

EN
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Answer given by Mr Tajani
on behalf of the Commission
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Council Directive 92/83/EEC of 19 October 1992 ¹ does not prohibit Member States from setting minimum retail prices for alcoholic beverages.

However, a national measure of minimum pricing and its effects needs to be compatible with the Treaty (TFEU), including the rules on the free movement of goods (Articles 34-36) and on competition (Articles 101-102).

As regards the free movement of goods, the Court of Justice has ruled that national rules fixing retail prices for alcoholic beverages could constitute measures having an equivalent effect to quantitative restrictions on imports contrary to Article 34 of the TFEU. This would be the case if, for ex, minimum prices were set at such a level that imported products were placed at a disadvantage in relation to identical domestic products and had an adverse effect specific to the marketing of imported products and thus constituted an obstacle to the free movement of goods². On the other hand, this would not be the case if pricing rules applied to all relevant traders operating within the national territory, and if they affected in the same manner, in law and in fact, the marketing of domestic and imported products³.

From a competition law perspective, the critical factor when it comes to a national measure setting minimum alcohol prices is that the alcohol industry should not be involved in the process in any way whatsoever, since this would render the measure contrary to Article 4, paragraph 3, TEU, in conjunction with Article 101 TFEU. The Court of Justice has held that national measures where a Member State requires, favours or reinforces an anti-competitive agreement or where it delegates to private operators the responsibility for taking decisions affecting the economic sphere will infringe said provisions⁴.

¹ OJ L 316, 31.10.1992.

² See, Case 82/77 van Tiggele [1978] ECR 25, paragraphs 14 and 18; Case 231/83 'Cullet' [1985] ECR 305, paragraph 23.

³ See joined Cases C-267/91 and 268/91 Keck [1993] ECR I-6097, paragraph 16.

⁴ See Case C-35/96 Commission v Italy [1998] ECR I-3851, paras 53-54