} Finansdepartementet (2015) Uppdrag till Tullverket, Polismyndigheten, Ekobrottsmyndigheten och Skatteverket om illegal hantering av punktskattepliktiga varor. Fi2005/05353/S3
<<http://www.regeringen.se/4adb09/contentassets/d00aeb9e748c4a33b28cf78bd5c55fbo/uppdrag-till-tullverket-polismyndigheten-ekobrottsmyndigheten-och-skatteverket-om-illegal-hantering-av-punktskattepliktiga-varor>>

^{xiv} Drugnews (2017) Höjd straffavgift ska stoppa spritbussar. <<http://drugnews.nu/2017/03/10/hojd-straffavgift-ska-stoppa-spritbussar/>>