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Evaluation

Accompanying the document

REPORT FROM THE COMMISSION TO THE COUNCIL

on the evaluation of Council Directive 92/83/EEC on the structures of excise duties on alcohol and alcoholic beverages

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1. INTRODUCTION

The EU's right to act in the area of excise duties is established in Article 113 of the Treaty on the Functioning of the European Union, which specifies that "the Council shall adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition".

The basic principles applicable to all products that are subject to excise duties were first laid down in 1992 in Directive 92/12/EEC. The legislative act currently in force is Directive 2008/118/EC¹.

The specific arrangements for the taxation of alcohol products were introduced on 1 January 1993 in the run-up to the completion of the internal market:

- Directive 92/83/EEC² deals with the structure of excise duties on alcohol and alcoholic beverages. Inter alia, it establishes the basis for the calculation of excise duties by defining applicable excise categories, and sets out the scope for applying reduced rates and lists applicable exemptions.
- Directive 92/84/EEC³ fixes minimum rates for the excise duties on alcohol and alcoholic beverages.

The subject of this retrospective evaluation was the functioning of Directive 92/83/EEC under the current legal framework.

In order to evaluate the functioning of the Directive, the Directorate-General for Taxation and the Customs Union (DG TAXUD) commissioned an external evaluation from a consortium established by Ramboll Management Consulting AS, Coffey and Europe Economics. The present Staff Working Document (SWD) is largely based on the results and conclusions of that evaluation study, which assessed the Directive from all angles.

2.1 Purpose of the evaluation

Directive 92/83/EEC has been identified for a retrospective evaluation. The Directive is 24 years in existence, little has been changed, and the alcohol sector and the beverages available now are very different from in 1992 when the Directive was drawn up. The evaluation was proposed in order to assess whether the Directive is still fit for purpose, and meets the Better Regulation criteria of effectiveness, efficiency, relevance, EU-added value and coherence⁴.

The evaluation specifically sought to:

¹ Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC

² Council Directive 92/83/EEC of 19 October 1992 on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages

³ Council Directive 92/84/EEC of 19 October 1992 on the approximation of rates of excise duties on alcohol and alcoholic beverages

⁴ http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf

- assess the extent to which Directive 92/83/EEC meets the objectives it sought to achieve;
- identify weaknesses in and assesses the quality of the legislative environment which result in negative consequences for stakeholders (e.g. internal market, competitive disruptions, administrative and compliance costs, etc.);
- formulate recommendations, based on the collected evidence, on how best to address identified issues.

Following consultation with Member States, it was agreed that the objective of the evaluation should be to assess whether the legislation leads to unnecessary administrative costs and burdens for both national administrations and economic operators and to identify elements which could be further assessed as part of an impact assessment on the level of compliance and security in collecting excise duties on alcohol and alcoholic beverages.

The Staff Working Document will be used to accompany the Commission Report to the Council to allow for a decision whether to analyse further and pursue the recommendations made with a view to correcting the areas of weakness by a proposal to amend the Directive.

2.2 Scope of the evaluation

The scope of the study is a retrospective evaluation of the Directive and its functioning under the existing, general, legal framework. It covers all provisions, beginning with the definitions of different categories of alcoholic beverages for excise purposes, reduced rates, exemptions and other legislative provisions.

Furthermore, according to Article 22 (7), the Commission is required, during 2015, to review an arrangement contained within the Directive and report to the Council on possible modifications⁵.

The report concentrates exclusively on structures of excise duties on alcohol and alcoholic beverages, and does not discuss or combine the findings in any way with the Directive 92/84/EEC, the "rates Directive".

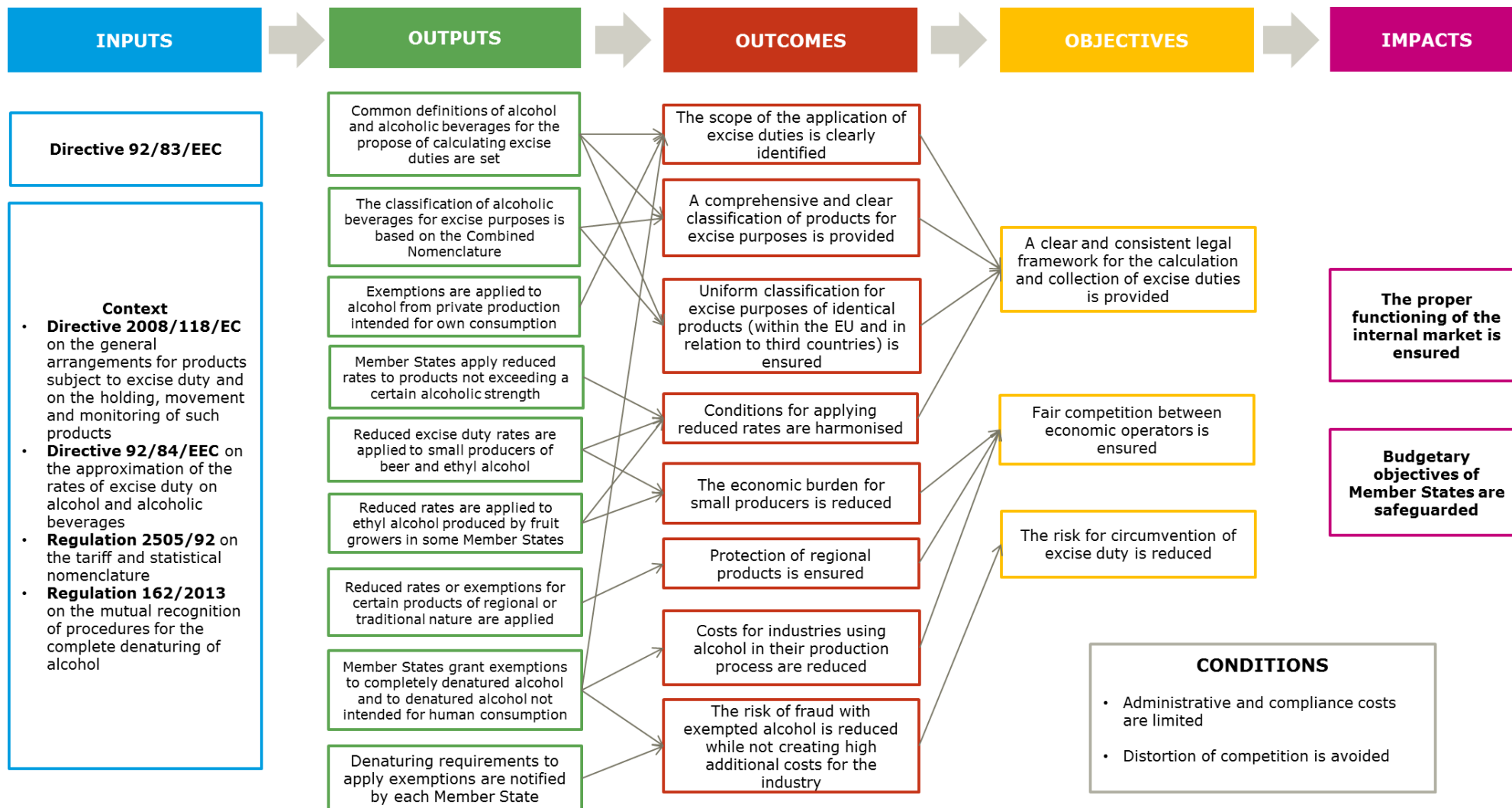
3. BACKGROUND

Directive 92/83/EEC 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, and provides a legal framework for reduced rates in some sectors, exemptions and certain derogations.

The Directive aims to ensure both the proper functioning of the internal market, reduce distortion of competition and guarantee the free movement of products in this sector. Figure 1 below presents the agreed intervention logic for Directive 92/83/EEC, laying down the

⁵ Article 22(7) Hungary, Romania and Slovakia may apply a reduced rate of excise duty applied to ethyl alcohol produced by fruit growers' distilleries producing more than 10HL p.a. from fruit supplied to them by fruit growers' households, limited per household to 50 L of fruit spirit p.a. and destined exclusively for their own consumption.

assumed links between the provisions of the Directive and the practical outputs as well as overarching aims of this legal act.



4. EVALUATION QUESTIONS

The following table lists the key evaluation questions⁶:

EQ No.	Evaluation Question	Evaluation Criteria/ Perspective
1	To what extent do the provisions of Directive 92/83/EEC ensure the proper functioning of the internal market?	Effectiveness
2	To what extent do the provisions of Directive 92/83/EEC safeguard the budgetary interests of the Member States?	Effectiveness
3	To what extent is there scope for compliance cost and administrative burden reduction?	Efficiency
4	What are the added benefits for the stakeholders of achieving the Directive's objectives at the EU level?	EU added value
5	To what extent do the provisions of Directive 92/83/EEC respond to the needs of the Member States and economic operators?	Relevance
6	To what extent are the provisions of Directive 92/83/EEC coherent with EU and international legislation on excise duties on alcohol and alcoholic beverages?	Coherence
7	Which of the problems identified could be solved through additional EU or national action and thus deserve further consideration?	Recommendations

5. METHODOLOGY

The evaluation was supported by an external comprehensive study. The contractors were given the task of (1) collecting data and evidence in order to answer the evaluation questions and (2) based on the responses to the questionnaires, they then carried out a broad stakeholder consultation. Alongside desk research, the contractors conducted targeted surveys to Member States administrations (tax/customs/finance and health authorities) and economic operators active in the alcohol market and/or associations representing their interest. The conclusions of the study are based on the triangulation of data using multiple analytical methods and present the views of the external contractors.

Member States were consulted on the functioning of all provisions of the Directive. All 28 Member States submitted responses to the questionnaire. Economic operators were consulted via a web-based questionnaire, which was promoted by the European Commission on various

⁶ http://ec.europa.eu/smart-regulation/guidelines/ug_chap6_en.htm

web platforms through a press release, social media and via the YourVoice in Europe website. A total of 323 answers were received (of which 76 partially completed). The respondents cover the five different product categories provided for in the Directive (i.e. beer, wine, other fermented beverages, intermediate products and spirits), producers, distributors and users of denatured alcohol as well as trade associations and federations of the above mentioned sectors. The survey reached economic operators from all EU Member States and was considered to present a relatively balanced representation in terms of number of respondents compared to the size of the Member State.

A relative majority of the responding economic operators represented large and very large firms of more than 250 employees. At the same time, almost half the economic operators were rather small with 50 employees or less. The conclusions drawn were that the survey samples were both balanced and representative.

In parallel to this data collection, the contractors prepared together with the Commission the open public consultation, in accordance with the requirements of the Better Regulation Guidelines. The public consultation was open to responses between August and November 2015. In total, 328 participants to the survey provided partial or complete responses.

The high level information collected through consultation at EU-28 level was complemented with data collected in the context of 5 thematic case studies, involving in-depth interviews of personnel of Member States administrations, (customs and excise administrations; customs laboratories) and selected economic operators. The case study themes covered: classification for tax purposes of alcoholic beverages, application of reduced rates for small producers, the functioning of the exemptions for denatured alcohol, exemptions applicable to provide production for own consumption and coherence of the Directive with health aspects.

A more detailed insight into the conceptual design, the analytical strategy and consultation strategy can be found in Appendix 2 - Consultation strategy synopsis report.

There were several shortcomings emanating from the evaluation:

1. A quantitative approach was not used when assessing whether the Directive is efficient in protecting the budgetary safeguards of the Member States
2. In the area of linking the exemption applied to denatured alcohol to fraud, Member States, in many instances, could not or would not provide the granularity of data required to make a sound judgement, and some that did assess the level of fraud at a significant degree did not provide evidence to support their considerations.
3. Data relating to cost categories and provisions that may lead to administrative burden were not quantified during the study.

6. IMPLEMENTATION STATE OF PLAY

Since the specific arrangements for the taxation of alcohol products were introduced on 1 January 1993 by the Directive 92/83/EEC in the run-up to the completion of the internal market, the substance of the Directive has not materially changed (apart from specific provisions addressed to Member States that subsequently joined the EU since 1993). At the

same time the market for alcohol products and the alcohol products themselves have changed significantly.

The reduced rates for small producers only apply to the production of beer and of ethyl alcohol, and do not extend to fermented beverages, intermediate products and wine. This is in part due to the fact that there was a minimum rate of zero set for wine and fermented beverages.

There is an area of ambiguity in the way alcohol produced for own consumption is taxed. The Directive allows all Member States to exempt excise duty on beer, wine and other fermented beverages when it is produced by a private individual and consumed by them or members of their family or guests, but this does not apply to spirits and intermediate products. There is also a specific derogation granted to Bulgaria / Czech Republic and Hungary / Romania and Slovakia to apply a reduced rate of 50% (of the standard national rate of excise) to spirits produced by fruit growers' distilleries for their own consumption.

There have also been a number of infringement cases / legal challenges mostly in the area of classification (for example the Siebrands ruling⁷) and in the application of the reduced rates for the production of ethyl alcohol (for example Palinka⁸) since the Directive was introduced. This includes reduced rates / exemptions applied for small producers and private production / own consumption and also several high profile classification cases.

7. ANSWERS TO THE EVALUATION QUESTIONS

7.1 To what extent do the provisions of Directive 92/83/EEC ensure the proper functioning of the internal market?

The proper functioning of the internal market in the context of the excise structures on alcohol and alcoholic beverages, is understood to include three core components:

- i) clear and consistent framework for excise duties to be paid on alcohol and alcoholic beverages;
- ii) “level playing field” in terms of competition between economic operators;
- iii) reduces the risk of circumvention of excise duty.

Overall, the Directive was found to be effective in achieving these three objectives. Through the harmonisation of structures, the approximation of rates and the definition of the scope of application of excise duty, at a general level, the Directive allows intra-EU trade to take place free of significant tax-related trade barriers, or major competitive disruptions between economic operators operating in the same sector of activity. Volumes of trade were not analysed as part of the evaluation.

The Directive successfully structures the taxation of alcoholic beverages in the categories specified in Directive 92/84/EEC which, in turn, sets minimum excise rates, and in Directive 2008/118/EU concerning the general arrangements for excise duty. There are clear rules with regard to the possibility of setting reduced rates for small producers or low-strength alcohol products. This provides a consistent framework for the taxation of alcohol.

⁷ <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-150/08>

⁸ http://europa.eu/rapid/press-release_IP-13-138_en.htm

Despite this overall positive conclusion, there are several points where the Directive does not provide the necessary legal clarity, and the issues this creates have an adverse effect on the functioning of the internal market.

The classification of certain products remains unclear because they could fall into any one of several categories, resulting in different treatment in different Member States and complications when these products have to be transported cross-border. Similarly, the difficulties encountered with the interpretation of the provisions for exempting denatured alcohol hinder the proper functioning of the internal market, as the conditions for such exemptions vary considerably across the Member States.

Where the Directive does sets clear rules, it also ensures similar conditions for economic operators across the EU. Their products are taxed on the basis of principles that apply in all the Member States. However, the absence of clarity regarding the exemptions for denatured alcohol permits excessive room for interpretation by the Member States. In turn, this leads to strong imbalances in competition, because the producers and users of denatured alcohol located in some Member States have a much wider choice of denaturing formulations than those in other Member States.

Furthermore, the Member States are unable to consistently apply reduced rates to small producers in respect of all the categories of alcoholic beverage. This unnecessarily limits the ability of the Member States to correct potential market imbalances where such a policy objective might be worth pursuing.

7.2 Do the provisions of Directive 92/83/EEC safeguard the budgetary interests in terms of taxation of the Member States?

Concerning the potential loss of excise duties for Member States, this evaluation considered:

- i) fraud involving alcohol and alcoholic beverages, and specifically the extent to which fraud involving denatured alcohol is taking place;

The Directive's provisions for ensuring the denaturation of alcohol intended for industrial purposes aim to protect the integrity of the exemption, and prevent such alcohol from being converted back into consumable alcohol. Overall, the available data on fraud showed that misuse of the exemption for denatured alcohol represents a very low proportion of total alcohol-related fraud. One caveat should be entered here, however, due to the fact that 15 Member States either did not know or did not submit an answer to the question of what duty loss due to fraud could be linked to the abuse of denatured alcohol. However, in a few Member States the findings suggest that fraud involving the use of denatured alcohol is non-trivial e.g. Spain and Latvia estimated that 61-80% of the total losses due to fraud were related to abuse of denatured alcohol (on spirits – which is where the denatured alcohol fraud is most prevalent); losses in Estonia and Poland is estimated at 41-60%. Further investigation would be needed to identify whether this fraud can be traced back to a deficiency in the Directive and the necessity as a result of that investigation, to define denatured alcohol, how it is manufactured and used in order to qualify for the exemption, and require economic operators to use denaturing formulations which cannot easily and cheaply be removed from the product.

- ii) the potential misclassification of alcoholic beverages into a tax category lower in terms of taxation than was intended by the Member States.

This analysis was also limited to 5 Member States during the case study phase. Several different product types were identified whose classification is not straightforward, and which

could arguably be assigned to two or more different tax categories. Problems primarily concern the category of “other fermented beverages” (thereby benefiting from a beneficial taxation regime) which is where the majority of disputes occur, and which products should be covered by the categories of “intermediate products” or “ethyl alcohol” with a higher excise duty rate. It is a message which is, arguably, better conveyed, understood and (mainly) accepted in relation to the categories of “beer” and “wine”. Specifically, products causing concern are:

“Ready-to-drink” products (also known as “alcopops)

Medium strength fermented beverages between 10-15% ABV16

Fermented alcohol with an alcoholic strength between 15 and 18% reached through industrial processes, bottled and sold to look like its equivalent, higher rate spirit.

Some of these products have been regarded as attempts to abuse a favourable tax category. Besides creating competitive distortions, the failure to provide unambiguous classificatory definitions may result in the Member States losing revenue. Quantification across the EU 28 has not yet been performed.

7.3 Is there scope for reducing the cost of compliance and administrative burdens?

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.

However, the evaluation of Directive 92/83/EEC has identified multiple areas in which the application of the provisions of the Directive are resulting in increased costs for both economic operators and Member States for example:

- increased guarantees for movements of denatured alcohol depending on treatment and application of the rules in a particular Member State;
- cost burdens for administrations in the customs laboratories who perform scientific checks on other Member States denaturing formulations compared to those who apply mutual recognition more flexibly;
- costs of legal challenge in cases of dispute over classification problems

These increased administrative and compliance costs identified result not from the application of systematic obligations inscribed in legislation; rather, they are the result of the complications, disputes and the inconsistent application of the Directive’s provisions that arise from situations in which stakeholders disagree on their interpretation. The number of examples supporting this assessment, plus their geographical extent, indicates that these complications are the result of a failure of the Directive to provide sufficient clarity to stakeholders⁹.

In summary, issues surrounding the classification of products which have been identified as ‘difficult to classify’ and the management of exemptions for denatured alcohol are resulting in increased costs for all the stakeholders concerned (including the Member States’ tax authorities as well as the economic operators). It cannot therefore be concluded that the Directive is efficient.

⁹ Chapter 2. Classification of alcohol and alcoholic beverages – Evaluation of Council Directive 92/83/EEC

7.4 What are the added benefits for the stakeholders of achieving the Directive's objectives at the EU level?

The evaluation has assessed the added value of establishing common rules at the EU level for the classification of alcoholic beverages, the granting of reduced rates for small producers, and the exemption of denatured alcohol from the scope of excise duty.

The findings of this study clearly show that only an EU-wide system can provide the uniformity and harmonised conditions that are necessary to ensure the proper functioning of the internal market. Based on the evidence supplied from the questionnaires, the majority of the tax administrations in the Member States agree that it would not have been possible to achieve the same results in terms of effectiveness and efficiency – let alone more positive ones – via an alternative, bilateral or international approach.

Moreover, the stakeholders' divergent interpretations of the Directive show that its effectiveness could be improved by expanding the EU-level approach. Greater engagement by the Commission in the future could be the response that would sustain and enhance the uniform application of the Directive's provisions across the EU.

Overall, the evidence collected shows that all types of stakeholder strongly support an EU-level approach regarding the excise duty levied on alcohol and alcoholic beverages, which in turn, facilitates trade, prevents competitive distortions, reduces administrative costs and prevents fraud.

7.5 To what extent do the provisions of Directive 92/83/EEC respond to the needs of the Member States and economic operators?

This question sought to understand whether the provisions of the Directive as formulated are still fulfilling the needs of Member States and economic operators. As a result, it was assessed:

- (i) whether the needs that the Directive sought to address still exist;
- (ii) to what extent those needs have evolved, and how;
- (iii) whether the arrangements meet the current needs.

While important progress has been made in the past twenty years towards the establishment of the common market, the Directive's objectives of providing a clear and consistent legal framework, ensuring fair competition and reducing the risk of excise duty being circumvented continue to be highly relevant. In this context, the provision of common rules regarding the levying of excise duty on alcohol and alcoholic beverages has continued to be important.

Consideration was given to whether the needs of the Member States have evolved in relation to the imposition of excise duty on alcohol, in so far as they might today also include the objective of influencing alcohol consumption habits via adjustments in excise duty rates. In practice, only a few Member States mentioned any health policy objectives in connection with the overall relevance of the provisions; accordingly, no definitive conclusions can be drawn in this area. Public health considerations need to be included in the further process.

Overall, the specific provisions of the Directive were reported to correspond to the needs of the administrations in the Member States and industry. The study report further analyses the needs of industry in terms of size and geographical location. The assigning of alcohol and alcoholic beverages to different categories for excise duty purposes continues to be relevant. Although some Member States (and spirits producers in particular) argued in favour of taxation based on alcohol strength but without specific product categories, the evidence shows that the maintenance of different categories is important for preserving socio-cultural

traditions (e.g. the continuous production and consumption of traditional products often made from natural ingredients grown in a particular location), and for supporting the creation or preservation of jobs, practices and traditional crafts.

The findings reveal that there are a few provisions that no longer seem to be needed, such as Article 28 regarding rules specifically for the United Kingdom which that Member State no longer applies. In addition, as several Member States have introduced positive rates of excise duties on wine, the fact that there is no provision for a reduced rate for small producers of wine and other fermented beverages may no longer be justified.

Finally, the relevance of reduced rates for products of low alcoholic strength was questioned. Further analysis at the impact assessment stage would be needed to draw any conclusion as to whether these reduced rates correspond to national practices linked to health policy objectives, and whether they correspond to any of the overall objectives that are stated in the Directive and identified in the evaluation criteria. Specifically, reduced rates for intermediate products and ethyl alcohol are rarely used by the Member States, and they might actually be undermining the objectives of the provision in the first place, as they could unintentionally increase the consumption of a product benefiting from the reduced rate in its own duty category despite its alcohol strength actually being higher than that of a similar product belonging to a different duty category.

7.6 To what extent are the provisions of Directive 92/83/EEC coherent with EU and international legislation on excise duties on alcohol and alcoholic beverages?

The evaluation has assessed the external coherence of the Directive with EU legislation and international agreements. Because the Directive was adopted more than 20 years ago, some changes have been made to ancillary legislation. However, these changes are not damaging the coherence of the provisions. While there are a number of references in the Directive to other EU legislation and to CN codes that need to be updated, the inconsistencies identified were not reported to be causing any significant practical problems.

Two points with regard to coherence are creating problems for economic operators, namely the CN codes for denatured alcohol, and the treatment of wine precursors:

- Member States are not using the CN codes for denatured alcohol in a consistent manner. While there is a CN code for denatured alcohol (2207 20), a number of other codes are being used for particular products that may contain denatured alcohol. This can have an impact on the conditions applying to the movement of these products, as well on the ability of the Member States to monitor and control the movements. This is a significant issue which has a detrimental effect on the operation of the regime creating additional costs and burdens for authorities in the Member States and industry
- **Two Member States reported issues with the treatment of wine precursors (i.e. must and juices that are due to be turned into wine). The Directive does not define them as excisable goods, but (in those Member States) the practice is that they can be moved under the Excise Movement and Control System (EMCS). There is currently no legal requirement to do this.** This is not a material issue, is limited in impact to 2 Member States, and as it is not an excise product, it is not a tax issue.

No inconsistencies between the Directive and international agreements were found.

8. RESULTS OF THE THEMATIC CASE STUDIES

The rationale for the detailed case studies and selection of the Member States chosen, was to enable the evaluation to prioritise those Member States and subject areas where the feedback from the questionnaires and desk research indicated there were the most significant problems. In order to balance the views, equal numbers of economic operators were invited to participate in interviews on the same topics.

8.1 Definitions and classification of alcoholic products

Since entry into force of Directive 92/83/EEC, the definitions and classification of alcohol and alcoholic beverages have not been amended and have therefore not taken in account Regulation (EC) No. 110/2008¹⁰ on the definition, description, presentation, labelling and the protection of spirit drinks. This therefore can lead to a significant amount of subjective interpretation.

The following conclusions are drawn:

- Different interpretations of the meaning of “entirely of fermented origin” concerns the treatment of the same product in different Member States and can therefore negatively affect the functioning of the internal market when Member States have a different understanding of what constitutes a product of entirely of fermented origin.
- The existence of tax incentives of having ones product classified within one excise category over another has resulted in the development and marketing of products which seek to comply with the requirements of a more beneficial tax category while arguably circumventing the intention of the legislator of what should fall within the more favourable category. Drawing from this that the development of such products would perhaps not have been so extensive without the tax break.
- The issue of classification of these types of products is a significant one in terms of the potential revenue loss, with potentially hundreds of millions of Euros of tax revenue at stake per annum.
- Disputes related to the classification of certain alcoholic beverages show that the intention of the legislator is not being interpreted coherently across the EU with potential consequences in terms of excise revenue, legal clarity and consistency of taxation across Member States as well as on fair competition for economic operators.
- Attempts to resolve the lack of understanding of what constitutes an “other-fermented beverage” for excise purposes within the current legislative context, which have focused on the legal interpretation of CN code 2206 have failed to provide an acceptable, coherent and unequivocal resolution to the reported issues and are not expected to do so fully in the future.
- The addition of flavours with alcoholic content to a wine base product is possible without the loss of the excise classification¹¹ of the EMCS code for still wine and still fermented beverages other than wine and beer of "W200".

8.2 Reduced rates for small producers

¹⁰ Regulation (EC) No. 110/2008 of the European Parliament and of the Council of 15 January 2008

¹¹ EMCS: W200 = wine based product under Annex II, Table 11 (Excise Product) of Regulation 684/2009

A number of Member States would like to have the possibility to introduce reduced rates for small producers within certain product categories which are currently not covered by the provisions on reduced rates for small producers inscribed in the Directive.

Based on the analysis of competition, it seems unlikely that the presence of reduced rates for small brewers and small distilleries have caused any negative competitive distortions within their markets (nor in the markets of other product categories). To the extent that the rationale for the introduction of reduced rates holds for small brewers and distillers (i.e. to level the playing field and allow small producers of these products to compete more effectively against larger producers), it is therefore appropriate to further examine whether this could be extended to producers of other beverages too, because the evidence is clear that economies of scale are likely to be present in those sectors too. However, public health considerations should be taken into account when the rates are set.

8.3 Reduced rates for alcoholic beverages below a certain alcoholic strength

The evaluation has found several weaknesses in relation to each individual provision:

- the threshold for application of reduced rates for low strength beer (alcohol by volume (ABV) of 2.5%) is too low for the modern brewing of traditional beer and the rate is more suited to the type of beers mixed with lemonade.
- the widespread use of the zero rates for wine, together with the rigid EU and international agricultural and commercial standards which are applicable in the wine industry, render the 8.5% threshold for wine largely irrelevant to all but a few wine products in special circumstances, although several Member States (who tax wine) do apply such a provision.
- in light of the classification issues reported in detail in section 4.3.1, and in particular, the findings related to the perceived abuse of the “other fermented beverages” category, the current threshold (8.5%) of this category may, in addition to the intended support for low-strength other fermented beverages, inadvertently give further support to products which, in the opinion of some, abuse the already lower rates of this excise category.
- Additional research on this topic (especially in the context where the recommendations on classification are taken up) would be necessary to determine the extent to which the provision is appropriate in light of re-established objectives. Such an analysis should not neglect to take into account similarities between this category and wine.
- Despite general support by Member States regarding the appropriateness of the provisions for low strength alcohol, only one applies such a rate, and does so only for products below 2.8%. As a result, individually, this provision seems to have become irrelevant.

As the full extent of these weaknesses could not be analysed in the context of this evaluation (in the context of a lack of common understanding, by stakeholders, of the core policy purpose of these provisions), further investigation is recommended. Such an in-depth analysis could be performed in the context of a future impact assessment which may investigate the impact of several policy options.

This investigation must be taken up in dialogue with Member States tax and health authorities.

8.4 Exemptions and reduced rates for products for private production of regional or traditional nature for own consumption.

Most Member States apply the current exemptions on beer, wine and fermented beverages and have not stated any severely negative experiences from applying these provisions. However, when it comes to the possibility of extending exemptions to cover intermediate products and ethyl alcohol, opinions are more divided, with most Member States having a strong view on whether such exemptions should be allowed:

- In favour - because of the important role that traditional home-made spirits and production methods play in their country's culture, or because they believe that such exemptions would legalise alcohol production which would otherwise take place illegally.
- Against - the perceived increased risk of (cross-border) fraud, higher administrative costs and burden, as well as perceived health risks.

8.5 The current system for the management of the exemptions for denatured alcohol

8.5.1 There are (still) too many national denaturing formulations in existence in the EU28, both for completely denatured alcohol (CDA) under Article 27.1 (a) and denatured alcohol which is exempted under Article 27.1 (b). All Member States should apply the same interpretation regarding the conditions under which the CDA formulations listed in Regulation (EU) 162/2013 can be used. And the principle of mutual recognition should also be clarified within the context of Article 27(1) (b).

8.5.2 There is little common agreement about what the qualifying criteria is to determine which products can be exempted under Article 27.1 (b). In addition, the scope of the Article should be clarified in order to unambiguously specify those products that can be exempted under Article 27.1 (a) and the consequences that flow from the distinction (e.g. in terms of the requirements for monitoring and control).

8.5.3 The term "not for human consumption" is not interpreted in the same way by the Member States when applying the rules to products that qualify for exemption under Article 27.1 (b). The requirements for movements of denatured alcohol used in the manufacture of products which are then moved in bulk are not consistent across the Member States.

8.5.4 Economic operators face uncertainty because there is no common understanding of what constitutes a CDA movement among the Member States, nor whether a given national formulation under Article 27.1 (b) is considered sufficient for securing an exemption in cases of intra-EU movements. However, the economic operators underlined their need for flexibility in using different denaturing formulations which can be adapted to their particular products and sectors.

8.5.5 The mechanism provided for conflict resolution to notify cases of fraud, evasion and abuse in Article 27.5 is under-used. The evidence on the magnitude of fraudulent use of denatured alcohol is limited. This is to be expected given the inherent uncertainty in measuring illicit activity.

However, some Member States were able to provide estimates of the magnitude of this type of fraud, and there is evidence from other sources on this type of fraud. The analysis suggests that fraudulent use of denatured alcohol does occur and is non-trivial in certain Member States. Therefore, collection of better statistics could be justified to

help understand whether additional policy action to prevent this type of fraud is warranted.

9. OVERALL CONCLUSIONS

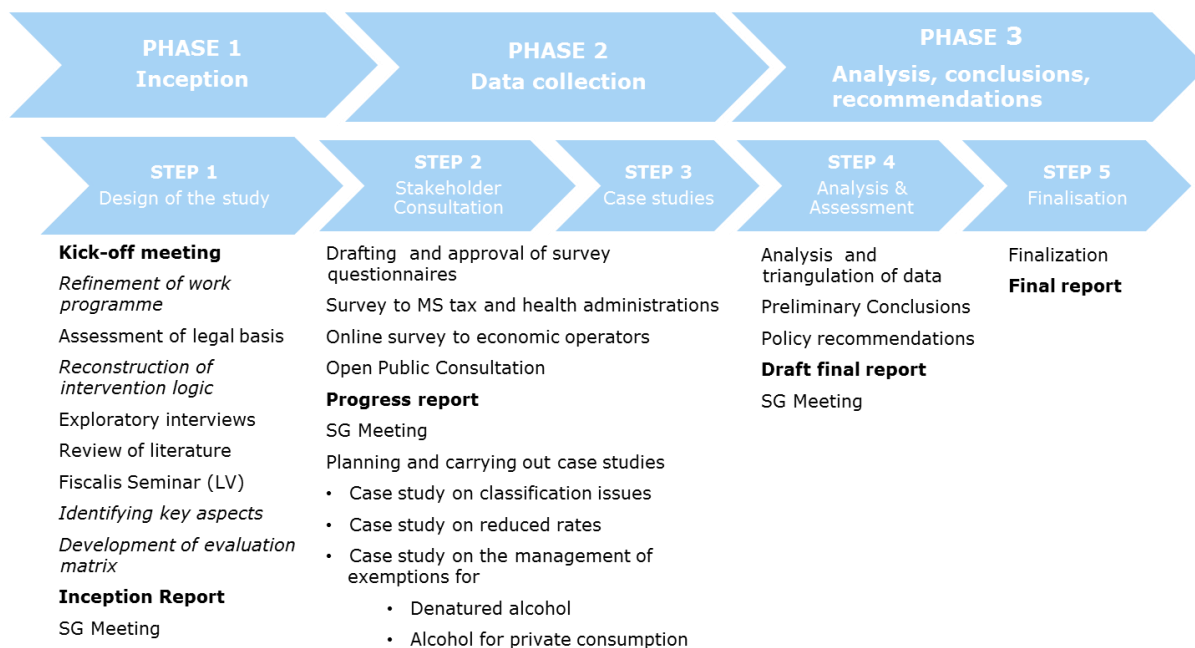
The evaluation of the Directive has proven it to be generally appropriate for enabling adequate collection of excise duties for the large majority of stakeholders.

Overall, the evaluation found that the general principles which define the current structures of alcohol and alcoholic beverages allow for neutral conditions of competition. At the same time, the evaluation findings show that there are some distortions within the internal market, and that they are significantly detrimental that the Commission must act upon them.

The evaluation does not quantify administrative and compliance costs for tax administrations and economic operators. However, the evidence collected shows that the lack of clarity of certain provisions (e.g. in the area of classification) can lead to legal uncertainty over the treatment of specific products, which in turn, can result in additional costs to businesses. The results of the evaluation also show that the existing ambiguity may lead to a revenue loss to Member States. The policy in these areas can therefore be considered not fully fit for purpose and further consideration could be given to possible simplification and / or clarification of the legislation.

APPENDIX I PROCEDURAL INFORMATION

- **LEAD DG – DG TAXUD, UNIT C2 ALCOHOL AND TOBACCO SECTOR (B)**
- **WORK PROGRAMME REFERENCE – 2015/TAXUD/034**
- **ORGANISATION AND TIMING**



- **CHRONOLOGY OF THE EVALUATION**

Activity	
Signature of the contract	19/12/14
Inter-Service Steering Group (1) – kick-off meeting	21/1/2015
Inception report	29/1/2015
Inter-Service Steering Group (2)	2/3/2015
Inter-Service Steering Group (3)	13/4/2015
Fiscalis Seminar (Latvia)	19- 21/5/2015
Questionnaires (public, Member States, industry)	27/8 - 27/11/2015
Inter-Service Steering Group (4)	22/10/2015
Progress report	29/1/2016

Activity	
Inter-Service Steering Group (5)	15/2/2016
Targeted case studies	8/3/2016 – 18/4/2016
Triangulation and analysis	18/4 – 16/5/2016
Draft final report	20/5/2016
Inter-Service Steering Group (6)	2/6/2016
Final report	9/6/2016

- **QUALITY ASSURANCE**

The Commission has carefully examined the external evaluation and has also taken account of the feedback received from stakeholders. The work carried out by the evaluation team was judged to be in accordance with the better regulation standards of the Commission¹².

The judgements and conclusions in the evaluation were derived directly from findings based on the evidence collected. To ensure the robustness of the findings, the evaluation used several data collection methods, including surveys, interviews, desk research and case studies. This methodological mix was overall considered as sufficient by the Commission.

- **EXTERNAL EXPERTISE**

There was a Fiscalis workshop held to prepare the Member States for the questionnaires and case studies in Latvia over 19-21 May 2015.

Throughout the period of the evaluation, there have been regular meetings of the Fiscalis Project Group (013), covering specifically the area of the exemptions applied to denatured alcohol. This consists of policy experts from the tax administrations and also the technical resource from the customs laboratories in the Member States. Working alongside them, the scientific resource of the Joint Research Centre (JRC) in the Commission through an Administrative Agreement between the 2 DGs.

An industry Round Table has also been established at the start of the denaturant project (in 2011) and this has continued to meet to discuss the developments in that area as part of the evaluation. A stakeholder network of the various alcohol beverages sectors has also been developed, and regular progress meetings have been held with each of them, aside from their feedback through the questionnaires and case studies.

¹² http://ec.europa.eu/smart-regulation/evaluation/docs/standards_c_2002_5267_final_en.pdf

1. CONSULTATION STRATEGY

The evaluation of Council Directive 92/83/EEC has relied, at all stages of its implementation, on a comprehensive consultation of all stakeholders impacted by the functioning of the legislative act.

Stakeholders were consulted at each step of the process involving the following activities:

- Exploratory interviews
- Fiscalis Seminar with Member States
- Survey to Member States administrations (tax and health authorities)
- Survey to economic operators (and organisations representing their interests)
- Open public consultation
- In-depth interviews in the context of the case studies.

Although not foreseen as a source of data for the evaluation, a set of ad-hoc contributions were also submitted to the study team. In the interest of transparency, these are presented in this Appendix.

This document sets out to describe the consultation strategy employed by this evaluation, the stakeholders which have participated, the interests that were represented and how they have supported the development of the evidence base for this evaluation. In addition, limitations inherent to the consultation are presented.

1.1 Exploratory interviews

With the aim to get a first understanding of the different issues linked to the Directive, an exploratory interview was conducted with Heather Jones from DG Taxation and Customs Union, Unit C2 Indirect taxes.

The consultants also took part in a Fiscalis Project Group meeting on screen wash, de-icers and anti-freeze in February 2015. Meetings with relevant economic operators and Member State representatives were also conducted. This helped forming a first understanding of the issues surrounding the exemption of denatured alcohol from different points of view of legitimate stakeholders.

1.2 Fiscalis Seminar with Member States

The study team has participated, along with representatives from the Member States in a Fiscalis Seminar¹³ organised in Latvia between the 19 and 21 May 2015. During this seminar, all provisions of the Directive which were going to be the subject of this evaluation were discussed among the Member States and have further reinforced the study's direction towards the evaluation of the most pressing issues.

1.3 Survey to Member States' Administrations (Tax and Health authorities)

The methodology of delivery of the questionnaire to Member States has utilised a single contact person within each Member State. In most cases, the contact persons (which

¹³ Fiscalis 2020 - Workshop on Legal, technical and operational issues related to the taxation, classification and exemption from excise duty on alcohol products - JŪRMALA (LV), 19TH - 21ST MAY 2015

were assigned by the Member States) are members of the tax administrations, customs authorities or ministries of finance of the Member States.

The contact person within each Member State was asked by the study team to coordinate with all relevant departments (including on matters related to health) within his/her own Member State when preparing answers to the questionnaire. In order to ensure a coherent approach, health authorities of all Member States were informed of the on-going consultation and asked to coordinate responses with the tax authorities of their own Member State on questions which are pertinent to them.¹⁴

Member States were consulted on the functioning of all provisions and were allowed to provide answers in EN, FR and DE. A copy of the questionnaire can be found in Appendix 3 – Questionnaire to Member States (EN).

All 28 Member States have submitted responses to the questionnaire associated with the study.

1.4 Survey to economic operators (and organisations representing their interests)

The survey to economic operators was made accessible on a web-based platform. The link to the survey questionnaire was available on the DG Taxud website. It was promoted by the EU Commission through a press release, social media and via the YourVoice in Europe website. Additionally, an invitation to participate in the survey was sent out to a number of stakeholders. In particular, relevant trade associations were targeted which then were invited to distribute the survey as widely as possible to their members.

The invitation to the survey included a distribution link guiding respondents to a web-page where they were invited to enter their e-mail address. Upon completing this step, they received, by e-mail, a unique, individual link which could be accessed at any time until the entire questionnaire had been completed. Intermediary answers were automatically saved, allowing respondents to close and re-open the questionnaire if they were unable to complete it in one sitting.

Through the online survey distributed to economic operators, **a total of 323 answers (247 complete and 76 partially complete) have been received.**

This section describes and analyses the types of respondents and their coverage of the EU Member States. The data has been cleaned and all irrelevant or duplicate entries have been excluded from the dataset.

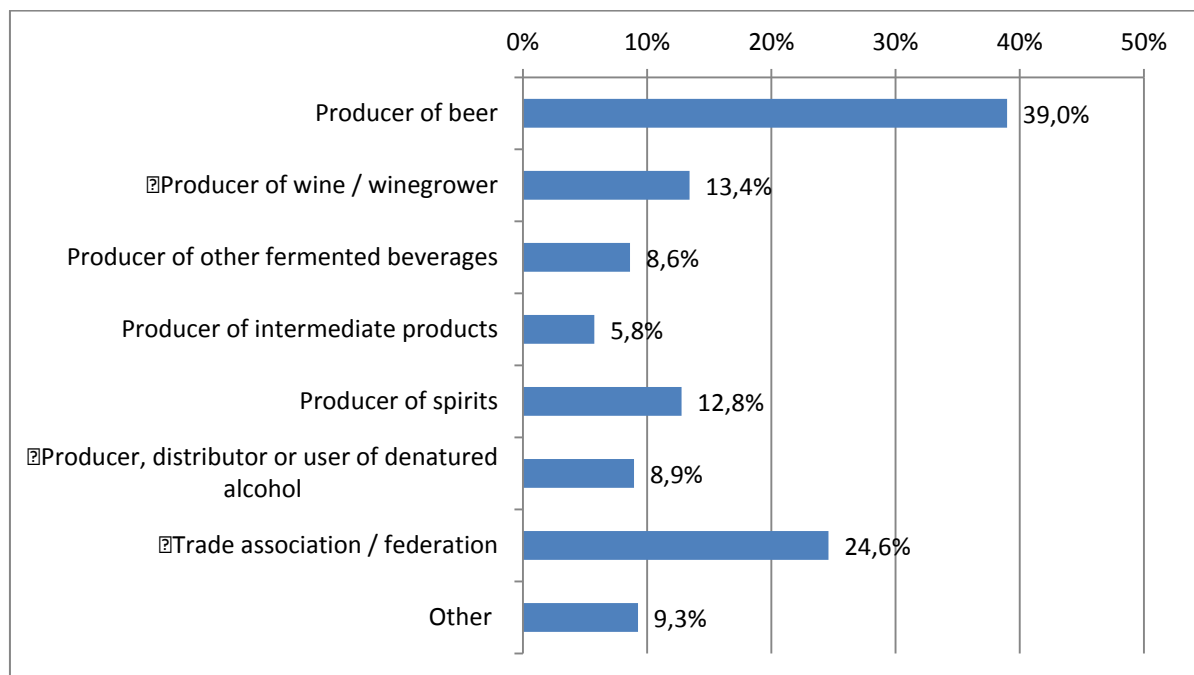
¹⁴ To guarantee that views of health authorities are adequately taken into account, an additional questionnaire was sent directly to health authorities who were given an additional opportunity to provide individual answers to specific questions pertinent to them, in case they did not have a chance to coordinate responses with their tax authorities.

1.4.1 Sectors of activity

General Overview

The respondents cover the five different product categories provided for in the Directive (i.e. "beer", "wine", "other fermented beverages", "intermediate products" and "spirits¹⁵"), "producers, distributors and users of denatured alcohol" as well as trade associations and federations of the above mentioned sectors. The respondent's main sector(s) of activity is presented in Figure 1 below.

Figure 1: Respondent's main sectors of activity (MCQ, N=313)



Note: Respondents may select multiple answers and therefore, the percentages shown in the figure exceed 100%. Source: Survey to economic operators, August-November 2015.

As the graph indicates, the share of "beer producers" among the participants was comparably high, giving the beer sector a strong representation in the survey. The share of "producers of intermediate products" and "producers of other fermented beverages", as well as the share of "producers, distributors and users of denatured alcohol" was comparably lower.

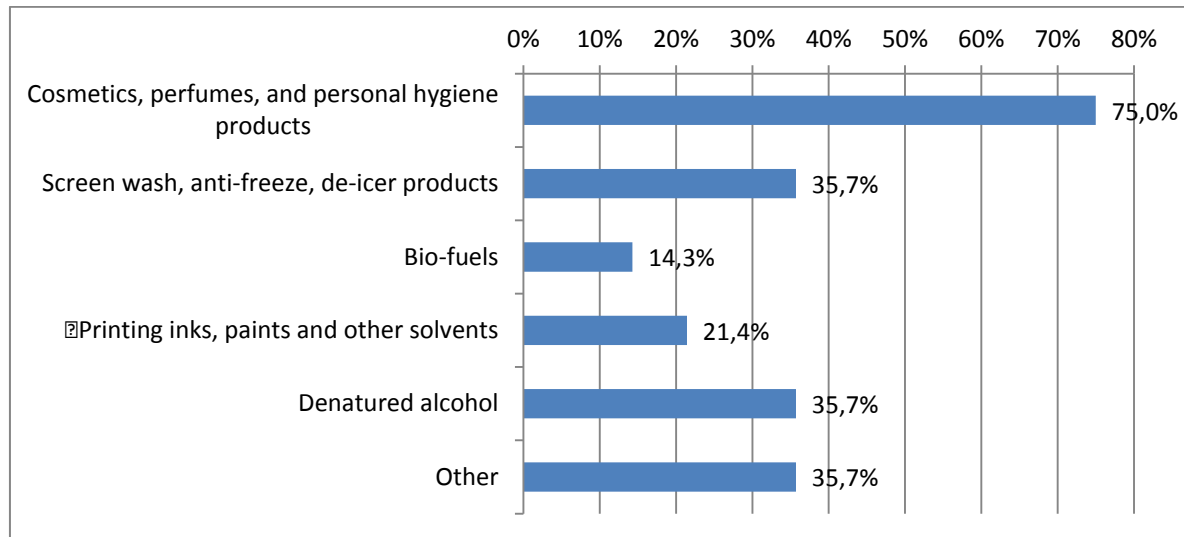
The 29 respondents from the "other" category indicated that they were consultants and/or other associations. They were active in different stages of the production chain (such as warehouse owners, distributors etc.). Further respondents were producers of denaturants or aromas containing alcohol.

¹⁵ Ethyl Alcohol

Denatured Alcohol Industry

Economic operators who indicated that they produce, distribute or use denatured alcohol were asked to further specify their industry.

Figure 2: Industry sector of producers, distributors and users of denatured alcohol (MCQ, N=28)¹⁶



Note: Respondents may select multiple answers and therefore, the percentages shown in the figure exceed 100%. Source: Survey to economic operators, August-November 2015.

Most economic operators who indicated to produce, distribute or use denatured alcohol activate in the sector of "*cosmetics, perfumes and personal hygiene products*". Relatively fewer respondents have said to be activating in the sectors of "*bio-fuels*" and "*printing inks, paints and other solvents*". The ten respondents from the "*other*" category indicated that they were working with "*detergents*", "*other chemical products*" and "*maintenance products*".

A number of respondents (11) reported to be active in several fields where denatured alcohol is used. The majority of these operated in more than three of the indicated sectors.

All respondents who have indicated to be active within the sectors of "*screen wash etc.*", "*bio-fuels*" or "*printing inks etc.*" also reported to be active either in "*cosmetics etc.*", "*denatured alcohol*" or "*other*", or they represented a combination of these, being active in one or more sectors.

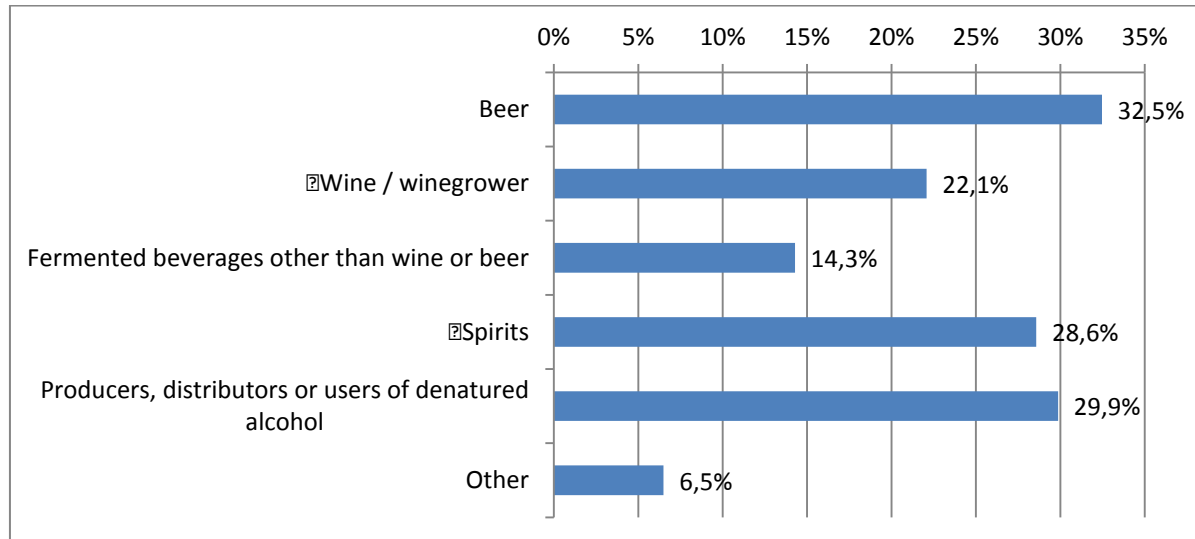
In sum, the cosmetics industry is strongly overrepresented among the denatured alcohol industry which has been taken into consideration in the analysis of the survey responses.

¹⁶ This figure does not include trade associations representing producers / distributors and users of denatured alcohol

Trade Associations

In total, 77 respondents accessed the survey as trade associations or federations. Organisations from all relevant sectors replied to the questionnaire.

Figure 3: Sector of activity of trade associations (N=77)



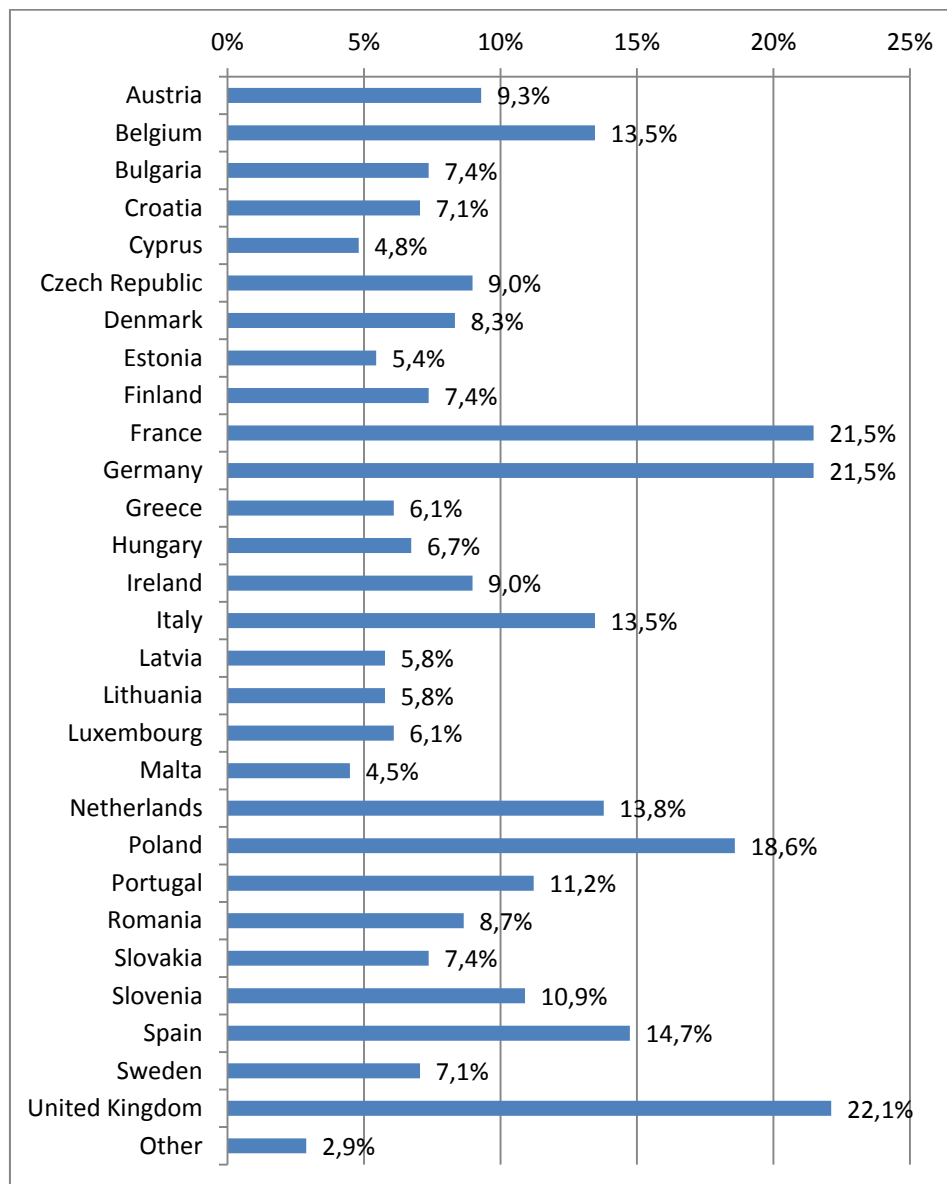
Note: Respondents may select multiple answers and therefore, the percentages shown in the figure may exceed 100%. Source: Survey to economic operators, August-November 2015.

The number of participating trade associations for “*beer*”, “*spirits*” and “*denatured alcohol*” was comparably higher than the number of associations representing “*wine producers or growers*” and “*producers of other fermented beverages*”. This is likely due to the organisation of trade associations within each sector and the representativeness of their respective memberships.

Some associations (16) indicated that they represented several sectors, including four associations of “*wine and spirits producers*” responded to the questionnaire, and three associations of “*beer, wine, other fermented beverages and sprits producers*”. Other combinations were also reported.

1.4.2 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.

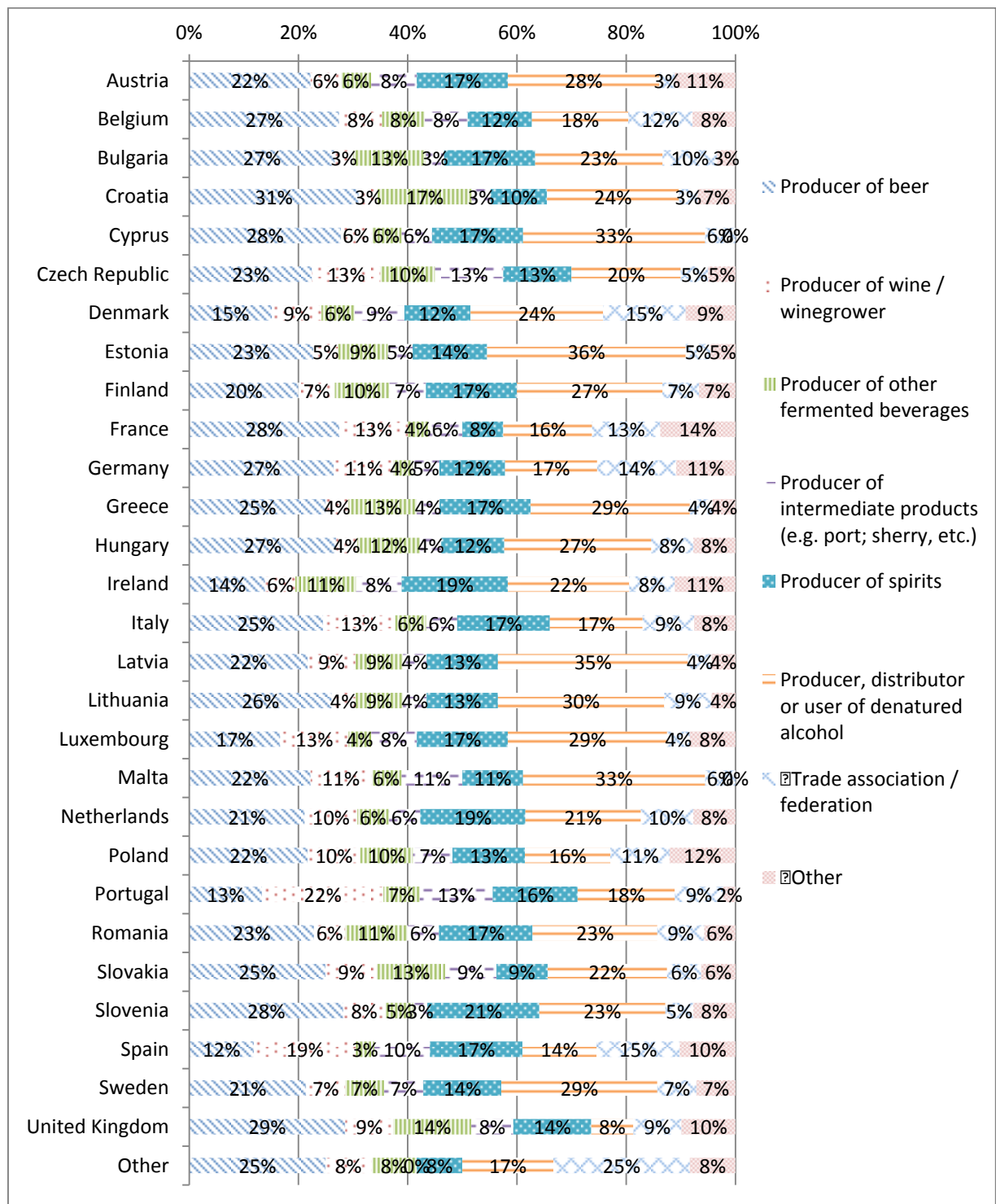
Figure 4: Geographical coverage (N=312)

Note: Respondents may select multiple answers and therefore, the percentages shown in the figure exceed 100%. Source: Survey to economic operators, August-November 2015.

Respondents who participated in the survey and indicated to be active in countries other than the EU Member States ("*other*") came mostly from other European countries such as Norway and Serbia.

A majority of the respondents indicated to be only active in one Member State while 14.1% were active in two or more Member States. Half of these were operating in ten or more Member States. For every EU Member State the survey managed to reach at least one economic operator of each relevant sector as presented in Figure 5 below.

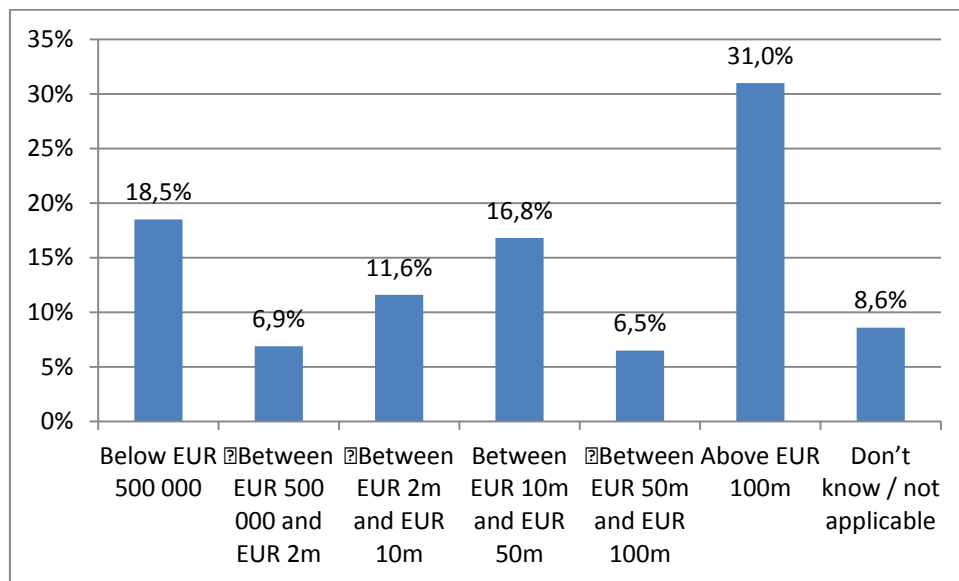
Figure 5: Main sector of activity per Member State (N=312)



Source: Survey to economic operators, August-November 2015.

1.4.3 Economic size

The economic size of the operators in the survey is measured in terms of turnover and number of employees. First, average annual turnover of the respondents is shown in the figure below.

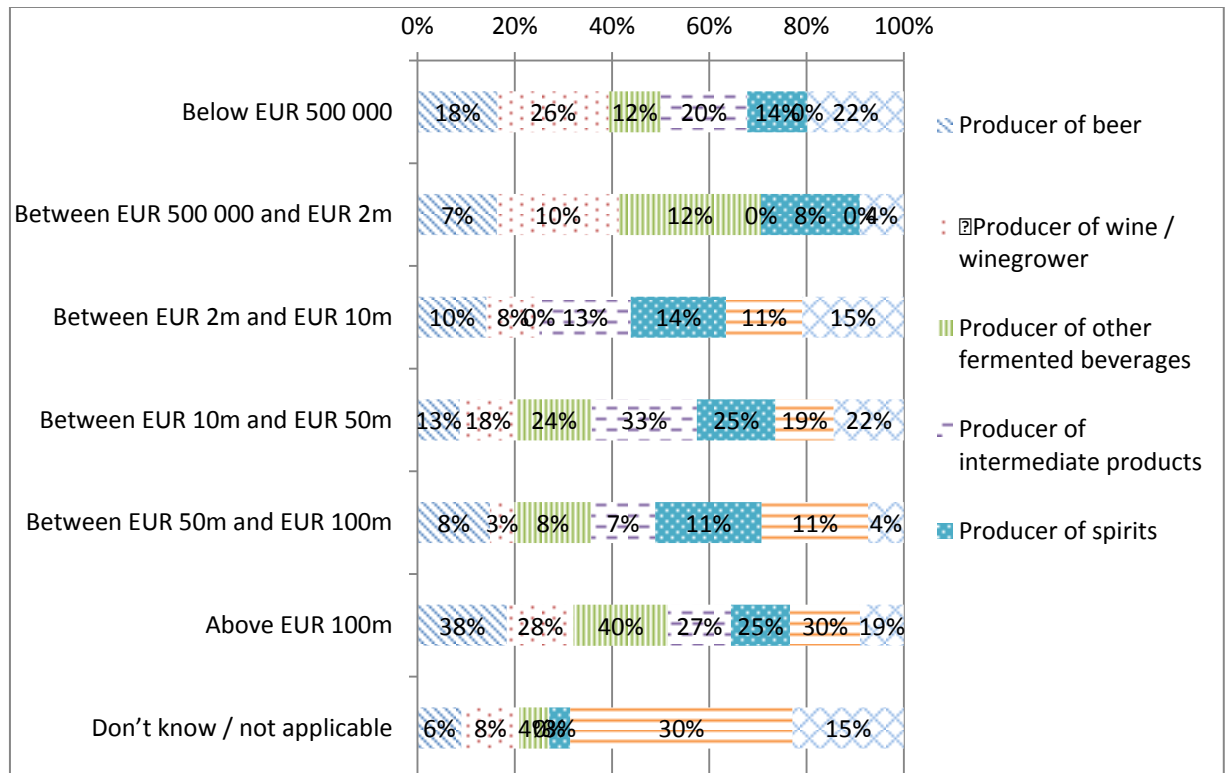
Figure 6: Average annual turnover (excluding trade associations) (N=232)

Source: Survey to economic operators, August-November 2015.

Almost one third of the respondents have an average annual turnover of more than EUR 100m but also an important number of small producers with a turnover of less than EUR 500,000 per year participated in the survey.

A comparison of average annual turnover of economic operators between the different industry sectors is presented in Figure 7. For all categories of alcoholic beverages producers on the low, medium and high end of annual turnover participated in the survey. The producers, users and distributors of denatured alcohol are represented by companies with higher annual turnovers.

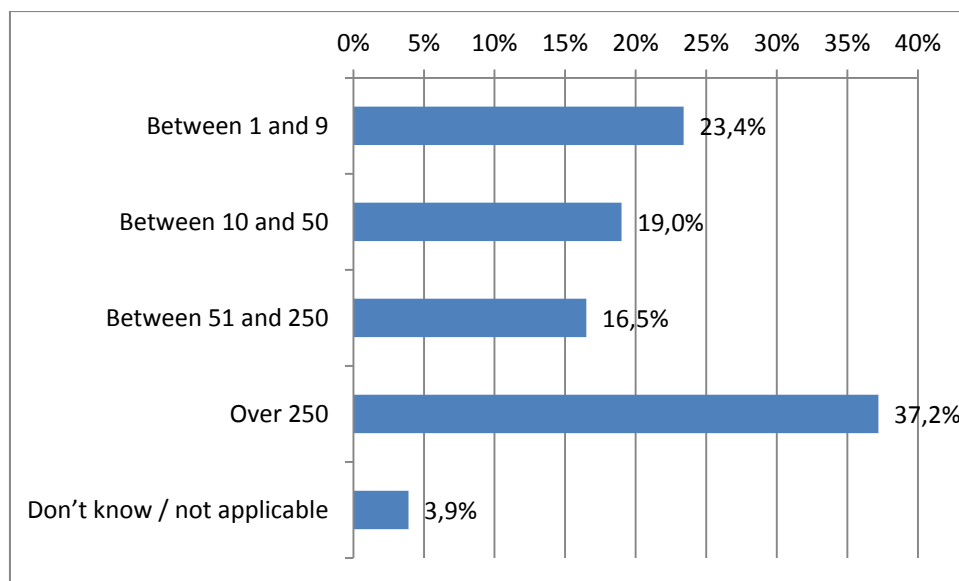
Figure 7: Average annual turnover per industry sector (excluding trade associations) (N=232)



Source: Survey to economic operators, August-November 2015.

The average number of employees per firm is shown in the graph below. The respondents were asked to focus on direct employment within the EU.

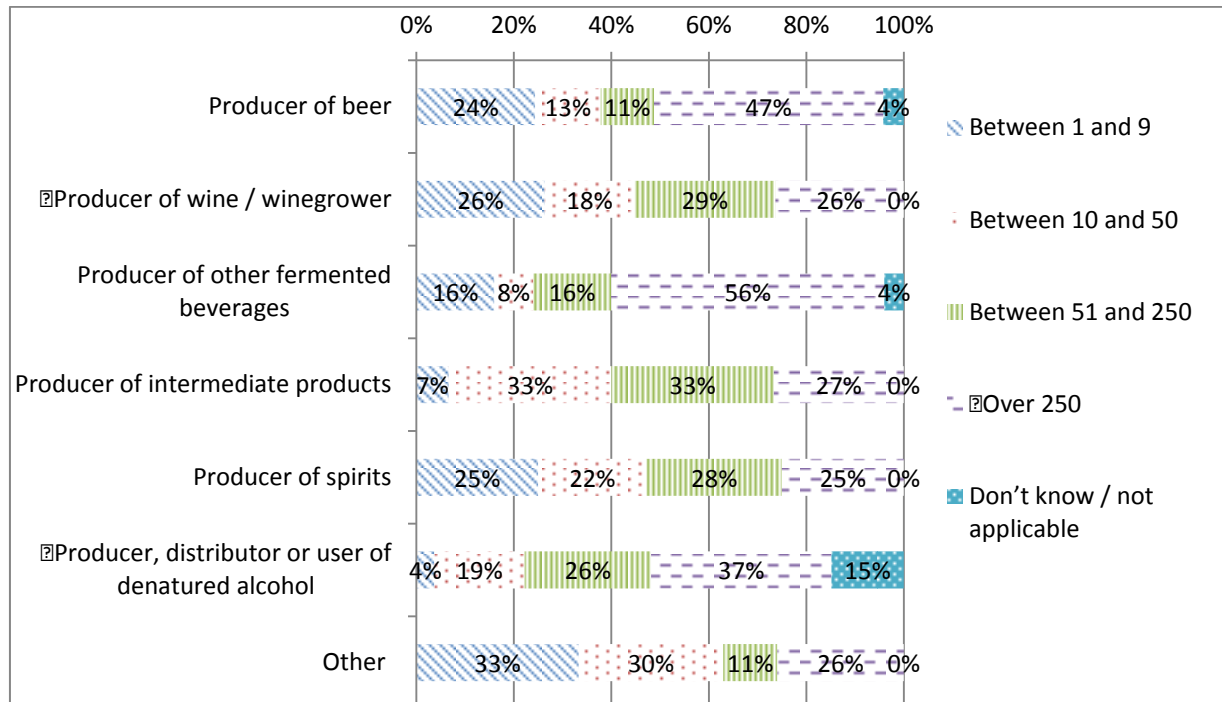
Figure 8: Average number of employees within the EU (excluding trade associations) (N=231)



Source: Survey to economic operators, August-November 2015.

A relative majority of the responding economic operators had very large firms of more than 250 employees. At the same time, almost half the economic operators were rather small with 50 employees or less.

Figure 9: Average number of employees within the EU per industry sector (excluding trade associations) (N=231)



Source: Survey to economic operators, August-November 2015.

Figure 9 provides a picture similar to the comparison of average annual income per industry sector. The producers of different alcoholic beverages covered in the survey come from very small firms of less than ten employees as well as from large firms of over 250 employees. Also medium sized companies are represented from all beverage sectors. The sector of denatured alcohol is represented with companies with low, medium and large numbers of employees.

1.4.4 Consequences for the analysis

We fully recognise the risk that opinions, views and positions taken in this survey are **highly subjective**. Our approach for analysis, rooted strongly in **triangulation** (which we understand to mean both in terms of **sources as well as methods**) has taken this risk into account.

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 the **Member State(s)** in which they are active.

1.4.5 Representativeness of survey sample

Taking into account the risks presented above, **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. In this context, we believe that analysis performed **at EU level** and **for each sector** can be considered sufficiently accurate.

A main concern is linked to the sector of denatured alcohol, where operators from the cosmetic sector are strongly overrepresented. As a consequence it has been decided that answers to some questions affected by this cannot be viewed as representative of the entire industry of “*producers and users of denatured alcohol*”. The in-depth case study on the exemption of denatured alcohol has collected additional data from a balanced sample of interviewees in order to ensure that all different sectors of producers and users of denatured alcohol are included.

1.5 Open Public Consultation

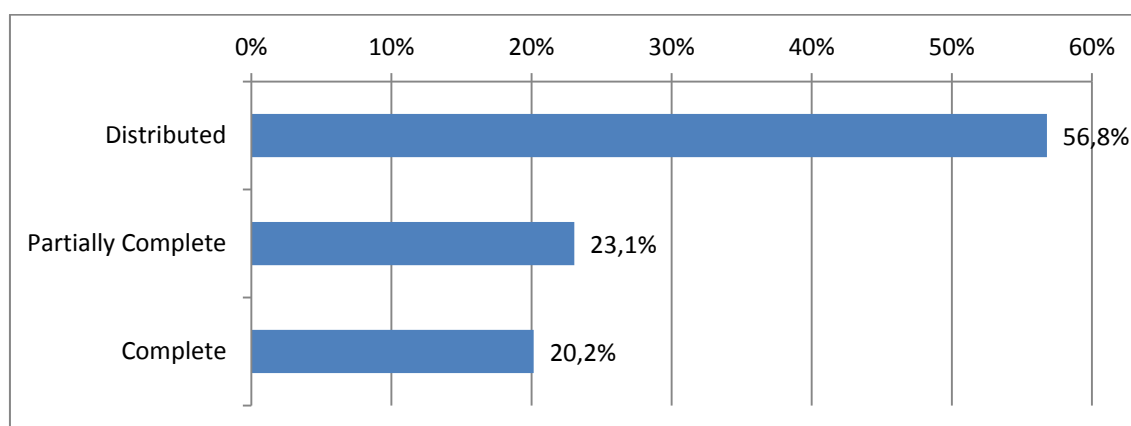
In parallel to the survey to economic operators, an open public consultation has been conducted. Everybody accessing the survey to economic operators was also informed of the open public consultation. Consumers and other types of stakeholders not covered by the targeted survey to economic operators were re-directed to the open, public consultation.

The public consultation was 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).

A link to the questionnaire was available on a dedicated page on the website of DG TAXUD. In addition, while promoting the survey to economic operators and the questionnaire to Member States, reference was made to the public consultation.

The public consultation was open to responses between August and November 2015. In total, the questionnaire was accessed 759 times (simple access to the survey is indicated as “distributed” in Figure 10 below). Out of these, 328 participants provided partial or complete responses.

Figure 10: Participation to the public consultation (N=759)



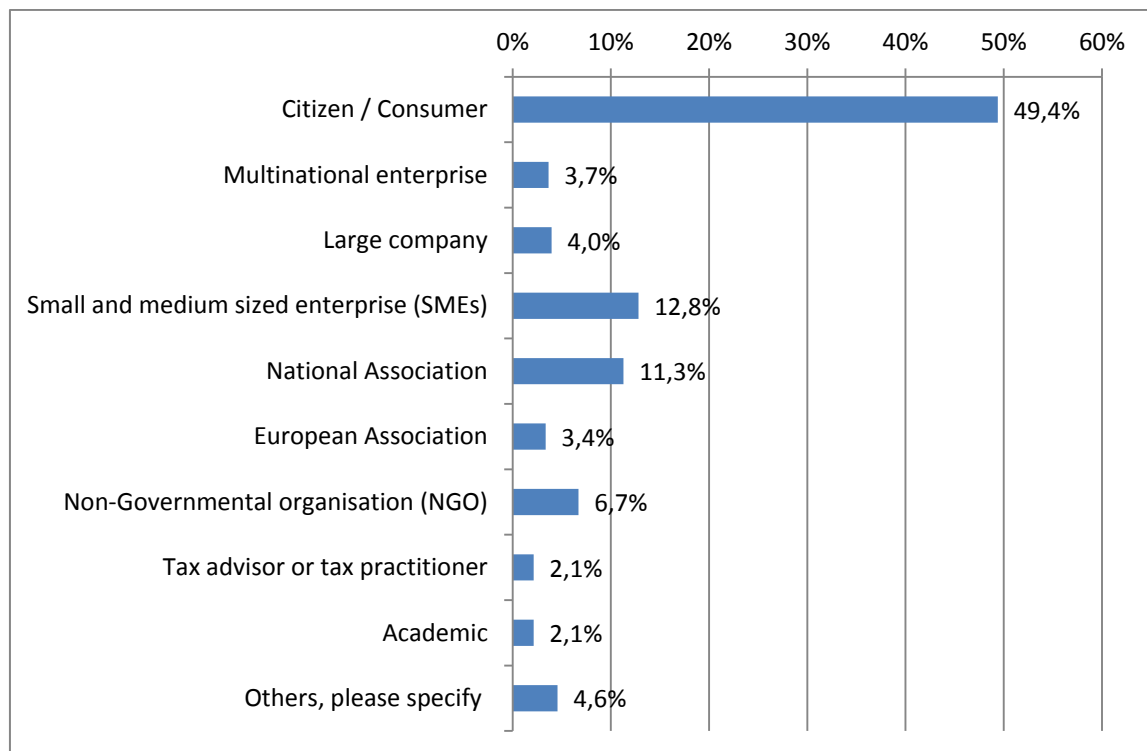
Source: Public consultation, August-November 2015.

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 status¹⁷, about their Member State and were asked to name their organisation/ entity/ company. The results to these questions are presented in the following.

1.5.1 Types of participants

Half of the participants to the consultation were citizens and consumers. Further groups of participants included SMEs and national organisations.

Figure 11: Types of participants to the public consultation (N=328)

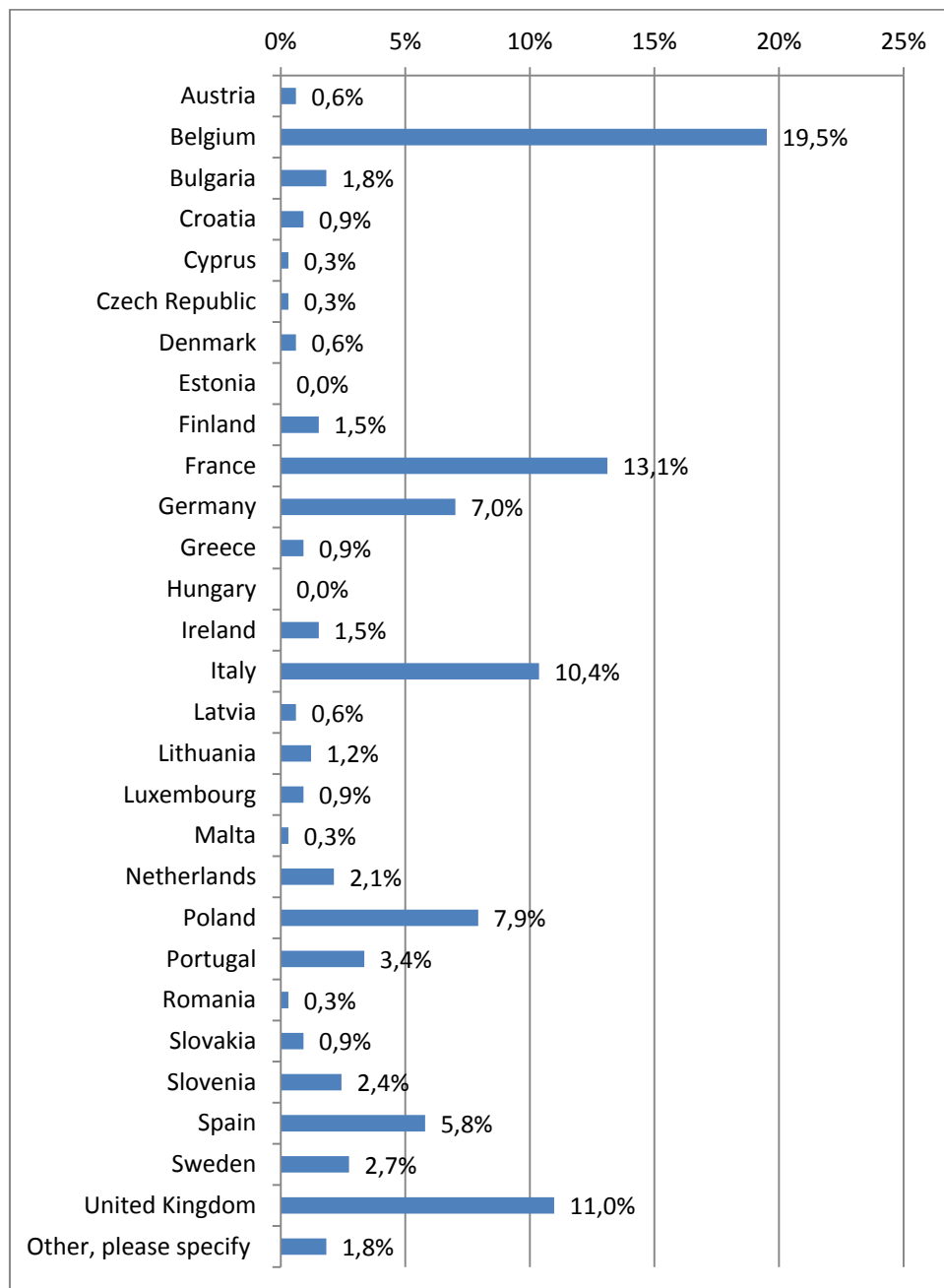


Source: Public consultation, August-November 2015.

1.5.2 Geographic coverage

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. With almost 20% of the responses, Belgium has a particularly high participation (this may be due to the concentration of relevant associations in the Brussels region). Together, the six Member States with the highest participation unite almost 70% of the responses.

¹⁷ Citizen / Consumer, Multinational enterprise, Large company, Small and medium sized enterprise (SMEs), National Association, European Association, Non-Governmental organisation (NGO), Tax advisor or tax practitioner, Academic

Figure 12: Geographic coverage in the public consultation (N=328)

Source: Public consultation, August-November 2015.

1.5.3 Consequences for the analysis

Analysis of the answers to the public consultation and treatment of data has followed the Commission Rules on public consultation, as inscribed in the better Regulation Guidelines¹⁸.

The analysis took into consideration the type of respondents and/or the country of origin in order to make a judgment whether any patterns (or diverging views) can be

¹⁸ SWD(2015) 111 final, Better Regulation Guidelines, Commission Staff Working Document, Strasbourg, 19.5.2015; See http://ec.europa.eu/smart-regulation/guidelines/uq_chap7_en.htm for additional information

observed. Any views diverging strongly from the 'mainstream' views have been clearly identified.

The results of the public consultation are also presented, in full, in an appendix to the main report (summary report) and the answers of those respondents who have given their consent to do so are published in full.

The results of the public consultation are used as an additional source of data, distinct from all other sources as input to the evaluation in strict accordance with the triangulation principle.

1.6 Ad-hoc contributions

In the context of the survey to economic operators and the public consultation a number of stakeholders decided to send additional written input to the study team. In total, **19 written contributions** were received.

Of these, 16 referred to the survey to economic operators: **associations of the different industry sectors** sent these contributions:

- Two contributions from the "Brewers of Europe" (beer)
- "Campaign for Real Ale", (CAMRA) (beer)
- "Polish Council for Winemakers" (wine)
- "Rola" – a wine and liquor distillery (wine and spirits)
- "Comité National du Pineau des Charentes" (intermediate product)

The others were from associations from **the denatured alcohol sector**:

- "Bulgarian National Association of Perfumery and Cosmetics and Essential oils" (cosmetics)
- "Cosmetica Italia" (cosmetics)
- "Cosmetics Europe" (cosmetics)
- "Fédération des Entreprises de la Beauté" (FEBEA), (cosmetics)
- "Irish Cosmetics, Detergent and Allied products Association", (ICDA) (cosmetics)
- "International Fragrance Association", (IFRA) (cosmetics)
- "IKW Schoenheitspflege" (cosmetics)
- "Johnson and Johnson" (cosmetics)
- "RUCODEM" (cosmetics)
- "Federal association of the German bioethanol producers" ("Bundesverband der deutschen Bioethanolwirtschaft") (bioethanol)

The three written **contributions to the public consultation** came from associations of doctors and dentists:

- "British Medical Association" (BMA)
- "Council of European Dentists" (CED)
- "Standing Committee of European Doctors" (CPME)

1.7 In-depth interviews in the context of the case studies

In the context of three of the case studies (i.e. classification, denatured alcohol and exemptions for private consumption)¹⁹, the methodology has foreseen the completion of in-depth interviews. This has entailed the following:

1.7.1 Case study on classification

All Member States who have reported difficulties in classification have been invited to participate (invitations to 18 Member States were sent). In order to balance this view, we have invited an equal number of economic operators to participate in interviews on the same topic. Economic operators participating at this stage were chosen at random from those operators which have answered “yes” to the following questions in the survey: *“Have you encountered any difficulties with the classification of your products”* and *“Have you ever come across products which were packaged to look like their equivalent higher strength spirits but otherwise were characterised by lower strength and/or lower price than the equivalent products in the higher tax band?”*

A full list of respondents is included in the final version of the case study report.

1.7.2 Case study on denatured alcohol

In the context of the case study, a total number of twelve interviews were conducted with producers and users of denatured alcohol. Interviewees were identified among the participants to the survey with the aim to cover all different sectors of the industry (i.e. producers of denatured alcohol, cosmetics, screen-wash, biofuels and printing inks). As not all of these sectors were covered in the survey, additional interviewees were identified through desk research and referral of other interviewees.

A full list of respondents is included in the final version of the case study report.

1.7.3 Case study on exemptions for private consumption

In the context of this case study, stakeholders from five Member States were interviewed: Romania, Hungary, Sweden, Austria and United Kingdom. Tax and health authorities, industry representatives, as well as academics in the field of alcohol and drugs research were interviewed.

A full list of respondents is included in the final version of the case study report (*to be submitted with the final report*).

¹⁹ The case study on reduced rates entailed only an analysis of economic data.