

INCEPTION IMPACT ASSESSMENT			
TITLE OF THE INITIATIVE	Structures of excise duties on alcohol and alcoholic beverages		
LEAD DG – RESPONSIBLE UNIT – AP NUMBER	DG TAXUD / C2	DATE OF ROADMAP	01/03/2017
LIKELY TYPE OF INITIATIVE	Proposal for revision of the Directive		
INDICATIVE PLANNING	Q4 2017		
ADDITIONAL INFORMATION	-		
This Inception Impact Assessment aims to inform stakeholders about the Commission's work in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options. The Inception Impact Assessment is provided for information purposes only and its content may change. This Inception Impact Assessment does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content.			

A. Context, Problem definition and Subsidiarity Check
Context
<p>Excise duties are indirect taxes on the sale or use of specific products. They are usually applied as an amount per quantity of the product e.g. per kg / per hl /per degree alcohol / per 1000 pieces etc. All revenue from excise duties goes entirely to the Member States. In the EU, Member States must apply excise duties to alcohol, tobacco, and energy.</p> <p>This initiative is included in the Commission Work Programme (CWP)¹ and is part of a package of three excise taxation initiatives: alcohol "structures"; tobacco rates and structures Directive² and the general rules for excise³. Directive 92/84/EEC (alcohol "rates") is out of the scope of this initiative.</p> <p>Directive 92/83/EEC⁴ sets out the rules on the structures of excise duty applied to alcohol and alcoholic beverages. In particular, it defines and classifies the different types of alcohol and alcoholic beverages, according to their characteristics, and provides a legal framework for reduced rates in some sectors, exemptions and certain derogations.</p> <p>Directive 92/83/EEC was included in the Regulatory Fitness and Performance (REFIT) programme. The questions of the delegations of the Excise Committee concerned in most cases classification difficulties of products for excise duty purposes and interpretation of the exemptions applied to denatured alcohol.</p> <p>A 2016 report⁵ and accompanying Staff Working Document (SWD)⁶ evaluate the functioning of the Directive and identify possible improvements that would reduce administrative burdens and compliance costs for both Member States and economic operators and in particular reduce distortion within the internal market. Report and SWD are based on an external evaluation⁷ of the Directive from a consortium established by Ramboll Management Consulting AS, Coffey, and Europe Economics. It was conducted between December 2014 and July 2016.</p>
Problem the initiative aims to tackle

¹ Commission Work Programme, Annex II 05/2017

² Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco

³ COUNCIL DIRECTIVE 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

⁴ [Council Directive 92/83/EEC](#)

⁵ [Report to the Council](#)

⁶ [Staff Working Document](#)

⁷ [External evaluation report](#)

It is clear that there are areas of weakness and ambiguity in the current arrangements which give rise to market distortions, unfair competition, legal uncertainty, protectionist measures and can also hinder the detection and prevention of fraud. The report identified the following specific problems:

1. The product categories as currently defined in the Directive are incomplete, leading to tax incentives being exploited by manufacturers of certain alcoholic beverages. The following weaknesses in the current rules were identified:
 - they don't accurately capture all existing products,
 - they don't provide a sufficient degree of legal certainty and clarity, particularly in the light of technological and market developments
2. The Directive is not sufficiently clear about its objectives and differential impacts, including on public health, in the area of reduced rates for alcoholic beverages below a certain alcoholic strength. This option has not been widely used by the Member States, and there are doubts concerning its use, namely as a health or national taxation policy instrument intended to be used at a national level to encourage shifts in the production of and consumption to lower-strength beverages within each category. The Directive does not explicitly state what these provisions should be used for nor does it state that it may or should be used as a tool for pursuing health policy objectives. The Directive has not necessarily kept up with important market developments, with fiscal and public health impact, such as the very important growth in recent years of micro-breweries and distilleries (doubling in several countries in just the last 5 years⁸).
3. There are significant problems for the administrations and economic operators alike in the application of the rules for the exemptions for the different types of denatured alcohol, how the exemption is granted, and what mutual recognition means in practical terms.
4. The approval of denaturants chosen by Member States for complete denaturing of alcohol (CDA) is currently subject to a specific procedure that has been in place since 1992 – long before the entry into force of the Lisbon Treaty of 2009. Currently, denaturants for CDA need to be communicated to the Commission and despite their variety (over 100 in total across all categories of denatured alcohol) alcohol producers can use national formulas that are accepted in any Member State and there is also a common denaturing procedure for CDA employed in all Member States ("Euro" denaturant). The proliferation of different denaturing methods creates administrative burdens for the customs laboratories in the Member States, barriers to trade for economic operators if there are problems with recognition, and additional costs associated with the provision (or not) of financial securities / guarantees for movements.
5. There is additional economic burden for economic operators in some Member States due to the inconsistent calculation of excise duties on beer, in particular on sweetened beers, in countries which use as reference the number of degrees Plato as opposed to one who use alcohol by volume (ABV). This may also have relevant public health impact as the sweetening of alcoholic beverages is an important factor in increasing palatability and (young) consumption.
6. There is an exemption for private production and own consumption of beer, wine and fermented beverages which does not apply to ethyl alcohol and intermediate products and there is a reduced rate for small producers of beer and ethyl alcohol which does not apply to small producers of wine, fermented beverages and intermediate products. In the case of private production of ethyl alcohol, there is evidence that this is a growing problem in some MS, where this practice is currently unregulated. In the case of small producers of wine, for example, some MS have started to tax wine, and would like to offer small producers a reduced rate, but this is currently not possible.

Subsidiarity check (and legal basis)

The legal basis for Directive 1992/83/EEC is Article 113 of the TFEU and therefore the European Union shares competence with Member States in this area.

The Directive in general works well and provides an EU-wide system of uniformity and harmonised conditions that are necessary to ensure the proper functioning of the internal market. Despite the shortcomings described above, no alternative national, bilateral or other international initiative would provide the same level of effectiveness in terms of the functioning of the internal market and the monitoring and control of excisable alcohol, and significant added value consequently accrues from establishing common definitions and rules of alcohol and alcoholic beverages for excise purposes at the EU level.

Decisions taken unilaterally by Member States, such as issued Binding Tariff Information (BTIs) for certain alcoholic beverages create additional complexity, while a solution that would clarify the scope of the current categories in agreement of all Member States would provide a much more effective solution.

When it comes to the reduced rates for small breweries – used by many Member States – the limits for reduced rates in the Directive ensure that reduced rates cannot be set at a level where they would present a distortion to competition. Although, more rarely used, the same applies to reduced rates for small distilleries. Consistent limits across the EU ensure that competition within and between the Member States are not distorted and that public

⁸ <http://www.brewersofeurope.org/site/countries/key-facts-figures.php>

health is protected at EU level.

When looking at the provisions related to denaturing alcohol, the source of the current complications lays precisely in the absence of clear rules at the EU level. Aligned to this, and because of that ambiguity, the MS are interpreting those current rules differently, and economic operators therefore take advantage of the more flexible approaches used in certain Member States. There is a lack of clear understanding of the rules on mutual recognition of denaturing methods between Member States, which also causes administration problems for authorities and economic operators alike. The evidence from evaluation showed that clear rules, common for all Member States would protect the single market. No bilateral or multilateral agreements could have the broad EU impact.

Work on this Directive does not cover other EU legislation for wine, spirit drinks and aromatised wine products.

B. Objectives and Policy options

It is expected that the fulfilment of the objectives outlined below would lead to a reduction of administrative and compliance costs, improvement in revenue collection in some areas, reduction of fraud and the facilitation of legitimate trade, as well as ensuring a higher level of human health protection.

General objectives:

- to ensure the proper functioning of the internal market, free and undistorted movement of goods within the EU (articles 26 and 113 TFEU)
- to safeguard the revenue of Member States
- to ensure a high level of human health protection in Union policies and activities (Article 168 TFEU).

Specific objectives:

- to ensure fair treatment of economic operators across the alcohol sectors for small producers of all types alcohol
- to prevent and correct distortions of competition in the application of the exemption for different types of denatured alcohol, the application of beer duty for sweetened beer, the reduced rates for low strength alcohol, and small producers of all types alcohol
- to provide clear and efficient rules to determine denaturation procedures for all types of denatured alcohol
- to reduce administrative burden and compliance costs for economic operators and tax authorities, and provide legal certainty specifically in the area of classification and the exemption for denatured alcohol
- to strengthen the fight against fraud and tax evasion, specifically in the area of denatured alcohol
- to identify possibilities to improve human health protection through redefining the reduced rates for low strength alcohol.

Policy Options

Options mapping:

- Baseline scenario – no EU policy change. The scope and content of the Directive will remain the same. Member States can act on own initiative and in line with the current European legislation. Therefore, the impact assessment will analyse the potential impacts of the non-regulation on EU level for taxation purposes from the point of view on the functioning of the internal market and fair competition. This analysis will also include the effect of non-regulation on the fight against tax fraud.
- Options of improving implementation and enforcement of existing legislation or doing less/simplifying existing legislation:
 - Clarify the rules for the different types of denatured alcohol, mutual recognition of denaturing methods by and between Member States and third country movements of denatured alcohol into the EU
 - In line with the need for the alignment of all existing legislation to the legal framework introduced by the Lisbon Treaty, and in particular the need to give high priority to the prompt alignment of all basic acts which still refer to the regulatory procedure with scrutiny⁹, Article 27 (3) and (4) should be amended
 - Redefine the category of "other fermented beverages" and the term "entirely of fermented origin"
 - Revise the reduced rates for small producers of alcohol and alcoholic beverages across all sectors
 - Revise and adjust the levels of low strength alcohol as appropriate

⁹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making, OJ L 123, 12.5.2016, p. 1 (cf. paragraph 27)

- Revise the rules for private production for own consumption across all sectors;
- Correct the anomaly between the treatments of calculation of excise duty on sweetened beers when using the Plato method.
- Alternative policy approaches:
 - Adjust the scope of other intermediate products and fermented beverages by a series of recommendations, product by product, at the Indirect Tax Expert Group (ITEG)
 - A series of recommendations for the implementation and interpretation of the terms and conditions for denatured alcohol, including mutual recognition and a guideline detailing uses of denatured alcohol
 - A guideline of tax structures for reduced rates for low strength alcohol and small producers, and the exemptions for private production and own consumption which could be implemented on national level to reduce the incentives for fraud, and to ensure a net positive impact on public health.
- Options that take account of new technological developments the possible influence on the functioning of the horizontal Directive and the Excise Movement & Control System (EMCS) will be taken into account under all options.

Preliminary proportionality check:

- None of the options should go beyond what is necessary to solve the identified problems.

C. Preliminary Assessment of Expected Impacts

The costs and benefits of each option will be the subject of further analysis in the Impact Assessment.

Although clarifying the intended scope of the category “other fermented beverages” can be achieved through a broad range of potential options, it is not possible to estimate accurately the expected impact of its implementation. However, any change in this area will have unintended consequences in that certain products are expected to change their excise classification as a result of the revision. Any possible change of classification may affect some product categories more than others (e.g. wine and aromatised wines) and this will be analysed fully in the impact assessment.. There may be an increase or decrease in excise revenues in the Member States depending on the scope of the change in the category. There may also be competitive effects on products expected to be classified differently as a result of any revisions. An unintentional impact which needs to be considered and measured during the impact assessment is whether such a change would unduly affect products which directly compete with those that are not expected to change their classification as a result of the revision

More widespread use of the "Euro" denaturant would lead to a further harmonisation of denaturing methods as more Member States decide to stop using their own national methods. There is also an anticipated reduction in the numbers of the remaining national denaturing formulations. A consistent interpretation of the rules of mutual recognition implementing a functioning mutual recognition regime, and more generally, the way in which the exemption is applied, by all Member States, would ensure more certainty for economic operators, allowing for a better functioning of the internal market. In addition, the equal treatment of exemption applied to denatured alcohol would eliminate any disruptions to fair competition. This will also provide a level playing field and the same requirements for the importation of denatured alcohol into all the Member States.

It is difficult to quantify changes at this stage as potential changes are dependent on the estimates provided by economic operators and Member States, particularly in the area of classification and of denatured alcohol.

Likely economic impacts

Denatured alcohol – reduced costs of the quantities of chemical agents used for member States as a result of full implementation of the "Euro" CDA denaturant, and the use of the simplified procedures would also affect the economic costs in a reduction of the level of movement guarantees. Reduction in the numbers of denaturing formulations in use, and the testing of samples required, would lead to efficiencies in the customs laboratories time. The costs of some of the remaining national formulations exceed that of the "Euro" denaturant by, in some instances, 2 times (e.g. 3EUR per HL for the "Euro" formulation compared to 6EUR per HL). The net saving for any particular Member State (depending on whether or not they continue to keep national formulations) will be measured in the impact assessment and aggregated up to EU level.

A positive or negative impact (i.e. increase or decrease) in excise revenues for the Member States as a result of the expected changes to the classification categories depending on whether the category is enlarged or restricted.

Changes in the areas of low strength alcohol, reduced rates for small producers and the exemption for private production / own consumption would not create any significant adverse effects / impacts on the EU market as a whole when initially assessed during the evaluation. However, their net fiscal and public health impact will have to be determined (excise rates affect price which in turn affects accessibility; this may lead to net increases in consumption - and not necessarily or only to substitution of consumption of beverages of higher alcohol content by consumption of others of lower content).

However, allowing a reduced or optional zero rate for small producers of all alcohol would reduce the excise revenues of the Member States as would extending the exemption for private production for own consumption to ethyl alcohol / intermediate products. There would also be an added cost for any additional enforcement / compliance resource as a result of the extension of these categories. In addition, the net public health impact will

have to be determined as mentioned above.
Likely social impacts
<p>More control over the illicit market where the tax exemption for denatured alcohol is abused will influence consumption, consumer choice and public health in a positive way, contributing to a reduction of alcohol related harm and preventing fatalities from the consumption of dangerous chemicals used in the production and cleaning up of denatured alcohol to convert it to potable use.</p> <p>The existence of a single "Euro" completely denatured alcohol formulation, (and its inclusion in the Directive) would also provide a clear cut identification method in the detection of illicit spirit, reduced administrative burdens and legal certainty for the Member States and economic operators.</p> <p>The inclusion of some alcoholic products into a higher taxing category would lead to a price increase which might affect the choice of consumers. The option to design a tax structure to limit the incentives for borderline products should lead to an appropriate level of taxation which could increase the taxation of these products and reduce the incentive to develop them and for manufacturers to market them as a substitute. An increase in taxation might lead to higher prices which could reduce the demand and have a positive effect on public health.</p> <p>However, the net public health impact will have to be determined (excise rates affect price which in turn affects accessibility; this may lead to net increases in consumption - and not necessarily or only to substitution of consumption of beverages of higher alcohol content by consumption of others of lower content). Extending the reduced rates on low strength alcohol and/or reducing the rates for small producers will likely have an effect on consumer choice, likely leading to lower prices and increased access and thus a negative public health impact.</p> <p>The extension of the excise exemption for private production for own consumption could increase availability and accessibility of alcoholic beverages and as such, would lead to increased consumption and consequent negative effects on public health.</p>
Likely environmental impacts
The control over and limitation of the use of hazardous chemical agents used in the cleaning up process to convert denatured alcohol into potable alcohol would prevent pollution and protect the environment.
Likely impacts on fundamental rights
There are no impacts foreseen.
Likely impacts on simplification and/or administrative burden
<p>Directive 92/83/EEC does not directly impose compliance costs on economic operators. By including certain products in the scope of excise duty, it indirectly subjects those sectors to the provisions of Directive 2008/118/EC, which sets out the rules and conditions for holding and moving excise duty goods.</p> <p>There are administrative costs associated with using the duty suspension scheme (which is defined under the rules for holding and movement) for denatured alcohol, which due to the current lack of clarity and ambiguity in the area of the exemption granted to denatured alcohol, is being exploited across the EU. Extending the use of the simplified movement procedures and the implementation of the "Euro" denaturant will reduce administrative burdens for Member States and economic operators and the inclusion of the "Euro" denaturant in the Excise Movement & Control System (EMCS) coding provisions will further simplify the procedures.</p>
D. Data Collection and Better Regulation Instruments
Impact assessment
<p>An impact assessment (IA) is being prepared to support the preparation of this initiative and to inform the Commission's decision. There will be another external study to analyse the impacts of the various policy options, inputting to this IA.</p> <p>An Inter-Service Steering Group (ISSG) has been established to discuss and evaluate all documentation and the same ISSG that was used for the evaluation will be used for the IA.</p>
Data collection
<p>Data has already been collected for the evaluation report. Further data will be gathered by surveys and questionnaires, in-depth interviews and through the use of public and commercial sources of market data.</p> <p>The analysis phase will involve the triangulation of all the data collected in the course of the evaluation, the drafting of conclusions, and the development of policy recommendations. The analysis, which is rooted strongly in triangulation¹⁰ in terms both of sources and methods to ensure that conclusions and recommendations were based on evidence.</p>

¹⁰ While the triangulation of sources entails inferring a fact from the statements of various types of stakeholder in the course of a single data-collection activity (e.g. all sectors of activity covered in the survey administered to economic operators), the triangulation of methods also requires the inferring of that fact from analytical actions (e.g. the analysis of economic data should support the conclusions drawn from the results of the surveys).

There is further data collection to be undertaken as part of the IA and the study to support it, across all the main areas:

- the costs of applying the "Euro" CDA and availability / supply of the chemical agents, how the remaining denaturing formulations are used
- the different categories of product within the "other fermented beverages" category
- the quantitative limits for reduced rates for low strength alcohol
- the quantitative limits for small producers of all alcohol
- the scale of the application of private production for own consumption
- the duty differential on sweetened beers using the Plato method of calculation
- regulatory costs and benefits (e.g. administrative burdens, compliance costs)
- the likely net impact on public health of any proposed changes.

Consultation strategy

A consultation strategy has been established as follows:

Stakeholder type	Method of consultation	Consultation period
Public Authorities in Member States, including public health authorities	Targeted questionnaires followed up by telephone and in-depth interviews as appropriate Roundtable meeting	Q1&Q2 2017
Economic operators and related organizations/associations	Targeted questionnaires followed up by telephone and in-depth interviews as appropriate Roundtable meeting	Q1&Q2 2017
NGOs active in the health area	Targeted questionnaires followed up by telephone and in-depth interviews as appropriate Roundtable meeting	Q1&Q2 2017
Citizens/businesses/General Public	Open public consultation	Q2 2017

For each policy option, relevant affected groups will be identified. The stakeholder analysis will consist of a mapping of the players who are concerned by the effects of the policy options under consideration. It is particularly appropriate to:

- ensure coverage across all sectors;
- appreciate the possible repercussions of policy change for indirectly or unintentionally affected products or sectors;
- anticipate reactions to policy change, based on the different roles and interests that individual stakeholders may have.

The categories of stakeholders that would fall under the scope of the analysis include the tax authorities and other public administrations (e.g. health) directly called upon in the implementation of the Directive and those involved in implementing the proposed changes, both at the national- and EU level. Secondly, the analysis should encompass different economic operators involved in the various sectors of the alcohol (and users of denatured alcohol) industry, and for the relevant products, i.e. beer, wine, other fermented beverages, intermediate products and ethyl alcohol and also include sectors of industry who use denatured alcohol including screen wash, biofuels, cosmetics and perfumes, solvents etc. Finally, since the proposed changes to the Directive are connected with the overall national policy for alcohol, the public of the Member States will not be neglected in the analysis.

Will an Implementation plan be established?

Yes