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**INDIRECT TAX EXPERT GROUP (ITEG)
(ex-WORKING GROUP 2)**

**"Partially" Denatured Alcohol (PDA) under Article 27 (1) (b)
of Council Directive 92/83/EEC**

Cosmetics, perfumes and personal hygiene products

**The use of a chemical analytical marker as a minimum
denaturing procedure**

Draft Recommendation ITEG/R/3/2014

1: BACKGROUND

(1) In accordance with Article 27 (1) (b) of Council Directive 92/83/EEC Member States shall exempt the products covered by the Directive from the harmonised excise duty under conditions which they shall lay down for the purpose of ensuring the correct and straightforward application of such exemption and of preventing any evasion, avoidance or abuse. The exemption applies when the alcohol has been denatured in accordance with the requirements of any Member States and used for the manufacture of any product not for human consumption.

(2) In practical terms, the process of denaturing is that of chemical additives to ethanol to make it into a form improper for human consumption, extremely bad tasting, foul smelling or nauseating, to form an undrinkable solution and discourage recreational consumption. In some cases it is also dyed. It is important that there are adequate controls in place as to where and how this process is done.

(3) In 2014, the Fiscalis Project Group (FPG013) in partnership with key industry stakeholders and also in the ITEG, discussed the specifics of cosmetics, perfumes and personal hygiene products with the view to define conditions allowing such adequate controls. The opinions and recommendations made by the experts in these discussions were then analysed and considered with the objective of making recommendations on the minimum conditions which would ensure a better level playing field for the application of the exemption across all Member States, improving their ability to reduce opportunities for evasion, avoidance and abuse, giving them and legitimate economic operators greater legal certainty and reducing the administrative burden for both.

(4) In the view of the experts:

- i. A chemical analytical component, specifically, isopropyl alcohol (IPA – CAS 67-63-0) and/or *tert*-Butyl alcohol (TBA – CAS 75-65-0) should be recommended as a minimum analytical marker for the denaturation of alcohol, making it difficult to use simple distillation or other processes to reverse the denaturation completely. Unlike methyl ethyl ketone (the "smelling" agent) and denatonium benzoate (the "tasting" agent), these analytical markers will remain after fraudulent attempts of distillation and or filtration and detectable even at trace levels.
- ii. Owing to its strong bitterness, denatonium benzoate should only be used in specific products excluding oral use and products which may unintentionally come into contact with the lips or mouth.
- iii. Diethyl phthalate (CAS 84-66-2) is a phthalate ester and a commonly used binding agent for perfumes and cosmetics, and also as a detergent and aerosol base for products like deodorant. Its continued use as a binding agent for cosmetics / base for aerosols should remain unaffected and not be included in the present recommendations.
- iv. The use of essential oils (Combined Nomenclature - CN 3301) *in isolation* is not suitable for the denaturing of the goods described

in the accompanying table. Essential oils are complex mixtures containing hundreds of compounds, and they differ greatly to one another in terms of composition. Quantitative analysis is difficult because it requires the separation of all the chemical components, and this is not often possible using standard analytical techniques. Such techniques would be impossible to implement routinely by the Customs laboratories and therefore it would be extremely difficult to tackle fraud and offer an appropriate level of legal certainty and equal treatment for legitimate economic operators if essential oils were to be used as the sole denaturant in PDA formulations. Adequate control in this area would further be weakened by the lack of transparency of the denaturing processes using essential oils. Against this background the use of essential oils (CN 3301) in isolation would create a justification for refusing to grant exemption or withdrawing relief already granted in accordance with Article 27 (5) of Council Directive 92/83/EEC of 19 October 1992.

- v. Additionally, extraction or maceration of aromatic compounds using ethyl alcohol (EtOH CN 2207 and 2208 / CAS 64-17-5) is not a denaturing process – it must be a recognisable finished product. This also links back to the generic statement expressed in the Opinion 1/2014 about what is a recognisable finished product not for human consumption.
- vi. However, when using either of the 2 recommended analytical markers (point (i) above) industry should free to add / mix any combination of aromas, fragrance compounds or flavourings they wish to. The recommendation should be limited to liquid alcoholic mixtures with a specific alcoholic strength –see attached table.

(5) Against this background ITEG should express corresponding recommendations.

(6) Article 1 of the Rules of Procedure of ITEG is to provide advice and expertise, to Member States, in relation to the implementation and enforcement of existing Union legislation and policies in the area of indirect taxes other than VAT.

(7) Article 6 of the Rules of Procedure stipulates that as far as possible, the ITEG shall adopt its opinions, recommendations or reports in this respect by consensus and in the event of a vote, the outcome of the vote shall be decided by a simple majority of the members.

(8) In its meeting of 13 June 2014 WG2 (now replaced by ITEG) decided to deliver its recommendation in accordance with the written procedure as provided for by Article 9 (1) of the Rules of Procedure.

Accordingly the competent authorities of Member States are invited to vote until 31 October 2014 on the following recommendation:

RECOMMENDATION

For cosmetics, perfumes and personal hygiene products described below in columns 1-3 the use of the chemical analytical markers described in columns 4-5 is recommended as a minimum denaturing in order to gain the excise duty exemption provided for in Article 27 (1) (b) of Council Directive 92/83/EEC.

<u>Description</u>	<u>CN¹ code</u>	<u>Product categories</u>	<u>Recommended Minimum denaturing agent(s) per HL of absolute alcohol</u>	<u>CAS² number</u>
Liquid alcoholic mixtures of an alcoholic strength exceeding 20% containing scented (or aromatic fragrances) substances.	3302 9010	Perfumes and toilette waters (CN 3303) Pre-shave, shaving or aftershave preparations (CN 3307 1000) or other scented liquid alcoholic solutions of an alcoholic strength exceeding 20% (ex CN 3307).	2 L isopropyl alcohol (IPA) + 1 g Denatonium benzoate; or 78 g <i>tert</i> -butyl alcohol (TBA) + 1 g denatonium benzoate	67-63-0 3734-33-6 75-65-0 3734-33-6
Liquid alcoholic preparations for oral or dental hygiene of an alcoholic strength exceeding 5%	3306	Mouthwash and mouthwash concentrates	2 L isopropyl alcohol (IPA) or 78 g <i>tert</i> -butyl alcohol (TBA)	67-63-0 75-65-0

¹ Combined nomenclature; ² Chemical Abstracts Service.