

## **Malt Maniacs E-pistle #2010-06** **By Keith Wood, Germany**

This article is brought to you by 'Malt Maniacs'; an international collective of more than two dozen fiercely independent malt whisky aficionados. Since 1997 we have been enjoying and discussing the pleasures of single malt whisky with like-minded whisky lovers from all over the world. In 2010 our community had members from 16 countries; The United Kingdom, Sweden, Germany, Holland, Belgium, France, Switzerland, Italy, Greece, The U.S.A., Canada, India, Japan, Taiwan, Australia & South Africa. More information on: [www.maltmaniacs.org](http://www.maltmaniacs.org).



### **The European Union - a Single Market** **Can we have one please?**

I'm sure you all know how it is when you begin to pontificate why something is how it is, perhaps a situation where you just can't understand the "why?", so you scratch at the surface with a little research and the more you uncover, the more you continue to fail to understand, even beginning to despair at your findings, but you must dig deeper until the final realisation is achieved.

My curiosity was first piqued after looking at some distillery websites with a view to grabbing a couple of bottles, but alas they refused to post outside of the UK. Now come on guys, play the game, this is after all a European Union which has always been 'sold' to us as a free or open single market. I can understand there being difficulties in sending bottles of alcohol further afield, but surely sending a bottle or two from my native UK to my adopted Germany qualifies in this respect?

My inner alarm bells then started ringing when I looked at a few German whisky websites and found a similar situation with almost all of our whisky sellers; 'Sorry we are unable to accept orders from abroad or post whisky outside of Germany'.

That did it, the Sherlock in me was fully awoken and I felt the urge to start digging.

The first little gem I uncovered was the now infamous landmark court case between [The European Court of Justice and a certain Mr. Joustra from The Netherlands](#). In this case Mr. Joustra and a circle of friends formed a wine club and on behalf of them all he placed his annual order with French vineyards and instructed a local transport company from Holland to collect the wine on his behalf and deliver it to him. Upon arrival, the transport company levied a Duty charge of €906 as instructed by the Dutch Tax Authorities. Mr. Joustra lost the case as the amount of wine purchased exceeded the 'recommended' limit of 90 litres for personal use and as he was sharing this delivery with a circle of some 70 friends, it was clearly not all for his personal consumption. Plus, he had not **personally** carried or transported the wine; he had used a third party to do this.

But surely, my ordering of one or perhaps two bottles of whisky isn't the same situation? Even if it was and I had to pay some Duty locally, this wouldn't prevent UK sellers from posting to me in Germany, or German sellers from posting to any other country. There must be something else afoot!

Sure enough and to cut a long story or search short, I eventually found the culprit in the form of this little baby; [EU Council Directive 2008/118EC](#). Otherwise known as "concerning the general arrangement for Excise Duty" and it repeals the former Directive 92/12/EEC.

This is the single Directive which lays out the law within our 'single market' or European Union of 27 Member States, for goods which are subject to Excise Duty and which basically means tobacco, fuel and alcohol.

Of particular interest to not only myself, but to any of us whisky consumers who wish to order via the internet or telephone is **Section 3, Article 36; "Distance Selling"** the full text may be found on my above link if you skip down to page 15 of the document, but in short it says the following:

1. Excise goods which are purchased by a consumer in a different Member State to the seller, whether transported by him directly or by some third party, are liable for Excise Duty in the member state of destination.

Member State of destination is defined as the country where the consignment arrives, meaning where the customer is.

2. The Excise Duty shall be payable at the time of delivery in accordance with the rates and procedures of the Member State of destination.

3. The person liable to pay the Duty in the Member State of destination shall be **the vendor**.

*Hold on a minute, do I understand this correctly? We now have a European Union of 27 Member States and a single market where I am supposedly free to buy a bottle of whisky from any Member State and have it sent to my home address, **but the seller has to pay Excise Duty in my country of residence?***



A little further digging and a comparison between this Directive and its predecessor finds very few differences other than an addendum to point 3 which allows sellers to use 'authorised tax representatives' in other Member States.

Of course, the Directive goes on and states that sellers have the possibility to claim back the Duty paid in their own country, as Duty should only be levied once per item.

If I understand this properly we have 27 Member States or different countries currently in the EU, between them 23 different official languages are used and now, our little corner shop which is being very enterprising by having a website where he offers his wares, needs to speak up to 23 different languages in order to deal with up to 27 different tax authorities or their 'authorised representatives' in the form of tax consultants, if he can even find where they are!

This would be a challenge for the largest international seller, let alone a poor one man business who just wants to sell his whisky. On top of this he will then have the 'fun' of trying to claim back the Duty he already paid locally from his own tax authority.

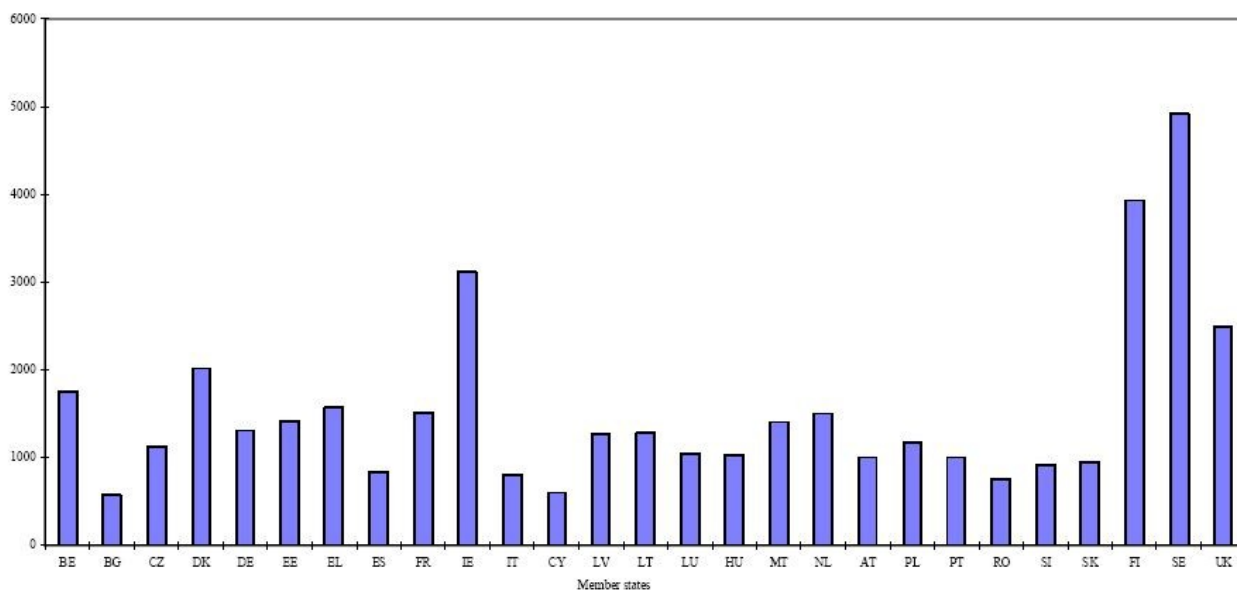
### **But surely this can't be so complicated, Duty doesn't vary that much does it?**

Well, within our 'single market' of 27 Member States there are, you guessed it, only 27 different rates of Duty applicable to our desired bottle of whisky, ranging from Bulgaria's €550 per hectolitre of pure alcohol (which equates to €1.60 per 70cl bottle at 40%abv) to Sweden's €5000 per hectolitre (equating to about €14 per 70cl bottle at 40%abv).

values in EUR at 1/10/2009

### Ethyl Alcohol

Situation as at 1 January 2010



Minimum excise duty: 550 EUR per hectolitre of pure alcohol

*Whoaaa, just hold on again here, let's back up again whilst I get my thoughts in order on this one; Within the EU the seller has to pay the relevant amount of Duty for each bottle sold into the country (and in the currency) of the buyer? To clarify, this means 27 different countries using 23 different official languages and of course, not forgetting 27 different tax authorities or their 'authorised tax consultants'.*

So, let's consider someone opening their little whisky shop, they're also enterprising in wanting a website so they can reach a broader range of customers. Their internet shop not only needs a good range of single malts, perhaps even including the latest trend of samples too, they also need to specify 27 different prices per item, depending upon which country the buyer lives in. They also have the task of keeping up with all changes in tax in those 27 different countries so that they can update the 27 different prices required for each item.

Surely it won't be that messy for a site to either list 27 prices per bottle or ask for "country of residence" just so a price can be generated, will it?

#### **Once he makes his first sale, I can just imagine the following conversation;**

*"Hello Mr. HMRC, I want to let you know that I just sold a bottle of Glen Wobbly to a nice man in Bulgaria and after spending 3 weeks finding their tax authority and paying €200 in official translations so I could communicate with them, I have paid them €1.60 in Duty, so can I have my €7.50 back from you please. Oh, can I also offset my €200 in translation costs against my next tax return please?"*



Meanwhile, back at [EU Council Directive 2008/118EC](#) we also find the rather innocuous looking "**Chapter VI, Miscellaneous, Section 1, Article 39, Marking**" (on page 17 of the link) clause which simply states that some countries may require tax markings on bottles.



But that's not all, it clearly states that the seller has to include the correct marker as required by the country of destination, which means if he is based in the UK selling to Italy, he has to remove the UK stamp, then source and include the Italian tax strip for the top of the bottle(s).

This just gets more interesting for our poor little seller. He not only has to pay Duty into 27 different countries, but he now has to work out which of those countries use a form of Duty stamp on alcohol and then how to source a supply of those stamps. "*But that's easy*" I hear you say, "*just look at the EU website again and find a list*". If only life were so simple, I have personally spent hours trawling all sources I could find and so far failed to come up with a definitive list of which of the 27 EU Member States require Duty Markers on their bottles. What I have found is that Italy, France, Portugal, Spain and the UK use them, but as for the rest, especially our new Eastern European members.....?

But this raises another more important point for our poor seller; Just how does he keep up with all the changes across 27 different Member States, it's often hard enough dealing with one's own systems and authorities.

**However, I think we're finally there! In fact I can now offer our seller just 9 easy steps to selling his whisky within the EU:**

1. Take an order
2. Confirm 1 of 27 prices with the buyer
3. Receive payment
4. Pay tax in foreign country (& currency?) to 1 of 27 tax authorities or 'authorised consultants' in one of 23 different languages
5. Remove 'own' Duty marker from bottle
6. Add Duty marker relevant to buyer's country
7. Post package
8. Buyer receives parcel
9. Claim back Duty from 'own' or local tax authority

**Of course, that was within the EU which is a single market, so let's compare those '9 easy steps' to selling outwith the EU:**

1. Take an order
2. Receive payment
3. Post package
4. Buyer receives package and pays any local tax if required

**Finally, as an open question to all 27 tax authorities in our 'single EU market';** please remind me how this can and will be enforced? Is our poor little seller with a corner shop in the back-streets of Ochtermuchty or wherever, running the risk of the infamous Italian "Tax Police" turning up one day with blue lights flashing and asking to see records of all bottles sold to Italian customers? I was quite amazed when I recently broached this subject with a seller who pointed out that the unique number on Duty markers was the only way to trace bottles and if this were removed or destroyed .....

***Is it April 1<sup>st</sup>?  
I am joking, right?***

I first started what I envisaged as 'just a little digging' project just over three years ago when the former Directive was still in place and when I was trying to prepare a presentation or workshop discussion on this topic within a high-level industry seminar.

In June of 2007 I spoke personally to a department manager within the UK's HMRC and then at a higher level, to a **Mr. Raponi of department DG TAXUD/ Unit D4** within Brussels. This was early in my digging and the responses I received from these two 'authorities' couldn't have been more different:

From Brussels I was told that yes, this Directive is in place and **must** be followed by the individual Member State authorities. The Duty is payable in the Member State of destination by the vendor. He also apologised that Brussels could not offer to send anyone along to the proposed seminar in the UK as this was the responsibility of the local (UK) tax authority; HMRC and I should speak to them.

The UK offered a rather different opinion by insisting that they had never heard of this Directive and that I was obviously mistaken, even though I supplied the official web link to the Brussels site and the Directive. As they didn't believe this Directive existed and that I must have misread something, they said that there was obviously no need to send anyone along to an irrelevant discussion.

None of this helped me in my preparation of my presentation or workshop on this topic for the seminar and eventually I had to cancel the idea, firstly because of these responses and secondly, because my time was being filled by my taking over of a whisky bar in Munich.

Since that time the original Directive has been repealed and replaced with the new one (it came into effect as recently as, *would you believe?* 1<sup>st</sup> April 2010) and I have now heard from various whisky vendors in the UK that they are being asked questions about their possible international (EU) trade by that very same HMRC, so the final word is; sorry folk, the answer to the questions is a very clear **"No, I'm not joking even if it was April 1<sup>st</sup>".**

**As I conclude** I would like to return to that first example I found where Mr. Joustra lost his case against The European Union. This was seen as a landmark case with every consumer in the European Union awaiting what was believed to be a foregone conclusion of victory for them and the freedom of accessibility to cheaper purchases that would follow via the internet, throughout this single large market. Alas, this was not to be, as what I can only call 'The Institution' won and once again the consumer seemed to suffer.

Around this same time the 27 various Governments of the EU were suddenly realising what this could mean in terms of lost revenue or Duty so many of them, especially the ones charging the highest or lowest rates of Duty, petitioned Brussels for the right to 'their tax' which they saw as sales within their country. Unfortunately for everyone, Brussels found a way to appease the Governments but they couldn't have it both ways. So this Directive which basically says that the Governments of the buyers have the right to the applicable Duty was born and, rather than offering any kind of sensible and what I see as workable solution, we the consumers are left in a 'State' where sales are so difficult that sellers of our beloved nectar would rather abstain from selling, than find a way to supply us.

**But forget not, we are all part of The European Union with 27 Member States, 27 different rates of Duty, 27 different tax authorities, 23 different official languages & one single market.**

**But not when it comes to whisky!**



Keith Wood was born in Yorkshire, England in the summer of '59 but moved to Bavaria in 1998. After being made redundant in 2005 he decided to turn his hobby of 25 years into a business when he formed whisky Emporium and worked with a local restaurant to offer gourmet whisky dinners. He also owned a whisky bar in Munich which boasted a range of almost 150 different single malts for just over two years. Unfortunately the bar closed in 2009 and he is once again unemployed. In October 2009 [Whisky Emporium](#) was redesigned as a non-commercial entity and became home to [Keith's personal tasting notes](#) and whisky musings on his "Dram-atics" blog-esque page. His tasting notes currently number well over 500, cover almost all Scottish and many international distilleries and are growing on an almost daily basis.