# COMMISSION IMPLEMENTING DECISION (EU) 2021/787

## of 12 May 2021

## authorising Lithuania to refuse to grant exemption from excise duty in relation to certain mouthwash products and cosmetic spirits in accordance with Council Directive 92/83/EEC

*(notified under document C(2021) 3260)*

**(Only the Lithuanian text is authentic)**

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages ([1]), and in particular Article 27(5) thereof,

Whereas:

(1) The purpose of Directive 92/83/EEC is to create, in the field of alcohol taxation, conditions ensuring the establishment and functioning of the internal market. Article 27(1) of Directive 92/83/EEC specifies the products covered by that Directive, which are to be exempt from excise duty by Member States. Article 27(1)(b) of Directive 92/83/EEC provides for exemption for denatured products covered by that Directive used for the manufacture of any product not for human consumption. The system laid down in Directive 92/83/EEC is that of mutual acceptance. Once a product falling under Article 27(1)(b) of Directive 92/83/EEC has been exempted from excise duty in any Member State it may move freely throughout the Union without being subject to excise duty. Article 27(5) of Directive 92/83/EEC allows Member States to refuse to grant such exemption if the product concerned gives rise to evasion, avoidance or abuse.

(2) By letter of 3 June 2016, Lithuania notified the Commission, in accordance with Article 27(5) of Directive 92/83/EEC, of its refusal to grant the exemption from excise duty provided for in Article 27(1)(b) of Directive 92/83/EEC for ethyl alcohol denatured with isopropyl alcohol with a quantity of 10 litres or less per 1 hectolitre of absolute ethyl alcohol used in certain mouthwash products and cosmetic spirits ('the products concerned'). Lithuania is of the opinion that the products concerned have given rise to evasion, avoidance and abuse in Lithuania.

(3) The Commission transmitted the communication of Lithuania to the other Member States on 15 June 2016 and invited them to give their observations.

(4) At the meeting of the Committee on Excise Duty on 8 November 2016, Member States agreed that the Fiscalis Project Group on arrangements for completion of the work on completely and partially denatured alcohol needs to examine the denaturing formulations for cosmetic and personal care products and to provide an opinion on the formulation that is appropriate for those products. The Committee is to revisit the issue following the opinion of the Fiscalis Project Group. The Fiscalis Project Group noted that the same formulation as that used in the products concerned is used in many other products not intended for human consumption. However, those other products have not given rise to evasion, avoidance or abuse. The taxation of all products denatured with that formulation would therefore be disproportionate. The Commission therefore invited Lithuania, by letter of 21 January 2019, to provide a detailed description of the products concerned rather than the denaturing formulation.

(5) By letter of 21 August 2019, Lithuania provided additional information on the products concerned. The Commission transmitted this information to the other Member States. In its letter, Lithuania explained that the products concerned are the mouthwash products with the brand names 'Classic' and 'Crystal' and cosmetic spirits with the brand names 'Yellow', 'Citrus', 'Green', 'Citrina', 'Red', 'Avietė', 'Blue' and 'Juodieji serbentai', with alcoholic strengths by volume of approximately 20 % or 60 %, respectively. The products concerned are not used for the hygiene or cosmetic purposes indicated on the label. According to the letter, economic operators are marketing

([1]) OJ L 316, 31.10.1992, p. 21.

those products to vulnerable groups of the Lithuanian population for consumption as intoxicating alcoholic beverages without removing the toxic denaturant, which is detrimental to human health. The products concerned are used for human consumption and Lithuania therefore considers that they should not benefit from an exemption from excise duty. Lithuania concluded in its letter that this gives rise to abuse referred to in Article 27 of Directive 92/83/EEC.

(6) Moreover, Lithuania estimated that from 2009 to 2016 the total volume of the products concerned sold on the Lithuanian market was approximately 1 500 000 litres, which amounts to approximately EUR 11 500 000 in lost excise duty revenue, or 1 per cent of the total excise duty revenue from ethyl alcohol in Lithuania during that period. Lithuania concluded in its letter that this gives rise to abuse, evasion and avoidance referred to in Article 27 of Directive 92/83/EEC.

(7) At the meeting of the Committee on Excise Duty on 15 November 2019, Member States discussed the taxation of the products and the evidence provided by Lithuania demonstrating the evasion, avoidance and abuse. Member States noted their support of addressing this issue in Lithuania. Moreover, Member States noted their support of addressing the serious risk that economic operators could easily modify the brand name of the products concerned or make other modifications in order to circumvent a refusal to grant exemption under Article 27(1)(b) of Directive 92/83/EEC.

(8) The Commission considers that the consumption of the products concerned as intoxicating alcoholic beverages constitutes improper use with serious negative implications for health and for tax revenues.

(9) The economic operators marketing the products concerned benefit from a more favourable excise duty regime than that applicable to alcoholic beverages. Lithuania has also demonstrated significant loss of excise duty revenue from ethyl alcohol used in the products concerned. Based on the evidence provided by Lithuania, which by its nature is difficult to obtain, and based on the estimates of lost excise duty revenue, the Commission considers that the products concerned give rise to evasion, avoidance and abuse.

(10) Given that the products concerned give rise to evasion, avoidance and abuse, Lithuania should be authorised to refuse to grant exemption under Article 27(1)(b) of Directive 92/83/EEC to those products.

(11) Moreover, the Commission is of the opinion that the economic operators manufacturing the products concerned could easily circumvent a refusal to grant exemption under Article 27(1)(b) of Directive 92/83/EEC by modifying an element of the products concerned, such as the brand name. In order to prevent such circumvention, Lithuania should also be authorised to refuse to grant such an exemption to any other similar liquid cosmetic spirits and mouthwash products that are consumed as alcoholic beverages.

(12) The measures provided for in this Decision are in accordance with the opinion of the Committee on Excise Duty,

HAS ADOPTED THIS DECISION:

*Article 1*

Lithuania is authorised to refuse to grant exemption from harmonised excise duty to ethyl alcohol denatured with isopropyl alcohol with a quantity of 10 litres or less per 1 hectolitre of absolute ethyl alcohol and used for the manufacture of the following liquid cosmetic spirits and mouthwash products, or any other similar liquid cosmetic spirits and mouthwash products, not intended for human consumption, but consumed as alcoholic beverages:

(a) mouthwash products with an alcoholic strength by volume exceeding 20 % with the brand names 'Classic' and 'Crystal';

(b) cosmetic spirits with an alcoholic strength by volume exceeding 60 % with the brand names 'Yellow' , 'Citrus', 'Green', 'Citrina', 'Red', 'Avietė', 'Blue' and 'Juodieji serbentai'.

*Article 2*

This Decision is addressed to the Republic of Lithuania.

Done at Brussels, 12 May 2021.

*For the Commission*

Paolo GENTILONI

*Member of the Commission*