

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

The Study has three main objectives:

- *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 includes six problem areas:

Classification of certain 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.*

Exemptions for denatured alcohol (art. 27): *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.*

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.

Reduced rates for low-strength alcoholic beverages: unclear objective of this provision and possible need to revise the current thresholds.

Exemptions for private production and home consumption: possible impacts of an extension of exemptions to beverages not currently covered (intermediate products and ethyl alcohol).

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.

On definitions: The Study looks into "borderline" products where classification uncertainties may have 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.

The Study concludes that '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 300 mn 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 extent 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 Euro 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 ECJ rulings).***
- (ii) Splitting the OFB category in 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 of 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 / CNEN (drawn from the ECJ rulings); adopting non-binding classification guidelines; promoting a sectoral regulation for cider; and measures to enhance market monitoring and control.

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 the 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

As regards Option III, the revision of CN / CNEN and the adoption of detailed classification guidelines may preempt the need to modify the Directive, while the adoption of sectoral regulation for cider would support the enforcement of classification rules. The major difficulty with these measures is that they fall outside of the current regulatory process, so they require the involvement and consensus of several different services of the national and European administrations.

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

OFB

Table 1 – The OFB ‘cluster’ of products, and the applicable tax categories (corresponding articles of the Directive)

CN	2205 / 2206			2206							2208		
Product	AW cocktail	AW drink		Piquette	Cider, perry		Other				MD / OFB		
					Flav.	Trad.	Beer mixes	Still	Spark.				
								MD / OFB					
<i>base</i> Vol.	<i>efo</i>	<i>efo</i>	<i>aa</i>	<i>efo</i>	<i>efo</i>	<i>efo</i>	<i>efo</i>	<i>aa</i>	<i>efo</i>	<i>aa</i>	<i>aa / clean-up</i>		
0.5%-1.2%													
4.5%	12.1	12.1	12.1	12.1	12.1	12.1	2	12.1	12.1	12.2	20		
5.5%													
7.0%								12.1*					
8.5%	8**	8**	12.1*										
10.0%												12.2*	
13.0%			17.1										
14.5%							17.1		17.1				
15.0%							17.1						
22.0%				17.1	17.1	17.1		17.1					
>22%					20	20		20	20	20	20		

Source: Author’s elaboration on the basis of the existing legislation and commentaries provided by some trade associations. In some borderline areas not explicitly covered by legislation the information reflects the Author’s interpretation.

Legend: the numbers displayed in the cells of the diagram refer to the applicable Article of the Directive. AW: aromatised wine; MD: mixed drink; flav.: flavoured; trad.: traditional / non-flavoured; ‘efo’: entirely of fermented origin; ‘aa’: alcohol added. (*): in accordance with Art 17.2 some MS may consider these products as Intermediate Products; (**): these products are under CN 2205 heading.

Notes: for simplicity the Vol. column displays only the upper limit for each ABV class considered. So the ‘4.5%’ class comprises products with an ABV exceeding 1.2% (upper limit of the lower class) and not exceeding 4.5%.

In principle, Art. 12 may apply also to CN 2204 products other than those displayed, which do not comply with Art. 8 definition. However, to the best of our knowledge the issue has negligible relevance.

It has been assumed that all CN 2205 products fit into one of the three categories of Reg. 251/2014. According to some stakeholders, this may not always be the case, however for the purpose of this analysis this seems an acceptable approximation.

Flavoured products

Table 1 – Market size of product categories possibly using alcohol as a flavour carriers

Categories	6MS	EU	Ratio 6MS - EU	CAGR***	Share (%) of products containing AFC - hypothetical scenarios		
					I - 25%	II - 50%	III - 75%
	mn litres	mn litres		2014-17	mn litres	mn litres	mn litres
Flavoured Beer*	224.9	554.1	41%	12.6%	138.5	277.1	415.6
Vermouth**	43.4	101.7	43%	-3.2%	25.4	50.8	76.3
Other flavoured still wine	82.7	189.2	44%	8.2%	47.3	94.6	141.9
Other flavoured sparkling wine	5.6	10.5	53%	9.7%	2.6	5.3	7.9

Source: Author's elaboration of IWSR data

Note: (*) radler beer is not included; (**) vermouth is typically fortified, so only a small share of this category seems relevant for the issue at stake. (***) The CAGR includes IWSR's forecast for 2017.

Flavoured products

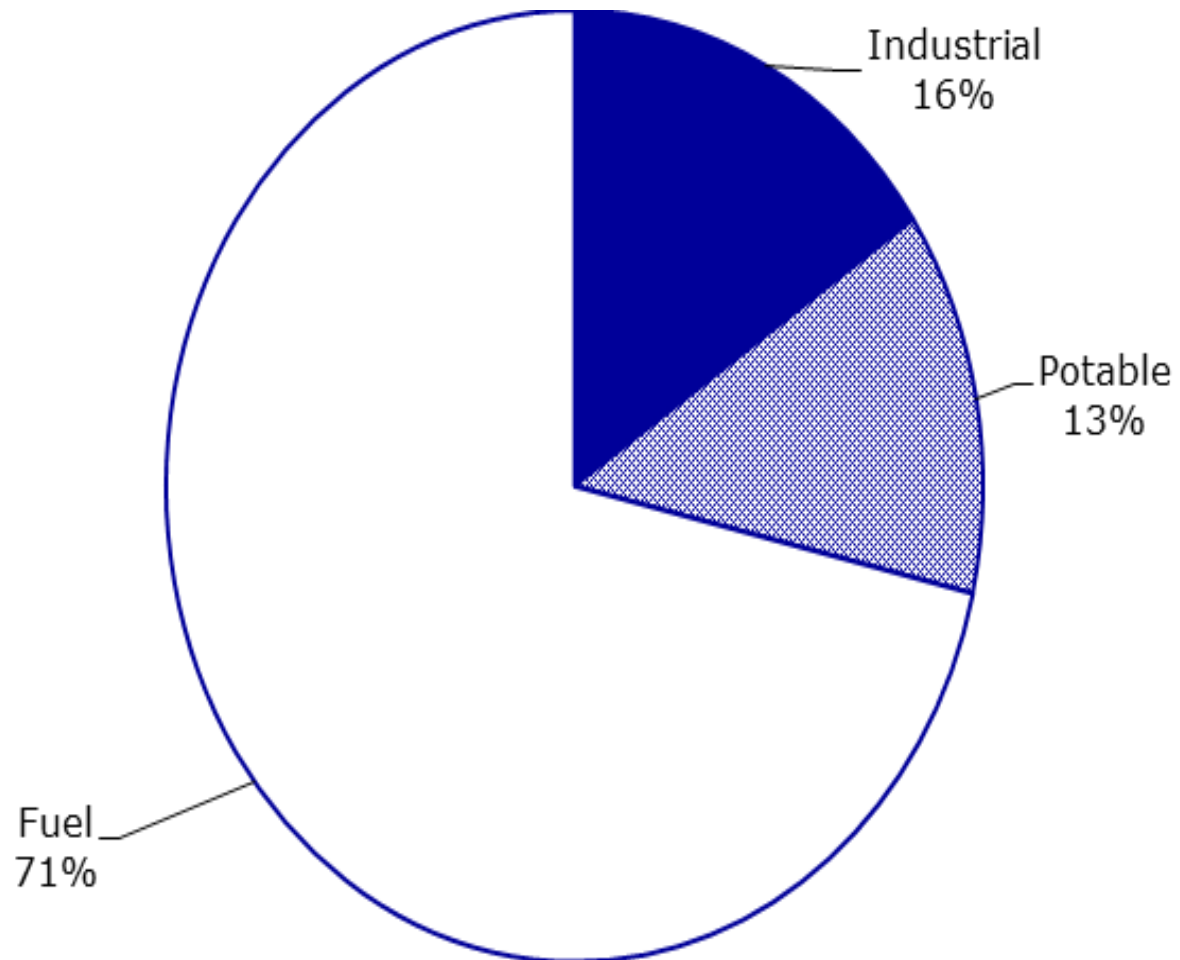
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Denatured alcohol



Approximately €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, screen wash 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.

There are concerns about fiscal fraud with denatured alcohol, which is estimated to result in lost tax revenues in the region of €150-200 million per year across the EU (the bulk of which in certain Central / Eastern European MS).

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.

Partial harmonisation is recommended. 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.