

TAXATION OF ALCOHOL AND CONSUMER ATTITUDE *IS THE ECJ SOBER?*

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Taxation of wine and beer has been the frequent subject of litigation before the European Court of Justice (ECJ) in the light of the second paragraph of Article 90.¹ The distinction between beer and wine is recognized as being of capital importance by the European legislator. Directives 92/83/EEC and 92/84/EEC apply different rules to beer and wine in terms of excise duties.² The popularity of these alcoholic beverages partially explains this interest, but it is their differences which are crucial to their tax treatment. In Case C-167/05, the Court was once again called to give answers to the question of taxation of wine and beer in the light of Article 90. Contrary to the Opinion of the Advocate General, the ECJ's judgment of April 8, 2008, dismissed as unfounded the Commission's action for infringement of Community law by Swedish law. According to the Commission's allegations, Swedish tax regulations on alcohol discriminated against wine (an imported beverage) in favor of beer (a widely nationally-produced product).

The Court's judgment is particularly interesting for it allows apprehension of the accuracy as well as the limits of the method applied. Also, the case concerned Sweden, a State that has a well-established anti-alcoholic public policy, mainly through its retail sale monopoly and the highest excise duties on alcohol in Europe.³ In the Rosengren Case,⁴ the Court examined the Swedish retail sale monopoly in the light of the free movement of goods (Article 28 of the EC Treaty). In Case C-167/05, anti-alcoholic objectives stayed very much in the background and the major issue was the consumer's attitude towards selling prices of alcoholic beverages.

The paper argues that the appreciation of the consumer's attitude in the ECJ's case –law on taxation of alcohol, especially wine and beer – is problematic and proposes a new approach to the question that puts consumers' sensibility towards tax arrangement at the centre of judicial control while it calls for a clearer apprehension of the anti-alcoholic claim which is often behind taxation of alcohol.