



EVALUATION OF COUNCIL DIRECTIVE 92/83/EEC

CNAPA MEETING

RAMBOLL


Europe Economics

coffey 

7 June 2016

AGENDA

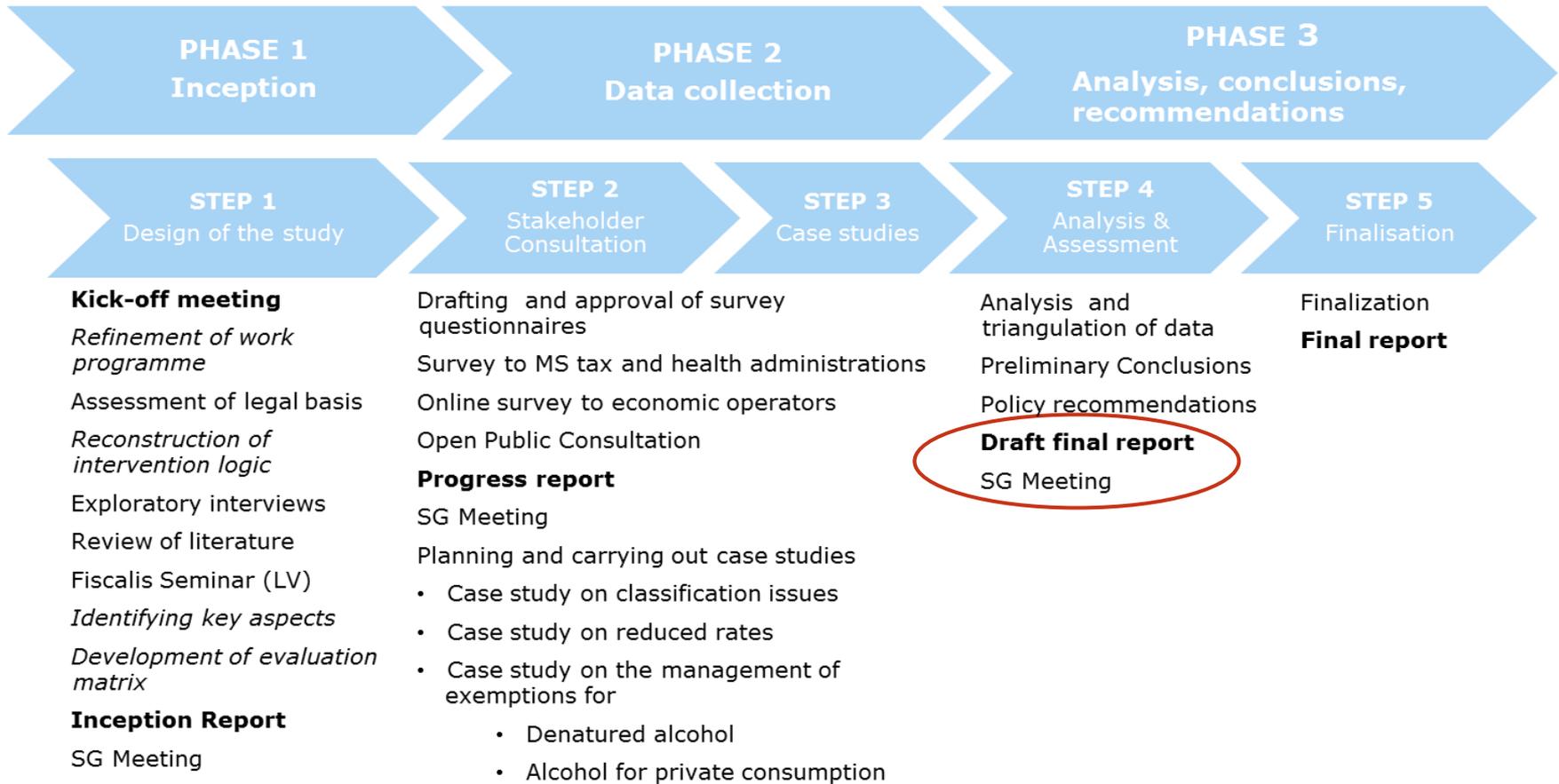
- ❑ Introduction
- ❑ Evaluation Design
- ❑ Stakeholder consultation
 - Member States
 - Economic operators
 - General public
- ❑ Results
 - Classification
 - Reduced rates
 - Exemptions for own production
 - Exemptions for denatured alcohol
- ❑ Conclusions
- ❑ Recommendations



INTRODUCTION TO PROJECT

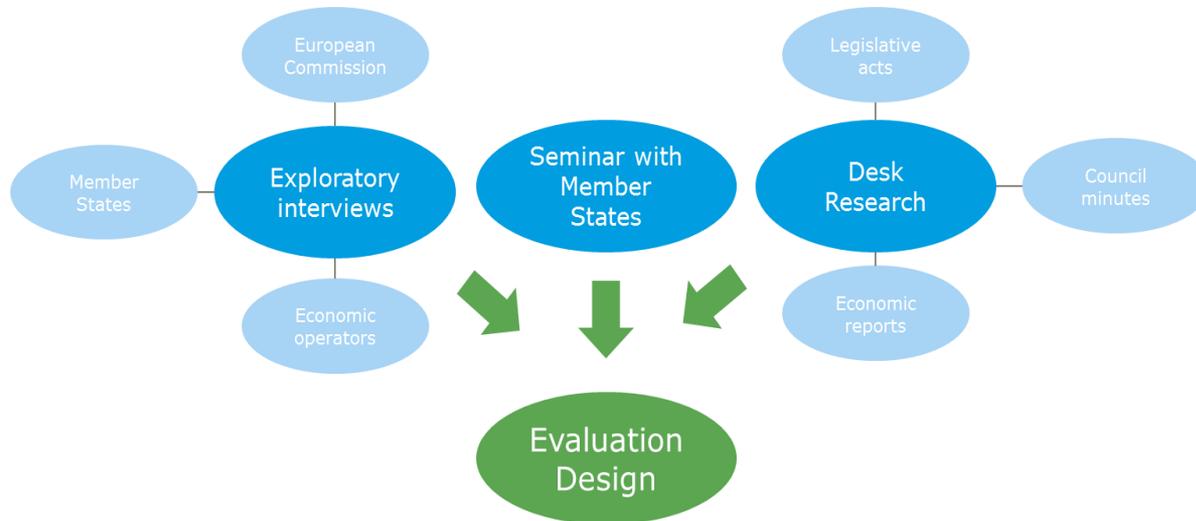
- Scope and Objectives
 - Evaluation of Directive 92/83/EEC and its functioning under the existing legal framework.
- Key issues:
 - The categorisation of products as beer, wine, other fermented beverages, intermediate products or ethyl alcohol which is set in Sections I to V;
 - Reduced rates for small breweries and distilleries which are foreseen under Article 4 and Article 22.
 - Articles 5.2, 10 and 14 providing for exemptions for own consumption /private production
 - Reduced rates under the derogations provided for fruit growers in Articles 22(6) and 22(7).
 - Section VII covering the exemption from excise duty of denatured alcohol, in particular Article 27.1(a) and (b).

OVERALL APPROACH



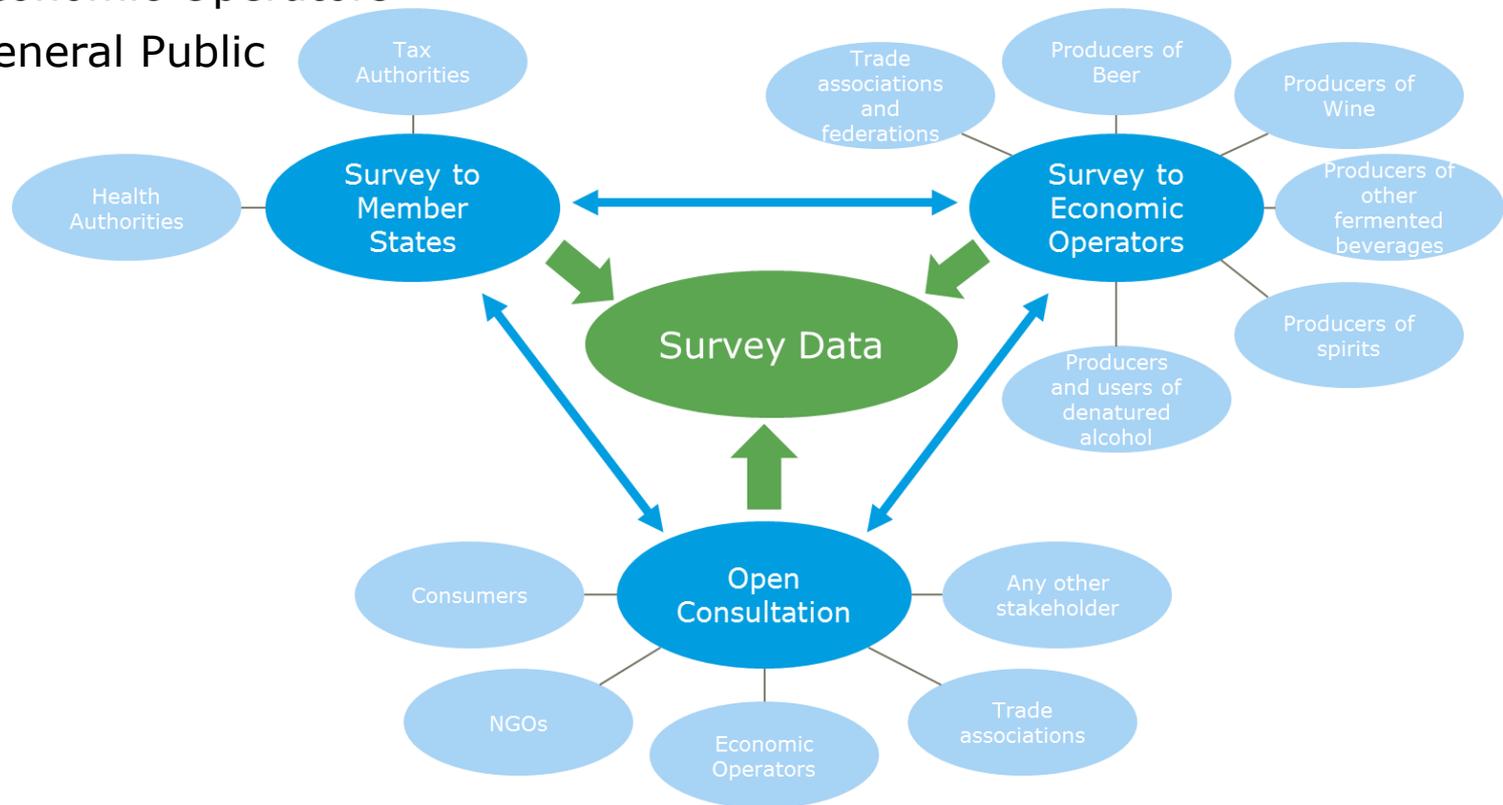
DETAILED METHODOLOGY - DESIGN

- Design of the study based on EU evaluation methodology in the context of the **Better Regulation** Guidelines
 - Intervention logic rooted at the core of the design of the study
 - Evaluation matrix design to ensure that all key issues, together with their appropriate indicators are adequately and transparently investigated



DETAILED METHODOLOGY – STAKEHOLDER CONSULTATION

- Extensive stakeholder consultation
 - Member States
 - Economic Operators
 - General Public

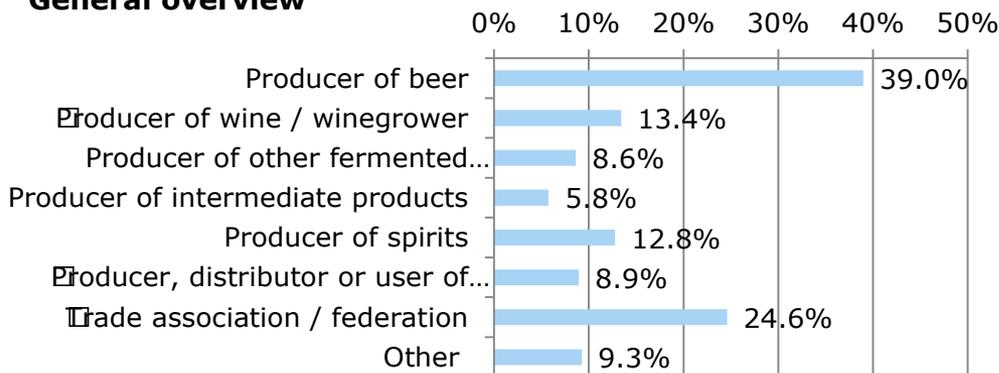


STAKEHOLDER CONSULTATION – ECONOMIC OPERATORS (1)

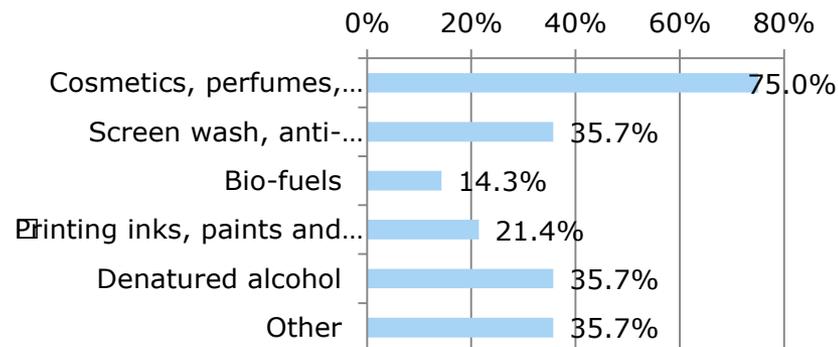
- Online survey questionnaire open to economic operators active in the field and the trade associations representing them.
- Survey was open for 12 weeks between 27 August and 28 November 2015
- A total of 323 respondents participated (247 complete and 76 partially complete answers)
- Delivery method:
 - A distribution link guiding respondents to a web-page where they were invited to enter their e-mail address.
 - A unique, individual link which could be accessed at any time was generated for each respondent requesting to answer the survey.
 - Intermediary answers were automatically saved, allowing respondents to close and re-open the questionnaire if they were unable to complete it in one sitting.

STAKEHOLDER CONSULTATION – ECONOMIC OPERATORS (2)

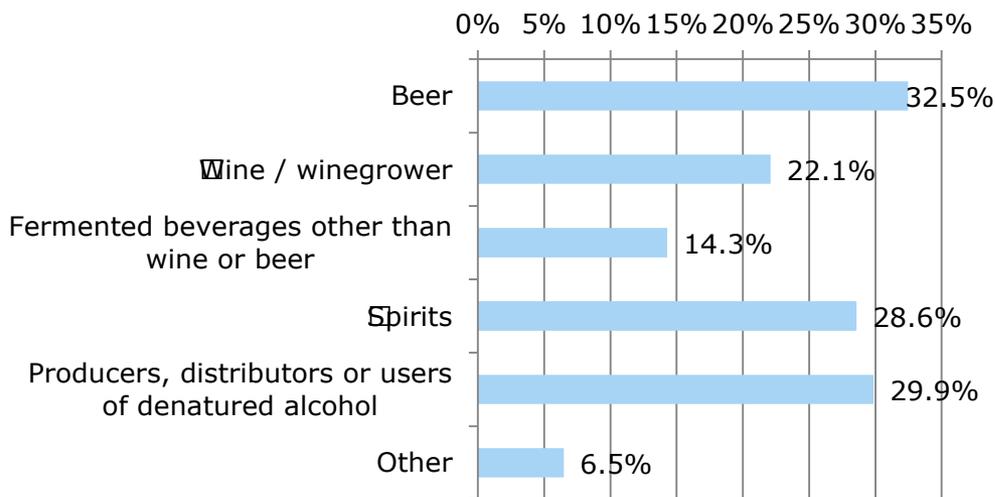
General overview



Denatured alcohol sector



Trade Associations



Geographical coverage

The survey reached economic operators from all EU Member States and presents a relatively balanced representation in terms of number of respondents compared to the size of the Member State.

For every EU Member State the survey managed to reach at least one economic operator of each relevant sector.

STAKEHOLDER CONSULTATION – ECONOMIC OPERATORS (3)

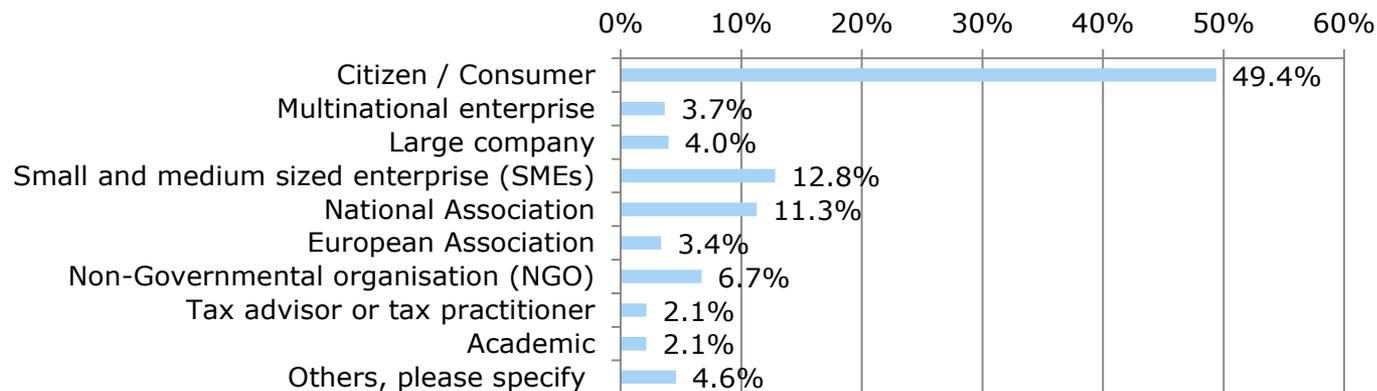
- Data on the background of economic operators has allowed filtering answers to the survey based on the **industry sector** of operators, their **size** and the **Member State(s)** in which they are active.
- **Overall the sample size and composition is considered rather representative.** The respondents cover well the different product categories, all countries and the coverage also included a good distribution between small and large operators. Any potential over-representativeness of certain sectors is mitigated. In this context, we believe that analysis performed **at EU level** and **for each sector** can be considered sufficiently accurate.
- The data collected on the background of economic operators has allowed filtering answers to the survey based on the **industry sector** of operators, their **size** and, where relevant, the **Member State(s)** in which they are active.

STAKEHOLDER CONSULTATION – PUBLIC CONSULTATION (1)

- Online survey questionnaire open to the general public under the public consultation rules.
- Public consultation open for 12 weeks between 27 August and 28 November 2015.
- Promoted by the Commission through a press release, on the Commission's "Your voice in Europe" website as well as through online media platforms (Twitter and Facebook).
- 328 partial or complete responses were received.
- Delivery method:
 - Access to the public consultation was provided through a direct link. Participants were not required to indicate their e-mail address. They were asked about their status, about their Member States and were asked to name their organisation/ entity/ company.
 - In line with public consultation guidelines, respondents were asked whether they consent to the publication of their responses and personal data.

STAKEHOLDER CONSULTATION – PUBLIC CONSULTATION (2)

- Half of the participants to the consultation were citizens and consumers



Responses to the public consultation were received from all Member States except for Hungary and Estonia. However, from many Member States less than ten responses were received. Belgium has a particularly high participation (approx. 20% of responses).

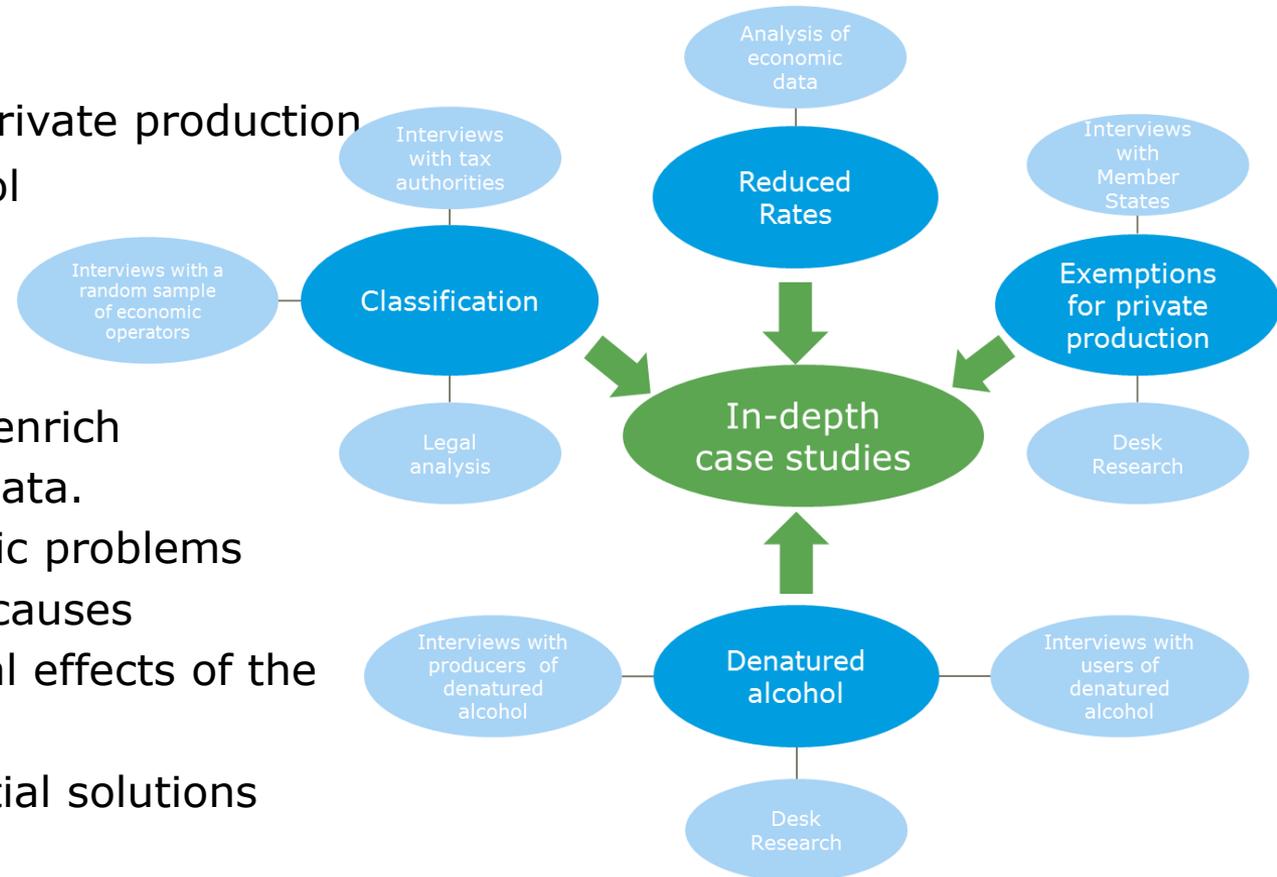
DETAILED METHODOLOGY – IN-DEPTH CASE STUDIES

In-depth analysis of key issues

- Classification
- Reduced rates
- Exemptions for private production
- Denatured alcohol

Purpose

- To complement and enrich the high level survey data.
- Further define specific problems and their precise root causes
- To underline potential effects of the observed problems
- To investigate potential solutions



IN-DEPTH STUDY ON CLASSIFICATION (1)

Rationale:

- Compelling arguments were brought by Member States and Economic operators detailing why classification provisions are unsatisfactory.
- Difficulties with the classification of alcohol and alcoholic beverages were reported.

Questions: (Part 1):

- **Which products** are difficult to classify (e.g. because they could, arguably fall within several excise categories)?
 - Precise characteristics,
 - Possible classifications
 - Legislative source of the problem

Methodology: (Part 1):

- In-depth interviews with all **Member States** which reported difficulties
- In-depth interviews with a **sample of economic operators.**
- **Desk research** into **ECJ case law** and results of survey
 - Establishing a detailed list of products which are difficult to classify

IN-DEPTH STUDY ON CLASSIFICATION (2)

Questions:

- What is the **potential excise duty at stake** taking into account the actual or potential classifications of products difficult to classify:
 - Drawing on the product categories identified in the case study to inform product categories to be analysed.
 - Drawing on stakeholder consultation to inform alternative taxation categorisations.

Methodology: (Part 2):

- Estimation of tax impacts of example products considered to be “difficult to classify”.
- Based on scenarios of the change in tax and end prices if products were classified differently.
- Calculation of tax impacts based on data on volumes, prices and price elasticity of demand.

IN-DEPTH STUDY ON REDUCED RATES

Rationale:

- Answering evaluation questions on the adequacy of provisions for reduced rates requires quantitative analysis of economic data

Questions:

- Issues for competition:
 - within the beer sector and within the spirits sector;
 - between beer and spirits sectors; and
 - between beer and spirits *and* other sectors.

Methodology:

- Focus on a selection of Member States (France, Germany, Italy, Spain and UK)
- Competition assessment in each market drawing inference based on quantitative indicators of competition.

IN-DEPTH STUDY ON EXEMPTIONS FOR PRIVATE PRODUCTION

Rationale:

- Current provisions have important implications, e.g. need for production to take place in tax warehouses
- Differences of opinion between MS on the adequacy of the provisions

Questions:

- Current state of affairs and experience of Member States
- Proposals being put forward by MS for improvement
- Likely effects of proposals

Methodology:

- 20 interviews with key stakeholders across five Member States

IN-DEPTH STUDY ON DENATURED ALCOHOL

Rationale:

- Current provisions have important implications, e.g. need for production to take place in tax warehouses
- Differences of opinion between MS on the adequacy of the provisions

Questions:

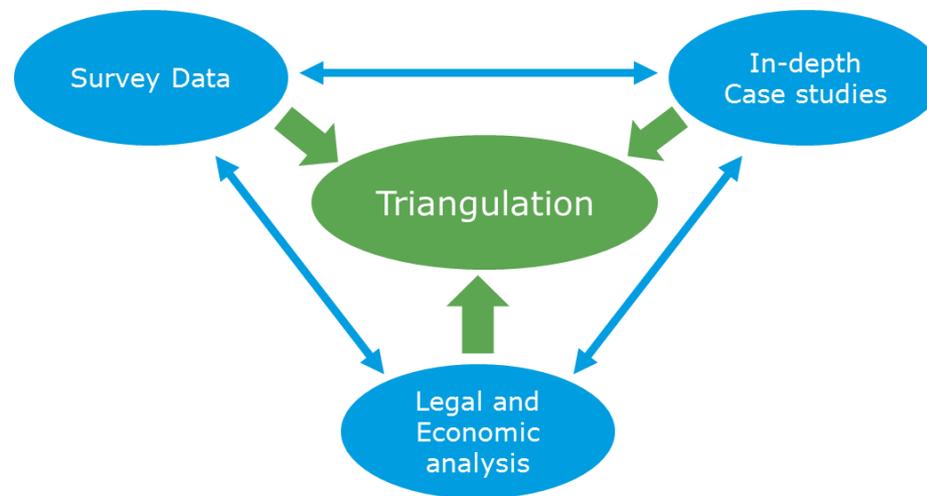
- Current state of affairs and experience of Member States
- Proposals being put forward by MS for improvement
- Likely effects of proposals

Methodology:

- Questionnaire with Member State authorities
- Mapping current state of affairs for all Member States
- 20 interviews with key stakeholders across five Member States

DETAILED METHODOLOGY – ANALYSIS AND CONCLUSIONS

- The **final conclusions are based on the triangulation** of data from all sources (e.g. different types of stakeholders) from several methods (e.g. survey as well as economic or legal analysis) and have been **subject to the interpretation and judgement of the authors of this study.**



CLASSIFICATION - INTRODUCTION

- Directive 92/83/EEC defines, for excise duty purposes, five categories of alcoholic beverages (*Beer; Wine; Fermented beverages other than beer and wine; Intermediate products and Ethyl Alcohol*).
- A **coherent understanding and application** of these categories across the EU is an **essential** internal market objective.
- By establishing different categories of products, the Directive acknowledges the intention of the legislator to **create the possibility for Member States to apply differentiated excise duties** on the abovementioned categories when pursuing national policies for alcohol taxation.
- We understand this approach to alcohol tax policy to be one which allows Member States to **pursue**, at a national level, **multiple objectives** in accordance with their own policy choices.

CLASSIFICATION - RESULTS (1)

- It is clear from the unequivocal support for EU action by stakeholders that the **common definitions of alcohol and alcoholic beverages for excise purposes should be set at EU level** as it is currently the case.
- The **EU added value** of this approach, *inter alia*, ensures free movement of goods, uniform treatment, forms the basis for a harmonised approach to controlling movements, thus avoiding illegal trade and reduces administrative costs.
- Overall, the **provisions** concerned **continue to generally fulfil the needs which they have set out to fulfil**.
- In the **vast majority of cases**, the classification of alcoholic beverages and the assignment of products within the given excise categories is **straightforward and causes no difficulties** for Member States and mainstream (i.e. most consumed) alcoholic beverages.

CLASSIFICATION – RESULTS (2)

- ... **several weaknesses** related to the completeness, legal certainty and clarity in light of technological and market evolution were observed
- Although research indicates that the quantities of products “difficult” to classify remain low, we believe that, at the source lies a **systematic weakness of the legislative environment** with potentially damaging consequences for the stakeholders involved. (e.g. potential revenue loss / unfair taxation, increased administrative costs and potential competitive distortions).
- In particular, Article 12, defining *other fermented beverages* for excise purposes (together with Article 20, defining *ethyl alcohol*) causes a non-negligible number of situations in which alcoholic beverages become difficult to classify.
- Multiple solutions to overcome the reported issues exist, however all exhibit advantages as well as shortcomings.

REDUCED RATES - INTRODUCTION

- The Directive **allows Member States to grant reduced rates** to certain categories of producers (i.e. small producers and fruit growers) and to certain products (i.e. alcohol beverages below a certain alcoholic strength and products of regional or traditional nature).
- Quantitative and qualitative **limits are set** by the Directive in order **to allow the proper functioning of the internal market** and **avoid unfair competition**.
- Member States may apply reduced rates for brewers producing no more than 200,000 hectolitres per year and distillers producing no more than 10 (20 in specific cases) hectolitres of alcohol per year
- Member States may also apply reduced rates for all categories of alcoholic beverages when they are below a certain level of alcoholic strength.

REDUCED RATES - RESULTS (1)

- All stakeholders agree that the provisions governing reduced rates for small producers should **continue to be set at EU level**.
- This approach provides added value by ensuring a **uniform approach**, the **approximation of national excise duty rates** and **avoids distortion of competition** between Member States.
- On the content of the provisions and applicable limit, however, the views and opinions of stakeholders **are split on almost all topics**.
- As a result, certain evaluation questions related to the appropriateness and effectiveness of the provisions for reduced rates on small producers were investigated through a **quantitative analysis of economic data**.

REDUCED RATES – RESULTS (2)

- Analysis of the stakeholder consultation suggests that reduced rates for small producers may help to **level the playing field**
- The volume of beer and ethyl alcohol being that is likely to benefit from reduced rates is **sufficiently small** so as to be **unlikely to result in any distortions in competition**, neither:
 - within markets (e.g. beer produced by small brewers vs. beer produced by large brewers),
 - across markets receiving reduced rates (e.g. beer produced by small brewers vs. spirits produced by small producers subject to tougher qualifying thresholds),
 - or across all markets (e.g. beer produced by small producers vs. other fermented beverages not subject to any reduction in rates).
- The results of the quantitative analysis suggest that the gains available to larger producers from **economies of scale** are likely to be sufficiently large so as to **outweigh any gains to small producers** from reduced rates

REDUCED RATES – RESULTS (3)

- A simple analysis of the opinions of stakeholders in relation to the provisions governing reduced rates for alcohol below a certain alcoholic strength shows that, overall, the **majority of stakeholders consider the status quo to be appropriate** and evaluate positively its functioning given the overall needs of Member States and industry.
- However...
 - While economic operators are concerned only with the tax advantages / disadvantages (and associated competitive impacts) which the implementation of these provisions can bring for their industry, a group of stakeholders (mainly health authorities of Member States) believe that the purpose and objectives of these provisions is not adequately reflected in the Directive and would require a careful revision.

EXEMPTIONS FOR PRIVATE PRODUCTION FOR OWN CONSUMPTION

- Directive provides for exemptions of excise duty to beer, wine and other fermented beverages “*produced by a private individual and consumed by the producer*”.
- Most MS are applying the current exemptions and no negative experiences have been reported.
- But when it comes to idea of extending exemptions to cover intermediate products and ethyl alcohol, views are divided:
 - Countries in **favour of extending** the exemptions have two reasons:
 - Traditional home-made spirits and production methods play an important role in their cultures
 - Expanding exemptions would legalise alcohol production which would otherwise take place anyway.
 - Countries **against the expansion** of exemptions worry about:
 - Increased risks of (cross-border) fraud
 - Higher administrative costs and burden,
 - Difficulties in controlling against the misuse
 - Perceived health risks.

EXEMPTIONS FOR DENATURED ALCOHOL – INTRODUCTION

- Article 27 of the Directive allows for exemption from excise duty of denatured alcohol:
 - Under Article 27.1(a) of the Directive “*alcohol which has been completely denatured in accordance with the requirements of any Member State*” shall be exempted from the application of excise duty. The requirements for those exemptions are to be notified to the Commission and shared with the other Member States.
 - Article 27.1 (b) stipulates that alcohol that is “*denatured in accordance with the requirements of any Member State and used for the manufacture of any product not for human consumption*” may equally be exempted.

EXEMPTIONS FOR DENATURED ALCOHOL – RESULTS (1)

- There are **clear advantages** of establishing a common system for the recognition and management of exemptions of denatured alcohol from the scope of excise duty at EU level.
- Stakeholders expressed support for action at EU level but pointed to flaws of the current system, as the rules are unclear and interpreted differently by Member States:
 - There are **inconsistencies** in the treatment of exemptions of **completely denatured alcohol** across the Member States. The variations in requirements can be traced back to differences in the interpretation of what encompasses mutual recognition.
 - Under **Article 27.1 (b)**, there is a potentially endless number of denaturing methods which can be used for **very different types of products**. The interpretation of “any product not for human consumption” varies between Member States.

EXEMPTIONS FOR DENATURED ALCOHOL – RESULTS (2)

- Inconsistent interpretation of both Articles 27.1 (a) and (b) lead to **uncertainties and financial risks** for economic operators. They can impact producers' and users' decisions on where to set up production or where to purchase denatured alcohol and can **hinder the free movement** of goods.
- There are a number of situations in which economic operators of one Member State may have a legislation induced **competitive advantage** over those coming from other Member States.

EXCISE DUTY GAP RELATED TO FRAUD WITH ALCOHOL AND ALCOHOL BEVERAGES (1)

- Given the difficulties in quantifying the extent of fraudulent use of denatured alcohol, a sensible first step is to understand the likely volume of alcohol fraud overall.
- In volume and value terms, the largest problems with overall fraud identified by the stakeholder consultation appear to be in the UK and Poland, but the issue is non-trivial in other Member States too.
- Evidence from the stakeholder consultation on tax gaps associated with fraudulent use of denatured alcohol in particular provide the headline results on this type of fraud.
- These problems appear to be particularly pronounced in Spain, Latvia and Poland.

EXCISE DUTY GAP RELATED TO FRAUD WITH ALCOHOL AND ALCOHOL BEVERAGES (2)

- Evidence from other sources suggest that individual counterfeiting schemes tend to be at the scale of thousands of litres.
- However, this type of criminal activity is relatively minor when compared to other more profitable types of tax fraud.
- The evidence has not identified the diversion of denatured alcohol from any one supply chain in particular.

OTHER ASPECTS

- The co-existence of two different methods of establishing the **duty on beer** does not create any major difficulties or negative consequences.
- Overall, the Directive has shown to be **coherent with EU legislation** and international agreements.
- Although not reported on by the stakeholders as a source of major problems certain inconsistencies and **outdated references** exist as a result of changes in the **Combined Nomenclature** and amendments to **EU legislation** since the introduction of the Directive.

HEALTH ASPECTS

- Several Member States noted that they would prefer calculation of excise duty based on alcoholic strength but overall Member States agreed that the provisions of the Directive 92/83/EEC allowed for **using excise duties on alcohol as a policy tool** with regards to protection of consumer health.
- Member States' health and taxation authorities which are in favor of setting **excise duty rates consistently based on alcoholic strength** indicated that this could support reaching health policy objectives and at the same time eliminate some of the current issues with classification.
- In particular academics and NGOs indicated that the provisions of the Directive were not responding to Member States' health policies, while companies and their associations were less concerned.

CONCLUSIONS (1)

- On the way to establishing (and maintaining) a well-functioning internal market, **common rules for the application of excise duty have been and continue to be of high relevance.**
- **All types of stakeholders strongly support an EU level approach** on the areas covered by the Directive. Provisions set at EU level facilitate a harmonised treatment, facilitate trade, avoid distortions of competition, reduce administrative costs and help prevent fraud.
- While the individual aims of each of the provisions of the Directive are rather distinct and aim to balance a set of complex outcomes and conditions, the overall objectives of Directive 92/83/EEC are to **ensure the proper functioning of the internal market, and to safeguard the financial interests of the Member States:**
 - The Directive is, overall, instrumental in enabling the collection of excise duty on alcohol and alcoholic beverages in the context of the internal market.
 - Despite this overall positive conclusion, several weaknesses in the legislative environment partially undermine the abovementioned objectives .

CONCLUSIONS (2)

- Issues surrounding **the classification of products** which have been identified as “difficult” to classify and the **management of exemptions for denatured alcohol** result in increased costs for all stakeholders concerned (Member States tax authorities as well as economic operators).
- While there are a number of references in the Directive to other EU legislation and to CN codes that should be updated, the identified inconsistencies were not reported to cause any significant practical problems.
- Two points with regards to coherence do create problems for economic operators, namely concerning the CN codes for denatured alcohol and the treatment of precursors of wine.

RECOMMENDATIONS - CLASSIFICATION

Recommendation	Responsible stakeholder(s)
<p>Clarify the scope of application of the excise category of other fermented beverages: The definition of the excise category “other fermented beverages” should be clarified by the legislator in order to define unequivocally, for all stakeholders concerned, the intended scope of application of this category.</p>	<p>Member States, European Commission, European Council and European Parliament</p>
<p>Create another excise category code within the EMCS: Annex II, Table 11 (Excise Product) of Regulation 684/2009 should be amended to include two additional Excise Product Codes (EPC): one for still fermented beverages other than wine and beer and another for sparkling fermented beverages other than wine and beer.</p>	<p>European Commission Member States</p>
<p>Clarify the notion of “entirely of fermented origin” within the understanding of Articles 8, 12(1) and 17: A potential revision of Directive 92/83/EEC should contain a clearer statement of the understanding of the concept of “entirely of fermented origin” a meaning which should be accepted by all Member States and subsequently enforced to ensure consistent treatment</p>	<p>Member States, the European Commission, European Council and European Parliament</p>

RECOMMENDATIONS – REDUCED RATES

Recommendation	Responsible stakeholder(s)
<p>Extend the application of reduced rates to small producers of still and sparkling wines, other fermented beverages and intermediate products: While the appropriate qualitative and quantitative limits to be introduced should be determined following a specific impact assessment on the subject and would ultimately be subject to policy decisions, a potential revision of Directive 92/83/EEC should consider the inclusion of the possibility (i.e. a formulation as Member States may) for Member States to introduce rates for small producers of alcoholic beverages in all excise product categories.</p>	<p>Member States, the European Commission, European Council and European Parliament</p>
<p>Further investigate the extent with which provisions on reduced rates for low strength alcohol can support re-stated policy objectives: The European Commission should investigate in-depth the extent to which the provisions for reduced rates can be used to pursue re-established, clear, policy objectives. This process should be taken up in dialogue with Member States tax and health authorities.</p> <p>In our view, such an assessment should take into account at least the following elements:</p> <ul style="list-style-type: none"> ⌚ What threshold is most appropriate in light of the policy objectives which are to be pursued? ⌚ What level of harmonisation is necessary to ensure the proper functioning of the internal market and avoid unintended, negative competitive distortions? ⌚ How can internal coherence between the different provisions for each product category can be ensured, particularly in light of cross-substitution and potential for abuse? 	<p>European Commission, Member States</p>
<p>Investigate the impacts of allowing Member States to exempt the production of ethyl alcohol and intermediate products for own consumption: The European Commission should consider analysing the likely effects of expanding the exemptions for beer, wine and other fermented beverages stemming from private production intended for own consumption (Articles 6, 10 and 14 respectively) to cover intermediate products and ethyl alcohol. This in-depth investigation should look not only at possible positive impacts, but also consider carefully the risks implied by such a proposal, not least related to the potential of fraud and abuse. On the latter, the experience of Member States which currently apply a reduced rate for ethyl alcohol produced by fruit growers for their own consumption, and in particular the effectiveness of their national measures to prevent fraud and abuse can be adequate indicators for assessing risks.</p>	<p>European Commission</p>

RECOMMENDATIONS – DENATURED ALCOHOL

Recommendation	Responsible stakeholder(s)
<p>Consider reducing the composition in the Eurodenaturant formulation: The denaturing procedure employed in all Member States for complete denaturation as presented in Regulation 162/2013 could be reduced from 3 litres of IPA, 3 litres of MEK and 1 gram of denatonium benzoate per hectolitre to a formulation of 1 litre IPA, 1 litre MEK and 1 gram denatonium benzoate.</p>	<p>European Commission and Member States</p>
<p>Ensure a common interpretation of mutual recognition: All Member States should have the same understanding under which conditions the denaturing methods listed in Regulation 162/2013 for complete denaturation can be used.</p>	<p>European Commission, Member States</p>
<p>Ensure a common understanding of which products can be exempted under Article 27.1 (b): Article 27.1 (b) should be clarified in order to ensure a common understanding across all Member States of what constitutes alcohol exempt under Article 27.1 (b). Furthermore the scope of the article should be clarified in order to make a clear distinction from products that can be exempted under Article 27.1 (a) and the consequences following the distinction (e.g. in terms of requirements for monitoring and control)</p>	<p>European Commission, Member States</p>

RECOMMENDATIONS – OTHER

Recommendation	Responsible stakeholder(s)
Update references in the Directive: References in the Directive to outdated legislation and CN codes should be updated.	European Commission and Member States
Ensure coherence of the definition of sparkling beverages with the definition employed for customs purposes: The definition of sparkling wine and other sparkling beverages with regards to the level of excess bar pressure should be aligned to the definition used for customs purposes.	European Commission and Member States



NEXT STEPS

Milestone	Planned Date
Draft Final Report	20'th May 2016
Inter-Service Steering Group meeting	2'nd June
Commission submits comments on the draft final report	2'nd June
Final Report (subject to approval)	9'th of June 2016
Contract Ends	30'th of June 2016

THANK YOU

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