



Study on Council Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages

Final Report

Executive Summary

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Acronyms and Abbreviations

ABV	Actual Alcoholic Strength by Volume
AFC	Alcohol as a Flavour-Carrier
CDA	Completely Denatured Alcohol
CJEU	Court of Justice of the European Union
CN	Combined Nomenclature
CNEN	Combined Nomenclature Explanatory Note(s)
EPC	Excise Product Code
EU	European Union
h1pa	Hectolitre Pure Alcohol
mn	Million
IA	Impact Assessment
IP	Intermediate Products
MS	Member State(S)
OFB	Other Fermented Beverages
PDA	Partly Denatured Alcohol
SME	Small and Medium-sized Enterprise

EXECUTIVE SUMMARY

1. Introduction

The overall purpose of this Study is to contribute to the Impact Assessment (IA) of a set of policy options for a possible revision of Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages ('the Directive'). The Study takes into account the results of the evaluation of the Directive conducted in 2016, and the following Commission's Report (2016) and Inception Impact Assessment (2017). The Study has three main objectives, namely:

- gather and analyse the evidence on the existing costs and benefits arising from the Directive, with the main focus on **analysing the scale of the problems** identified in the previous evaluation study.
- assess the evolution of the problems if **no further action** at EU level is taken (dynamic baseline scenario).
- assess the economic, social and environmental impacts of the **possible options to address the problems identified**.

The scope of the work includes six problem areas that can be summarised as follows:

1. **Classification of alcoholic beverages:** legal uncertainties in the classification of certain 'borderline' products using the current definition and criteria, with possible adverse effects on market functioning, tax revenues and administrative burden. Moreover, uncertainties with the interpretation of the notion 'entirely fermented origin', and minor issues with the structure of the Excise Product Codes (EPC).
2. **Exemptions for denatured alcohol:** possible ineffective functioning of the single market and associated costs, as well as risk of fraud under the current rules for 'completely' and 'partially' denatured alcohol and impact thereof.
3. **Reduced rates for small producers:** issues with the functioning of the scheme for small producers and possible extension to alcoholic beverages for which this option is currently not available.
4. **Reduced rates for low-strength alcohol:** unclear objective of this provision and possible need to revise the current thresholds.
5. **Exemptions for private production:** possible impacts of an extension of exemptions to beverages not currently covered (intermediate products and ethyl alcohol).
6. **Measurement of Plato degree of sweetened / flavoured beer:** review of the different interpretation and calculation methods across national authorities and industry stakeholders and the possible impact on market and tax revenue.

2. Overview of methodology

An in-depth consultation of stakeholders has been carried out, covering a total of 12 Member States (MS), as well as EU-level institutions and organisations. Overall, 161 interviews were conducted involving: public authorities and administrations (tax and customs authorities, public health authorities, agriculture authorities and others); economic operators, of different sizes, active in different segments of the market and value-chain; non-government public health organisations; and various other alcohol market experts. The interview programme was complemented by an Open Public Consultation, which received a total of 166 responses.

The Study results are also based on the outcomes of a quantitative market analysis conducted with the support of econometric models and involving the review of more than 800 potentially problematic products, as well as on a comprehensive desk review

of EU and MS-level policy documents, scientific literature, various institutional databases, industry and stakeholders' reports, web-sources and other 'grey' literature.

The main focus of the analytical work was to compare the 'no change' scenario with several 'policy change' scenarios, using both quantitative and qualitative methods. Four main categories of impact have been assessed to this end: (i) tax revenues; (ii) administrative, enforcement, and other regulatory costs; (iii) market effects (including Single Market functioning, distortion of competition, and SME competitiveness effects); and (iv) indirect social effects (illegal activities and fraud, and alcohol control policies).

3. Summary of key findings

3.1 Classification of alcoholic beverages

The Directive defines the categories of alcoholic products subject to harmonised excise duty in accordance with their customs classification, i.e. the Combined Nomenclature (CN) codes. The correspondence between the fiscal categories and the CN codes is however not straightforward, and certain novel products may take advantage in certain circumstances of an unduly favourable tax treatment. It has been observed that **classification uncertainties may lead to disparities of treatment** across MS and between similar products, due to **different criteria** used to determine the essential fermented character of certain beverages.

'Borderline' products can be found primarily in the tax categories of Other Fermented Beverages (OFB) – especially low-strength mixed drinks and certain types of cider – and among Intermediate Products (IP) – i.e. products with a fermented base that are in many respect equivalent to certain spirits-based beverages. In absolute terms, the **magnitude of the problem is modest and mostly stable**: 'borderline' products currently amount to an estimated 308 million litres/year, i.e. less than 0.6% of the total market of alcoholic beverages in the EU. Nonetheless, for the tax categories concerned the issue is more substantial: nearly 17% of OFB and 24% of IP may consist of products, to different extents, exploiting an unduly advantageous tax treatment. Uncertainties with 'borderline' products may **increase the classification burden** for administrations and economic operators, which has been estimated around one million EUR per year.

Three main policy options have been considered and assessed:

- (i) **Revising the current definition of OFB and IP**, and establishing common criteria (and implementation methods) to identify products that have lost their fermented character and should be therefore assimilated to ethyl alcohol (in line with the landmark rulings of the Court of Justice - CJEU).
- (ii) **Splitting the OFB category into two sub-categories**, of which one would maintain the current treatment while the other – ideally comprising all 'borderline' products – would be defined and treated separately.
- (iii) The third option encompasses binding and non-binding measures that **require no change of the Directive**, and in this sense are mostly outside the remit of the regulatory revision process. These measures are not strictly alternative to the other two options above, but rather complementary and include: clarifying certain subjective criteria laid down in the CN and the related Explanatory Notes (CNEN); adopting non-binding classification guidelines; promoting a sectoral regulation for cider; and measures to enhance market monitoring and control.

All options may help **reduce the classification uncertainties**, but also **present downsides**. Option I would be effective in reducing the disparities of treatment of similar products in one country (also cutting the administrative burden), but not so effective against the risk that the same product is treated differently in different countries, and may cause troubles in external trade. Option II would enhance EU-wide

harmonisation, reducing the need for special national taxes for specific categories of products (like 'alcopops', 'pre-mixes' etc.), but would not effectively address inconsistencies generated at CN level, and would impose additional burden to economic operators and tax authorities. As regards Option III, the revision of CN / CNEN and the adoption of detailed classification guidelines may pre-empt the need to modify the Directive, while the adoption of sectoral regulation for cider would facilitate a coherent enforcement of classification rules. The major difficulty with these measures is that they fall outside the current regulatory process, so they require the involvement and consensus of several different services of the national and European administrations.

Under both regulatory options, the **market impact for the target products would be significant**, since their demand is quite sensitive to price. According to the results of the economic model used, a substantial decline of sales of ca. 80-200 million litres/year can be predicted. This is a small amount if compared to the overall alcoholic beverage markets (less than 0.4%), but substantial for the specific lines of products at stake. Regarding excise duty revenues, the decline in sales would not be entirely offset by the higher rates applied, so **a net loss in tax revenue can be expected** (down a maximum of EUR 247 million) - very likely mitigated by consumer switching to other products.

Both policy options **may unintentionally affect certain non-target products**, especially aromatised wine-based drinks and cocktails that are currently classified as 'other fermented beverages'. The estimated market and fiscal impact for these products would be of the same scale of magnitude of target products (i.e. down approximately 78 million litres/year), which may pose questions on the balance of such intervention.

Table 1 – Summary of the expected impact of proposed options on sales volume and tax revenues

	No Change		Option I		Option II	
	Volume (mn litres)	Tax revenue (€ mn)	Volume (mn litres)	Tax revenue (€ mn)	Volume (mn litres)	Tax revenue (€ mn)
'Borderline' products	308.5	795.0	-42.3	-122.5	-133.3	-275.4
Non-target products	104.5	11.5	-35.8	-3.4	-74.5	+28.7
TOTAL	413.0	806.5	-78.1	-125.9	-207.8	-246.7

Another issue at stake regards the addition of minimal amounts of alcohol as a flavour carrier (AFC) or for other functional purposes to certain flavoured wine and OFB. This practice **seems in contrast with the 'entirely fermented origin' requirement** laid down in the Directive's definition for these products. The evidence from fieldwork revealed that various MS have already adopted legal and administrative provisions establishing a margin of tolerance for products containing AFC, and would be **in favour of harmonised rules** in this regard. The Study findings show that the adoption of similar approaches at EU level would reduce the existing uncertainties and possibly improve the market functioning, while the impact on tax revenues would be minimal.

Finally, the **lack of a separate EPC for Other Fermented Beverages** is not ideal for monitoring purposes and may fuel misclassifications and errors in excise duty payment, although the magnitude of concrete problems is minimal since most MS apply the same excise duty to wine and OFB. The introduction of a separate EPC for OFB would cause some initial (modest) administrative burden, which would be counterbalanced by improved clarity, reduced risks of errors and better market monitoring.

3.2 Exemptions for denatured alcohol

Article 27 of Directive 92/83/EEC stipulates that alcohol shall be exempted from excise duty if it has been denatured (i.e. had certain substances added to make it unfit for human consumption). It distinguishes between 'completely' denatured alcohol (CDA),

for which there is a system of mutual recognition of national denaturing procedures to ensure it can be traded freely throughout the EU, and so-called 'partially' denatured alcohol (PDA), for which the exemption is conditional on its use for the manufacture of any product not for human consumption, and MS are free to define their own national procedures. Approximately EUR 3-3.5 billion worth of denatured alcohol is consumed annually in the EU for a variety of industrial uses, including the manufacture of cosmetics products, screenwash and anti-freeze, detergents, inks, paints and coatings, as well as biofuels, which account for the largest proportion by far. We estimate that more than 95% of the total consumption is PDA, although CDA accounts for a significant share of the market in certain MS and sectors.

Overall, the data collected and analysed as part of this Study suggests that the EU regulatory framework for exempting denatured alcohol from excise duty **works relatively well**. The majority of stakeholders consulted (including both national authorities and economic operators) felt the current rules at EU level, although complex, were fit for purpose, and there is no need for any fundamental changes. Nonetheless, **problems can and do occur** due to (1) an incomplete / inconsistent mutual recognition of CDA, (2) the proliferation of national regulatory approaches to PDA, and (3) divergent interpretations of certain terms related to PDA. It is evident (*inter alia* from the frequent discussions within the Committee on Excise Duty and the Indirect Tax Expert Group dating back to 2008) that the provisions in Article 27 concerning denatured alcohol are not phrased in a completely clear and unambiguous way, which has given rise to uncertainties and disputes, especially when denatured alcohol is to be moved across borders between MS whose interpretation of the applicable rules do not coincide. Some of these uncertainties have non-negligible cost implications for producers and/or users of denatured alcohol, and can inhibit intra-EU trade in denatured alcohol. However, the evidence suggests that only a limited number of economic operators in specific circumstances have been affected. There are also concerns about fiscal fraud with denatured alcohol, which is estimated to result in **lost tax revenues in the region of EUR 150-200 million per year across the EU** (the bulk of which is in certain Central / Eastern European MS).

Regarding the mutual recognition of '**completely**' denatured alcohol (CDA) produced in different MS, the unclear wording of the Directive has in the past led to a number of problems, primarily when economic operators wanted to produce or use CDA using a formulation notified by a MS other than their own. There have also been cases of fraud involving certain national CDA formulations. However, with the recent adoption of a common Eurodenaturant by a large majority of MS, the likelihood of these kinds of problems occurring in the future (and therefore the negative impacts) is greatly reduced. Nonetheless, since not all MS are able to agree on a single CDA formulation, **a clarification of the wording** of Article 27.1 (a) **would be beneficial** to eliminate the remaining ambiguity, and thereby avoid potential future disputes.

The non-harmonised approach to '**partially**' denatured alcohol (PDA) is welcomed by most stakeholders, as it allows MS to balance the needs of their national industry with the need to minimise the fraud risks in the way they deem most appropriate. However, the proliferation of national procedures and formulations can create uncertainties, risks and/or costs when more than one jurisdiction is involved – though larger firms are typically able to overcome these, while smaller ones tend to have few economic incentives to source denatured alcohol from abroad. There are also known cases of fraud involving products which have been manufactured with alcohol that has been denatured with a 'weak' formulation (e.g. because the smelling and/or tasting agents are relatively easy to remove / mask, and the absence of a chemical analytical marker makes it difficult for the competent authorities to detect the alcohol is illicit).

In theory, a **complete harmonisation of PDA formulations** for different sectors could further facilitate cross-border trade in PDA and alleviate the fraud-related concerns. However, this would require MS to agree on compromise solutions to reconcile their

(sometimes very restrictive, sometimes very flexible) views on the formulations they are prepared to authorise. Recent attempts to achieve such a compromise for certain sectors failed, and many MS seem not willing to accept full harmonisation, due to the potentially large cost implications for (certain sectors of) their national industries.

Partial harmonisation seems therefore more effective. It would involve agreement on a harmonised list of PDA formulations that is applicable across the EU, while allowing MS that wish to do so to authorise different formulations for specific uses where the fiscal risk is demonstrably low. This would enhance legal certainty and transparency to a significant extent, and thereby facilitate cross-border operations as well as further restrict practices that might give rise to fraud, without requiring the minority of MS who currently authorise specific, tailored PDA formulations for individual users to categorically stop doing so. This option may require further preparatory work on the harmonised list and the definition of the concept of low fiscal risk, before these could be enshrined in the Directive itself. 'Softer' policy options, such as a database of national formulations, and/or EU-funded measures to enhance confidence and trust between competent national authorities, could also be considered, although the benefits these would generate are likely to be more limited.

The text of Article 27.1 (b) should be amended so as to clarify the wording and address two issues that continue to cause uncertainties and discrepancies, namely:

- Clarify that the term 'used for the manufacture of' includes indirect uses (such as cleaning manufacturing equipment and production lines). This would ensure a fairer treatment across the EU and reduce the costs for users in the minority of MS that currently do not consider that PDA used for these purposes qualifies for the exemption.
- Clarify what can be considered a 'finished product' containing PDA that can be exempted from excise duty and released for consumption. This would enhance legal certainty and help reduce the risk of fraud by limiting the scope for the misclassification of PDA mixed with very small quantities of other substances (which should still be subject to controls under the duty suspension regime).

3.3 Reduced rates for small producers

Member States have the option of granting reduced excise duty rates to small producers of beer and ethyl alcohol, in order (i) to support the competitiveness of SME vs. large players, in the case of beer, and (ii) to protect traditional productions, in the case of ethyl alcohol. Reduced rates cannot be granted to small producers of wine, OFB, and intermediate products. This may affect conditions for competition, and prevents MS from pursuing the same policy objectives in the markets for the excluded categories.

In the 23 MS that have adopted **reduced rates for small breweries**, the scheme is estimated to cover 95% of active breweries, and 5% of the production (about 17 million hectolitres), and causes very modest foregone tax revenues (ca. 1% of the revenue from beer) and negligible administrative costs for operators. Two minor areas of improvement have been identified, which could be tackled by means of a legislative revision or non-binding guidelines:

- **Improving the clarity of the definition of 'independent brewer'** and the conditions for recognising such brewers. In this area, non-binding measures (e.g. guidelines) seem more flexible and easier to update.
- **More straightforward application to cross-border operators**, e.g. by establishing a mandatory uniform certificate for operators, or by means of an appropriate system for exchanging data among national authorities (the latter not requiring a legislative revision).

These measures may generate benefits in terms of legal certainty, competitiveness of SME, and cross-border trade, although on a limited scale given the small share of the market concerned. The implementation burden would also be modest, although concentrated on the customs authorities of the MS where reduced rates are currently not in place. Enforcement difficulties should be carefully considered when choosing among the different options.

As far as **small distilleries** are concerned, reduced rates are implemented in only seven MS and cover a very small number of operators. In particular, the very low threshold of 10 hlpa per year established in the Directive in practice **restricts this facility to ancillary spirit production**, which represent a negligible share of the market. Therefore, the option of raising this threshold moderately (to 100 hlpa) or significantly (10,000 hlpa) has been assessed in the Study. Under the first scenario the impact would be limited, since only very small commercial operators would gain access to the facility, whereas under the second scenario mid-size commercial operators would also be covered. So, the competitiveness of SME in the spirits market would be largely enhanced under the latter scenario, but this may also generate market distortions, substantial reductions of the excise duty revenues collected, negative public health effects, and the need to scale up monitoring and enforcement efforts.

Finally, the Study examined the possibility of **introducing this option for the categories of products not currently covered**, namely wine, OFB and intermediate products. The magnitude of the problem and the expected impacts would not be uniform:

- For still wine, the scope of application would be limited, as 78% of the market is currently subject to zero rate. Moreover, small producers may already receive support to improve their competitiveness in the form of exemptions from several requirements of the excise legislation. Conversely, stakeholders perceive the risk that this option may eventually translate into the introduction of positive minimum rates at EU level.
- The competitive position of small cider makers *vis-à-vis* large producers is similar to that of small breweries, so the introduction of reduced rates for this category may have beneficial effects on their development with limited adverse effect in terms of foregone revenues and administrative burdens. The lack of a harmonised sectoral legislation on cider may represent an obstacle to an equitable implementation of the scheme.
- Finally, extending reduced rates to small producers of fortified wine would trigger impacts which are, on the one hand, limited, and, on the other, uneven across operators active in the same value chain. Moreover, it would be somehow redundant with the reduced rates extended under Art 18.4 of the Directive.
- Reduced rates may incite consumption, with negative public health effects especially in MS where these products are popular and standard rates are high.

Table 2 – Reduced rates for still wine and cider makers: Problem dimension and expected impacts

	Threshold considered	Small producers		% EU market at zero rate	Impacts of the extension	
		% of companies	Market share		Foregone revenues	Administrative burden
Still wine	1,000 hl	85%	17%	78%	€300 mn	1.2 €/hl
Cider	15,000 hl	97%	5%	9%	€15 mn	0.3 €/hl

3.4 Reduced rate for low-strength alcohol

Articles 5, 9, 13, 18, and 22 of the Directive allow MS to apply reduced rates on low-strength alcoholic beverages. **The level of uptake of this option across MS is uneven**, primarily due to the specificities of national fiscal priorities and targets rather

than to lack of clarity on its objective in the text of the Directive. Furthermore, there is scant evidence on its potential contribution to public health objective (i.e. in the form of a reduction of the overall per capita consumption of alcohol). In fact, **tax reductions for low-alcohol beverages may affect consumers' behaviour in opposite ways:** on the one hand reducing the amount of pure alcohol consumed by regular consumers, on the other hand potentially encouraging the initiation of abstainers (including young persons) to the consumption of alcoholic beverages.

For each product category, the Directive establishes the thresholds under which MS may apply reduced rates. From a market perspective, these thresholds are of limited relevance (with the exception of OFB), since **only a small share of existing products are eligible**. Therefore, the Study investigates the possibility of raising the existing thresholds to encourage MS uptake and, by consequence, more pervasive effects.

In the case of beer, there is some consensus among stakeholders – with a few notable exceptions -on the benefit of **raising the current threshold to 3.5% vol**. This amendment would expand the scope of application, and eventually encourage the development of this segment of the market. In fact, lower taxation may result in lower retail prices (depending on the extent to which the discount is passed on to consumers) and encourage price-sensitive consumers to shift from stronger products. The proposed option may lead to **foregone tax revenues of about 1%** of the current level. The price reduction may generate a small increase in per capita consumption of low-alcohol beer (between +2 cl and +10 cl per year based on a sample of MS).

As regards the other alcoholic beverages, there is limited appetite for revising the current thresholds, and no alternative thresholds have been proposed. Furthermore, higher thresholds for intermediate products and ethyl alcohol may eventually turn out advantageous for certain new products like mixed drinks that are particularly appealing to young people, thus resulting in negative impacts for public health policies.

3.5 Exemption for private production

MS can exempt from the payment of excise duties the production of 'fermented beverages' (i.e. beer, wine and other fermented beverages) for own consumption. With very limited exceptions, this activity is unregulated. On the contrary, such an exemption is rarely granted to the production of spirits and fortified products, as private distillation is considered more dangerous from a public health perspective. The exclusion of intermediate products and ethyl alcohol **may constitute a case of unequal treatment**, which may need to be redressed, if no significant negative effects are triggered.

The **amount of illicit private distillation is estimated to be low** in most of the countries reviewed (between 0.5% and 2.5% of the current market for spirits), and more significant in a couple of them (respectively 3.5% and 6%). At EU level, it is estimated to represent about 2.3% of the spirits market. Foregone excise revenues in the six sample MS examined amount to about EUR 100 million (1.4% of the revenues from ethyl alcohol); at EU level, **tax losses can be estimated at about EUR 250 million** (1.6% of the revenues from ethyl alcohol).

The option to introduce an exemption for private production of intermediate products and ethyl alcohol would have **modest but negative impacts** in terms of tax revenues (EUR -45 million, or -0.3% of the excise revenues from ethyl alcohol at EU level), and market effects (-0.1% of the current production of spirits). Additionally, it could be harmful from a public health perspective since it may increase: (i) the risks of methanol intoxication; (ii) the accessibility and consumption of distilled products. The option is also likely to generate some additional administrative burdens and enforcement costs

for public authorities. In any case, MS that would not take up this option would bear minimal negative spill overs, as cross-border effects are estimated to be negligible.

3.6 Measurement of Plato degree of sweetened / flavoured beer

Article 3(1) of the Directive allows for levying excise duty on beer with reference either to the Plato degree or ABV strength of 'finished product'. This article results in different interpretations when it comes to measuring the Plato degree of sweetened/flavoured beer, i.e. mixture of beer with non-alcoholic additives or beverages. In particular, there seems to be three different approaches (A, B1 and B2) to measuring the Plato strength of sweetened/flavoured beer:

- Approach A measures the Plato degree of the base beer, prior to the addition of sugar/flavours.
- Approach B1 measures the Plato degree of the final product after the addition of sugar/flavours taking into account only the 'non-fermented (real) extract', i.e. the extract of the base beer without considering sugar/flavours added to the sweetened/flavoured beer after fermentation.
- Approach B2 measures the Plato degree of the final product after the addition of sugar/flavours taking into account the 'present extract', i.e. the extract of the sweetened/flavoured beer including also the sugar/flavours added.

Different approaches lead to different values of the Plato degree. In particular Approach A and B1 generally result in a lower Plato degree than Approach B2. Such difference has evidently an **impact on the applicable excise duty**. Assuming the excise duty is consistently passed-on to retail price, it may also affect **the competitiveness of products and the related demand** and ultimately cause disparities of treatment and potential distortion of the market. The different methods are also the basis of a legal dispute that has been brought before the CJEU, whose judgment is still pending.

Table 3 - Examples of possible results of measuring the Plato degree with different approaches

	Radler (50% made of lemonade)	Other sweetened/flavoured beer (Additive added after fermentation)
Approach A (base beer)	5.5°	12.0°
Approach B1 (non-fermented extract)	5.6°	11.7°
Approach B2 (present extract)	10.0°	14.6°

To address the problems caused by diverging interpretations two policy options have been considered: (i) a review of Article 3(1) to clarify what is meant by 'finished product'; and (ii) the issuance of guidelines to harmonise the calculation methods. Overall, **the option consisting in reviewing Article 3(1) seems more effective**, since non-binding measures cannot ensure compliance from all MS and would therefore not eliminate the risk of legal disputes, and related costs for both authorities and brewers. Since the CJEU case is still ongoing, the Study does not recommend any of the possible interpretations, but focuses on assessing the impact from the three different scenarios. In particular:

- Approach B2, would result in only minor changes since it is already the choice of several MS. The change in the overall market volume would be negligible and the tax revenue from beer would increase by +0.2%.
- Approaches A and B1 would have a similar market impact: sales may decrease by -1% and tax revenue may increase by 0.1%.
- Furthermore, Approaches A and B1 would generate higher enforcement costs than approach B2, as customs laboratories cannot measure the tax base by checking the Plato degree of the end-product; rather, they would need to perform checks at the production facilities.

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