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IMPACT ASSESSMENT

Accompanying the document

Proposal for a Council Directive

amending Directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages

{COM(2018) 334 final} - {SEC(2018) 254 final} - {SWD(2018) 258 final}

CONTENTS

ABBREVIATIONS

ABV	Actual Alcoholic Strength by Volume
AFC	Alcohol as a Flavour-Carrier
AWP	Aromatised Wine Products
BTI	Binding Tariff Information
CDA	Completely Denatured Alcohol
CJEU	Court of Justice of the European Union
CN	Combined Nomenclature
CNEN	Combined Nomenclature Explanatory Note(s)
EMCS	Excise Movement and Control System
EPC	Excise Product Code
ET	Ethyl Alcohol
EU	European Union
FPG	Fiscalis Project Group
hl	Hectolitre
IP	Intermediate Products
ITEG	Indirect Tax Expert Group
mn	Million
MS	Member State(s)
OFB	Other Fermented Beverages
OPC	Open Public Consultation
PDA	Partially Denatured Alcohol
REFIT	Regulatory Fitness and Performance Programme
SME	Small and Medium-sized Enterprise
TFEU	Treaty on the Functioning of the European Union
WHO	World Health Organisation

1. INTRODUCTION AND CONTEXT

1.1. Introduction

The European Commission is committed to preventing trade distortions in the single market, ensuring fair competition between businesses, and reducing administrative burdens and compliance costs for businesses and tax administrations. The launch of the single market resulted in the abolition of tax controls at the borders between Member States (MS) and the adoption of common rules for excise products, including alcohol, to facilitate cross-border trade and to prevent competitive distortions.

Excise duties for alcohol are regulated through two directives:

- Directive 92/84/EEC[1] on the approximation of the rates of excise duty on alcohol and alcoholic beverages sets out the minimum rates of excise duty on alcohol products.
- Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages sets out the common rules on the structures of excise duty applied to alcohol and alcoholic beverages. This directive defines and classifies the different types of alcohol and alcoholic beverages, according to their characteristics, and provides a legal framework for reduced rates, exemptions and derogations in some sectors.

In addition to these directives, Directive 2008/118/EC[2] sets out the common provisions, which apply to all products subject to excise duties. This directive is currently under review in a separate proposal. Furthermore, businesses must adhere to other EU legislation, which regulates areas such as product definitions, labelling etc.

Both alcohol Directives have failed to keep pace with developments including inflation. In 2006 in response to a request from Council, the Commission proposed to amend the minimum rates as set out in Directive 92/84/EEC. The proposal fell short of the necessary unanimity and was withdrawn in 2015 by the Commission.

Since the adoption of Directive 92/83/EEC in 1992, the first and only evaluation of the Directive was in 2014. This Directive has not kept pace with the challenges and opportunities offered by new technologies and developments within the alcohol industry. The Directive was identified by the Commission for a retrospective evaluation under the Commission's Regulatory Fitness and Performance Programme (REFIT). One of the objective was to identify weaknesses in the legislative environment caused by the Directive resulting in negative consequences for the stakeholders (e.g. obstacles to the functioning of the internal market, competitive disruptions, administrative and compliance costs, etc.)

This impact assessment intends to ensure that the future proposal is cognisant of previous experiences and in particular identify any areas where the regulatory framework can be improved to bring benefits to businesses, MS and citizens. While a proposal to amend Directive 92/84/EEC may reduce the incentive for tax evasion and positively impact on public health, this impact assessment will not focus on this due to the limited support of stakeholders and the Commission's prior experience in proposing an amendment to this Directive. Furthermore this proposal will focus solely on requirements imposed by tax legislation and not sector / industry requirements.

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1 Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages, OJ L 316, 31.10.1992, p.29.

2 Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, OJ L 9, 14.1.2009, p.12-30.

1.2. Scope for reforms

To support the REFIT evaluation, an independent study was carried out in 2014/2016 by a consortium led by Ramboll Management Consulting (hereinafter the 'Ramboll Evaluation').[3] The recommendations and findings of the Ramboll Evaluation were taken into account in the Commission's report submitted to the Council in October 2016[4]. According to this Report, the Directive has proven to be effective and generally appropriate for the collection of excise duties.

Nevertheless some problems have been identified and inefficiencies persist causing possible distortions of the internal market. The large variation in duty levels between MS[5], which provides a strong incentive for tax evasion, and other weaknesses in the design of the tax necessitate the use of burdensome administrative procedures for both tax administrations and businesses. These increased administrative and compliance costs for businesses restrict the participation of small and medium-sized enterprises in intra-EU trade in alcohol and alcoholic beverages.

In December 2016, Member States unanimously supported the call to review the Directive and the Council subsequently adopted Council Conclusions (see Annex 5), asking the Commission to carry out the necessary studies and consultation to submit a proposal for revision. In March 2017, the Inception Impact Assessment[6] on a possible revision of the Directive was published, and laid down the problem areas to be assessed and a preliminary set of potential policy options. A grouping led by Economisti Associati s.r.l. (EA) and including the Centre for European Policy Studies (CEPS), CASE - Center for Social and Economic Research, wedoIT-solutions GmbH, and ECOPA undertook the assignment titled "Study on Council Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages" ("the Study"). The Study analysed the scale of the problems identified in the Ramboll evaluation, assessed their evolution and assessed the impacts of possible options to address the problems identified.

2. WHAT IS THE PROBLEM AND WHY IS IT A PROBLEM?

2.1. Introduction

As noted above, the Ramboll Evaluation found that the Directive has proven to be effective and generally appropriate for the collection of excise duties. However some problems were identified and inefficiencies persist. These findings are evident by the frequent queries from MS and businesses, Indirect Tax Expert Group (ITEG) and Committee for Excise duties (ExComm) agendas, complaints against the Commission and the existence of the Fiscalis Project Group 013 on arrangements for taking forward the work on completely and partially denatured alcohol.

The problems touch upon the following 4 areas: (i) Exemptions for denatured alcohol, (ii) Classification of certain alcoholic beverages, (iii) Reduced rates for small producers and low strength alcoholic beverages, and (iv) Measurement of Plato degree of sweetened/flavoured beer. The problem areas are very distinct from each other, which has an impact on the structuring of the analysis presented in this report. There is no uniform and homogenous market for alcohol and alcoholic beverages; the markets for specific beverages or other alcoholic products are generally not competing against each other, follow specific sectorial regulations and requirements, and exhibit specific problems. There are at the same time issues with the functioning of Directive 92/83/EEC which are of horizontal nature, such as the classification problems.

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3 Ramboll Management Consulting, Coffey, Europe Economics, "Evaluation of Council Directive 92/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages", 2016

4 '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 beverage', Brussels, 28.10.2016, COM (2016) 676 final.

5 Council Directive 92/84/EEC sets the minimum rates of excise, which is not within the scope of this document.

6 'Inception Impact Assessment on the Structures of excise duties on alcohol and alcoholic beverages', 01.03.2017

All of the problem areas require dedicated scope of analysis. The drivers behind each of the problems areas are problem-specific and so are, mostly, the consequences. As a result, also the objectives are drawn up in such a way that they correspond only to specific problems/drivers (see section 4). Acknowledging the complexity of the issues at stake and their analysis, Figure 2 offers an overview of the intervention logic behind the initiative, guiding the reader through the analysis.

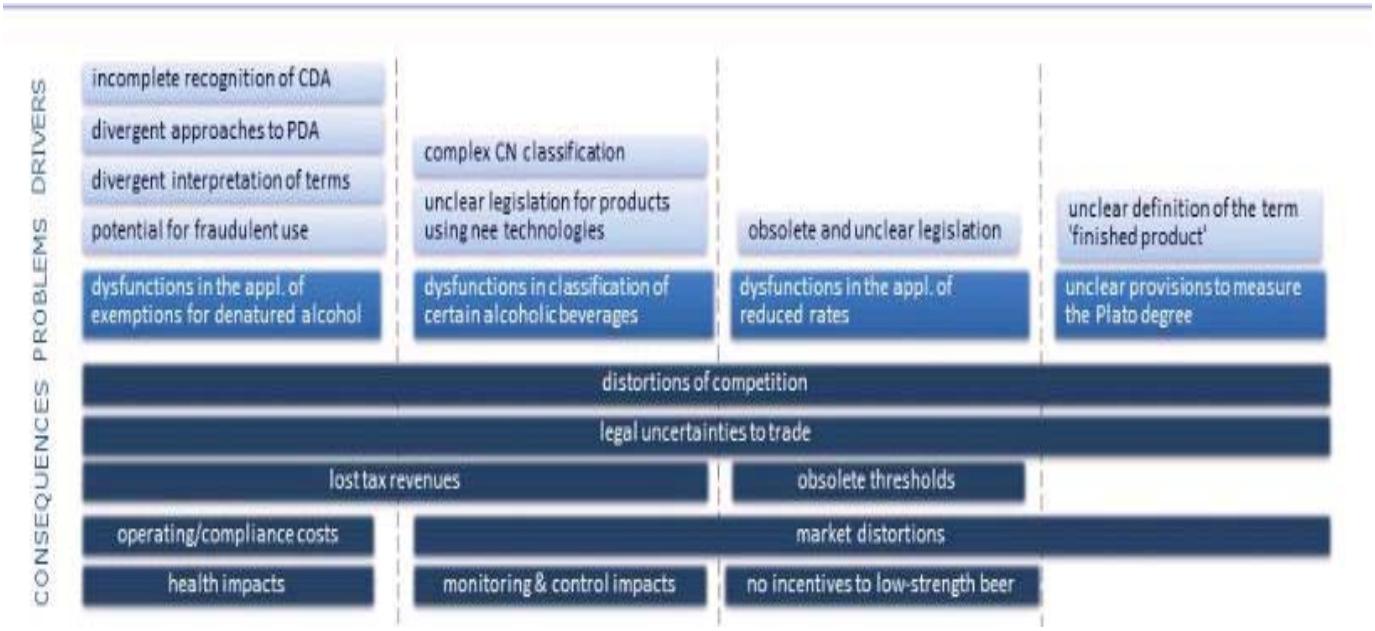
Furthermore, it should be noted that some of the problem areas impact specific stakeholders only, who have learned for the main to work within the current legislative framework. The general muted response can be attributed in part to the perceived risks of amending a Directive that is 25 years old, the risk of positive rates for some products and also to the fact that the problem may not impact the stakeholder in any event. Contrary to the apparent lack of interest of stakeholders, this reluctance cannot be generalised and Member States unanimously supported a proposal for an amendment to the Directive.

2.2. Scope of the problems

The Ramboll evaluation and the Study took a broad approach to the possible problems, identified through various sources, with the functioning of Directive 92/83/EEC. Follow-up analysis of both studies resulted in a conclusion that not all of the aspects of the problematic areas merited EU action. The excise duty exemption for private production of fermented beverages (i.e. beer, wine and other fermented beverages (OFB)) for home consumption, which was reviewed in both studies, will not be further considered in this impact assessment. The reasons behind this decision are explained in detail in Annex 16.

The following problem tree outlines the problems, the drivers and their consequences of the problematic areas retained for further analysis in this impact assessment.

Figure 1 –the problem tree



2.3. Problem 1 - Dysfunctions in the application of exemptions for denatured alcohol

Overall, the Study suggests that the EU regulatory framework for exempting denatured alcohol from excise duty *works relatively well*. The original objective behind the provisions – that of ensuring fair competition between businesses - was found to be still relevant. However, it is evident (*inter alia* from the frequent discussions within the ExComm, the ITEG and the Fiscalis

Project Group dating back to 2008) that the provisions in Art. 27 of the Directive 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 moved across borders between MS whose interpretation of the applicable rules differ. The original intention of the provisions for exemption of denatured alcohol and in particular the differentiation between the exemption under Article 27.1 (a) and 27.1 (b) is no longer met under the current interpretation. 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.

Art. 27 stipulates that alcohol shall be exempted from excise duty if it has been denatured (i.e. the addition of certain substances 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 formulations 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 destined for human consumption, and MS are free to define their own national procedures.

CDA is predominantly used for industrial use, whereas PDA is used for products not intended for human consumption but for which the rules on CDA are not suitable (i.e. because the intentionally strong smell of CDA means it cannot be used in perfumes or its tasting agents cannot be used with products that come into contact with the mouth, etc.). Examples of such products include cosmetics, perfumes, inks, screenwash and anti-freeze, detergents, paints and coatings, as well as biofuels, which account for the largest proportion by far.

The key drivers of the problem, which are discussed in Annex 6, are (i) an incomplete / inconsistent mutual recognition of CDA between the MS, (ii) divergent national approaches to PDA, (iii) divergent interpretations of certain terms related to PDA, and (iv) potential for fraudulent use of denatured alcohol.

2.3.1. *Consequences: who is affected and how?*

Member States authorities

Fiscal fraud with denatured alcohol 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 Central / Eastern MS). The World Health Organization (WHO) has published estimates that around 17% of all alcohol consumed in Europe in 2010 was unrecorded. The estimated proportion of unrecorded alcohol (based on data from the Commission's excise duty tables (EDT), 2016) ranges from as little as 3% (FR) to over 20% (RO). Box 1 illustrates the scale of the tax revenues lost in PL.

Box 1 - Estimating fraud with surrogate alcohol in Poland

The WHO estimates the consumption of illicit alcohol in PL to be about 1.6 litres of pure ethanol pp/year (13% of total consumption). According to interviewees, the illicit alcohol is predominantly spirits (ethyl alcohol), its total legal consumption is about 120 million litres of pure ethanol/year. A project carried out in 2012 by the Polish Spirits Industry in cooperation with the Ministry of Finance found that, between 2009 and 2011, the majority of illicit spirits (7 out of a total of 12 million litres of pure alcohol/year) consumed in Poland were derived from decontaminated/purified industrial alcohol.[7] Based on the current excise duty and exchange rates, this would be equivalent to just under EUR 95 million of excise duty lost per year (or approx. 6% of the total excise duty receipts from ethyl alcohol).[8] Whether this is a realistic estimate depends on who is asked: while the authorities in PL estimate that the consumption of illicit alcohol has fallen to around 5% of the total recently (meaning this type of fraud is responsible for around EUR 50 million of lost revenue/year), some industry representatives reckon the

[7] Based on OECD, 'Illicit Trade: Converging Criminal Network. The size, impacts and drivers of illicit trade in alcohol', 2016

[8] Calculations based on data from the Commission's excise duty tables (2016).

market share of illicit spirits in PL is closer to 20% (equalling approx. EUR 200 million per year of lost revenue).

***Source**: EA, "*Study on Council Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages", 2017

A minority of MS also indicated they felt that the existence of various denaturing methods across the EU made it "particularly difficult" for their administration to monitor and control of the production and/or movement of denatured alcohol. This was mainly due to a lack of knowledge of the different denaturing formulations used by other MS, resulting in a ***burden on the time and resources*** available for analysis in the laboratories.

According to the CZ and PL authorities alcohol can account for between 25 – 50 % of their customs laboratories' workloads. Recently their laboratories have analysed several hundred samples of denatured alcohol. As a sample can be denatured using one of the many denaturing formulations, the list of ingredients to be checked can vary substantially in each sample making it impossible to establish chemical algorithms. However, only a minority of these samples contain (cleaned up) denatured alcohol of unknown origin. In these cases, testing these samples can reportedly be extremely time and labour intensive i.e. take several days and cost up to EUR 1 000 in staff time and materials. Assuming 500 samples are analysed each year and approximately 5 % of these are difficult cases, the estimated total annual cost for an administration is approximately (a maximum of) EUR 25 000.

Finally as described under the drivers, the different approaches to PDA lead to ***the legal uncertainty*** and legal proceedings, which have costs for both tax authorities and businesses. In the context of the Ramboll evaluation Member States highlighted the need for clear rules on the exemption of denatured alcohol. One MS noted that the "definitions of rules at this [EU] level is of utmost necessity, otherwise each MS will have its own system, according to its national interests, and that will only complicate matters."

Businesses

The different procedures and regimes in each MS as regards CDA make ***cross-border trade more difficult*** and can create competitive advantages to some, particularly in the cross-border movement of CDA or imports from third countries. However, since extra-EU imports are subject to an import tariff of EUR 10.2/hl, and the value of all imports of denatured alcohol into the EU amounts to approx. EUR 20 million/year of which CDA accounts for a small fraction, no stakeholders consulted raised competition from third countries as a substantial concern either[9]. It therefore seems that it remains more a potential risk than a manifested distortion.

Nevertheless, there appears to have been a perceptible hindrance and cost associated with moving CDA cross-borders, as reported by OPC respondents. 9 (24) businesses indicated that they, and/or a company that they had done business or were in direct contact with, had incurred additional costs and burdens because alcohol recognised as CDA in one MS was not recognised as such in another MS, on one or more occasions. A further 8 respondents noted that alcohol was recognised as CDA after a delay. 7 respondents indicated that they or another company had chosen not to import/export CDA from/to another MS because of the risk it would not be recognised as such.

With regard to the ***administrative burden***, in general, the main concern of the economic operators was linked to the specific requirements regarding supervision of production and movement in some MS that cannot be directly linked to the provisions of the Directive, and which represent these MS' national-level response to their estimations of the risk of fraud.

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[9] Only 4 out of 21 OPC respondents indicated they or another company had chosen to purchase CDA from a third country, rather than from an MS, because it was subject to more lenient rules.

With regard to the different national approaches to PDA, while producers noted that intra EU trade in PDA is possible and does happen, the investment required (i.e. purchase of storage facilities, setting up and maintaining tax warehouses) is likely to prevent many. Furthermore the ***cost of understanding and complying*** with the applicable rules in the different MS hampers smaller businesses in cross-border trade. For example in the CZ the financial guarantee is approximately EUR 10/L of alcohol. Interviewees in PL noted that it was common for users of PDA to have a full-time member of staff dedicated entirely to ensuring compliance with the regulatory framework, and companies prefer to use CDA wherever possible to avoid the burdens associated with using PDA. Large specialised companies for whom alcohol is a key product often find it economical to make this investment (no detailed cost estimates were available).

In addition to the costs of complying with the supervisory regimes and providing the required information to national authorities, there can also be other ***operating costs*** that arise from the different procedures in different MS. For example, cosmetics companies in some MS have access to a much wider range of PDA formulations and production procedures (including in situ denaturation) than other MS. This can mean that the manufacture of certain products is possible to a higher standard and/or at lower costs in certain MS.

Multinational companies may be able to take advantage of such differences and locate the production of certain goods in the MS that offer the most favourable conditions as regards PDA formulations and related factors. However, there are also instances where multinationals companies in several MS claim to incur ***additional costs***, as they need to adapt the formulations and production processes for otherwise identical products containing alcohol to the respective national PDA rules. The costs arising from the national regulatory frameworks vary significantly from MS to MS, from sector to sector, and even from company to company, and would therefore be very difficult to estimate comprehensively. In any case, the costs arising from these aspects are not attributable to the Directive, but to national implementing rules.

In response to the OPC, 57% of respondents indicated that they or a company they had contact with had incurred additional costs to understand the legal situation as regards the applicable rules and procedures for PDA when moved from / to another MS. 68% indicated that they had incurred additional costs / administrative burdens to ensure that PDA using a formulation accepted in one MS was also recognised as such in another MS. 39% of respondents had to pay excise duty on denatured alcohol because a MS did not recognise the procedure by which it was denatured in another MS and 48% of respondents chose not to import or export PDA due to risk it would not be accepted as PDA. No specific estimates or evidence was provided by the MS, which most likely stems from the fact that the administrations or companies do not keep such readily available statistics and disaggregating from other data is difficult. In the context of the Ramboll evaluation, one producer described a situation where a commitment had been made with a customer for the use of a specific denaturant. The authorities subsequently refused to authorise this formulation but the producer was contractually bound to produce the alcohol without an excise duty exemption.

With regards to the lack of clarity around the terms Art. 27 (1) (b) and the diverging interpretations of the term 'used for the manufacture of' the different interpretations by different MS, sometimes even by different customs offices within a given MS, of what does and does not constitute a finished product lead to ***legal uncertainty for businesses*** and costs (if the classification is challenged). Some businesses (47%) reported having experience of such situations, but were not able to specify costs, and stated the issue was eventually resolved to their satisfaction (in one case via a BTI). In MS where the exemption is not applied, the businesses may have to incur *additional costs* for purchasing and storing CDA in addition to PDA. The majority of stakeholders (76%) involved in the production or end-use of industrial alcohol stated that they have encountered issues with different interpretations.

Consumers/Citizens

Apart from the lost tax revenue, the resulting reduced funding for public services and other negative effects of criminal activity on society, the other main concern in relation to the effects of this fraud is ***public health***. There is at least one known recent case in the UK where anti-freeze containing denatured alcohol seems to have been used to manufacture illicit vodka. The consumption of denatured alcohol is also evident in LT, where it is commonly known that mouthwash is sold to individuals for consumption as alcoholic beverages. The Polish National Health Fund data show an average of around 200 hospital admissions, and around 50 deaths due to glycol (alcohol) poisoning per year in PL.

2.3.2. *How will the problem evolve (baseline scenario)?*

Approx. EUR 3-3.5 billion worth of denatured alcohol is used annually in the EU for a variety of industrial purposes. It is estimated 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.

With the adoption of Regulation 2017/2236 and the entry into force of the new list of CDA formulations, 25 MS recognise the Eurodenaturant as the only denaturing formulation, with only 3 MS (CZ, SE, UK) recognising different concentrations of the same ingredients. In addition, from 2019, when the authorisation of the remaining FI formulation expires, only 2 MS (CZ, EL) will still be using national formulations containing different denaturants. This greatly reduces, but does not completely eliminate, the scope for problems arising from the manifestly unclear rules on recognition of CDA formulations stipulated in Art. 27(1)(a) of the Directive. Still, it should be noted that the Directive in its current form allows MS to re-introduce national CDA formulations, if they wish to in the future. While this seems unlikely, it cannot be ruled out, especially if issues with the Eurodenaturant were to come to light.

In any case, if one considers that a system is only as strong as its weakest link (as CDA can circulate freely across the EU, and fraudsters would tend to use the "weakest" formulation available), then the fact that many MS have replaced their national formulations with the Eurodenaturant should reduce the risk of fraud with CDA overall. It is impossible to predict if this will result in a reduction of fraudulent activity or in a displacement of fraud towards PDA.

The proliferation of national approaches to PDA will continue. It could possibly intensify for biofuels, which accounts for the largest proportion of PDA as the future market evolution of biofuels is dependent on the direction of renewable energy policy in Europe. No changes are expected in relation to the divergent interpretations related to PDA and the uncertainty for cross-border trade will continue.

2.4. Problem 2 – Dysfunctions in the classification of certain alcoholic beverages

2.4.1. *The problem and its EU dimension*

Alcoholic beverages are defined and categorised at multiple levels and for different purposes. These different layers only partly coincide and this lack of coherence seems the single most significant cause of all classification issues. The excise duty classification is determined by the five harmonised tax categories established in the Directive, which are defined primarily with reference to the Combined Nomenclature (CN) headings. See Annex 7 for details.

The classification dysfunctions, which can be subdivided into two key areas which exhibit distinct characteristics (and drivers) while sharing most of the adverse effects: (i) interaction between fiscal and customs classification and (ii) definition and classification of certain non-standard products not explicitly, or imprecisely, foreseen in the Directive. The Ramboll

evaluation recalled approximately ***70 different cases of products "difficult to classify"***, spanning a majority of MS.

Interaction between fiscal and customs classification

The Directive defines the categories of alcoholic products subject to harmonised excise duty in accordance with their customs classification. The correspondence between the fiscal categories and the CN codes is however not straightforward. Within the EU, classification uncertainties 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 level of the legal uncertainty that may derive from the above classification issues is connected primarily to the specificities of national markets, and the classification rules adopted.

Under the current system the customs classification determines the excise duty category. Once a beverage is classified as CN 2208 it can be taxed only under Art. 20 (Ethyl alcohol), while if classified as CN 2206 it may fall under Art. 12 (OFB) or 17 (IP) depending on its strength, but not under Art. 20 (unless it exceeds 22% vol., but there are no actual market incidences). Since the excise duty classification follows the CN classification, administrations have limited room for manoeuvre in applying the category that they consider appropriate for products that has a CN code they disagree with. In principle, tax administrations might challenge questionable CN coding decisions, but when these are covered by a Binding Tariff Information (BTI) issued in another MS they generally opt to avoid disputes. The consequence is that similar products may end up being subject to different excise categories depending on the country of origin.

The magnitude of the problem is reflected in the number of Court of Justice of the EU ("CJEU") rulings on the classification of alcoholic beverages, which captured some instances of disagreements and disputes over the classification of products that took place in the various MS. In fact, especially where the matter is in the remit of customs offices instead of tax offices, the disputes are reportedly settled through alternative methods: when a misclassification is detected, the competent administration imposes the payment of a certain amount of tax arrears (with/without a fine) to the responsible entity. Businesses prefer this procedure rather than opening a legal case, since it is faster, it often envisages the possibility of negotiations, and it does not imply public disclosure so the potential reputational effects are minimised. However, for this very reason precise figures on the frequency of administrative cases are not available.

The landmark rulings of CJEU (see box 2) established the possibility of classifying dubious products and gave MS a tool to tackle opportunistic practices. On the one hand, the CJEU rulings effectively indicated how to interpret the old rules *vis-à-vis* new products, but on the other hand the selection criteria remained somehow subjective (taste, smell, appearance) or indefinite (no specific thresholds or methods to determine the prevalent origin of the alcohol used). Therefore the risk of disparities in the application of these criteria across national administrations persist, and the need for objective classification rules has possibly become even more pressing.

Box 2 – Summary of CJEU landmark cases on the classification of alcoholic beverages

Case C-150/08 ('***Siebrand***) regarded alcoholic beverages – in specific the three beverages 'Pina Colada', 'Whiskey Cream' and 'Apfel Cocktail' – with a cider base to which distilled alcohol, water, sugar syrup and various additives had been added. The question was if these beverages may maintain the CN 2206 code – due to their cider base – or should be classified under CN 2208 as established by the Dutch customs. The Court ruled that when a fermented beverage loses the taste, smell and/or appearance of a beverage produced from a particular fruit or natural product, due to the above mentioned additions, it no longer falls under CN 2206, but CN 2208 applies.

Case C-196/10 ('***Paderborner Brauerei***') concerned the fermented beverage 'Salitos Ice' and its 'malt beer base'. The 'malt beer base' was produced from brewed beer with an alcoholic strength by volume of approx. 14%, which was clarified and then processed with ultrafiltration techniques. The base obtained was then employed for the production of a light beer-based mixed drink. The question was if such a product had to be classified under CN

2203 or 2208. The Court ruling established that '*a liquid described as a "malt beer base", with an alcoholic strength by volume of 14%, obtained from brewed beer which has been clarified and then subjected to ultrafiltration, by which the concentration of ingredients was reduced, must be classified under heading 2208*".

The joined cases **C-532/14 and C-533/14** ('***Toorank***') tackled the fermented beverage called 'Ferm Fruit' and a range of beverages with a 'Ferm Fruit' base to which other ingredients were added. Ferm Fruit was prepared using an alcohol resulting from the fermentation of fruit, which was then purified through ultrafiltration so that its smell, colour and taste resulted neutral. The question was if 'Ferm Fruit' (Question 1) and 'Ferm Fruit-based beverages' (Questions 2&3) had to be classified under CN 2206 or CN 2208. The CJEU ruled that '*a beverage, such as Ferm Fruit, which is obtained through fermentation of an apple concentrate and is designed to be consumed either undiluted or as a base in other beverages, being neutral in terms of colour, smell and taste as a result of purification (including ultrafiltration) and having an alcoholic strength by volume, without the addition of distilled alcohol, of 16% falls under heading 2208 of that nomenclature*'.

***Source**: EA, "*Study on Council Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages", 2017

Definition and classification of certain products

Harmonised EU definitions of some alcoholic products exist. In the case of spirits, this harmonised definition was developed to ensure, amongst other things, a systematic approach to spirits, to prevent the misuse of the terms and to protect the reputation of EU spirits[10]. However there is no harmonised definition of cider, perry and fruit wines in the Directive or in other EU legislation. Both in the CN and excise classifications, the OFB definition is less strict than for other alcoholic beverages. This reflects at the same time the heterogeneity of the products comprised (e.g. cider, perry, mead, other fruit-wines, and mixes), the variety of national production practices ('cider' designates products with marked differences across MS) or commercial designation of these products (e.g. malt-based alcopops, 'wine-coolers', un-hopped flavoured beer, cider and fruit wine based refreshers, generic low-strength pre-mixes, certain cream liquors and other flavoured liquors, etc.) and the related absence of harmonised sectoral definition and rules that to the contrary exist for wine and spirits.

Borderline products have been introduced to the market with the specific aim of being classified in a product category with a lower excise duty rate compared to competing products. Tax differentials vary and high differentials can be observed in MS with a zero rate on OFB.

A report[11] shows that certain products that in PL are classified as spirits are very similar to other products that other MS classify as OFB. 65% respondents experience frequent classification uncertainties and disputes within the pre-mixed drinks product group. 62% said uncertainties and disputes frequently occur with the category fermented alcohol pushed to 15-21% actual alcoholic strength by volume (ABV) industrially, bottled and sold to look like its equivalent spirit, on which a higher excise duty is due.

This favourable tax treatment, combined with a certain flexibility of the criteria used to define this category, provided in the past an incentive for the development of various new products, based on novel production techniques, arguably designed to take advantage of the OFB tax category for competition purposes. In the absence of a harmonised definition, a number of MS have adopted national ad hoc measures for the tax treatment of OFB.

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[10] Regulation (EC) No 110/2008 of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks and repealing Council Regulation (EEC) No 1576/89, OJ L 039 13.2.2008, p. 16.

[11] Report prepared for the Polish Council of Wine by Parulski & Wspolnicy, 'Tariff and Excise Tax Classification of Fermented Beverages – Issues of Concerns', September 2016.

A final element of the classification issue relates to the disparities of classification of certain flavoured wine and OFB to which minimal amounts of alcohol which are *not* from fermented origin are added as a Flavour Carrier (AFC) or for other functional purposes. According to the Directive, the alcohol contained in a product should be of "entirely fermented origin" in order to be classified as wine or OFB. However, no clarity is provided by the Directive for products containing both alcohol from "entirely fermented origin" and "non-entirely fermented origin", and the some disparities may arise, regarding aromatised wine products (AWP) or flavoured OFBs.

Similarly, the CN 2206 heading admits products not entirely of fermented origin[12], but the permitted amount is not specified[13], and the jurisprudence in this area (see box 2) did not establish any straightforward criteria. As a result, various MS have already adopted non harmonised provisions establishing a margin of tolerance for products containing AFC by either (i) adopting a flexible approach to functional alcohol added, or (ii) setting specific maximum limits (in ABV terms) to the amount of AFC that can be added to a fermented beverage before the tax category changes (typically 1.2% vol).

To the extent the tax differential between Art. 12 and 17 and between Art. 17 and 20 is high, there remains incentives for certain businesses to exploit this ambiguity. It is difficult to accurately quantify the size of this market, however 2017 estimates are in the region of 850 billion litres. Approx. 550 billion litres of which are flavoured beer, which does not pose classification issues as Regulation 1967/2005[14] addressed this issue. However this is a growing area, although moderately, and the risk of abuse may become more relevant in the future.

The key drivers of the classification problem are discussed in detail in Annex 8.

2.4.2. *Consequences: who is affected and how?*

As mentioned above, the Ramboll evaluation identified approximately 70 different cases of products "difficult to classify", across most of the MS. While the consequences surrounding each case are unique (some were resolved swiftly following a few exchanges between the tax administration and the economic operator in question, while others became the subject of lengthy court cases spanning several years), it is clear that all the cases have resulted in ***additional administrative burdens*** for the tax administrations (who had to dedicate additional resources to enforce their view of the correct classification) and compliance costs for economic operators (who needed to undertake similar actions to defend their position against either the tax administration or a competitor).

An important outcome revealed in relation to the situations documented was ***litigation costs***. Disputes between tax administrations and operators were likely to be taken to court, resulting in significant costs both for the administration and for the economic operators if the financial risk at stake was considerable. Additionally, litigation resulted in significant costs for economic operators seeking to correct the perceived unfair competition presented by "difficult to classify"

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[12] The explanatory notes and classification opinions adopted by the Harmonised System Committee relating to Heading 2206 states: "*All these beverages may be either naturally sparkling or artificially charged with carbon dioxide. They remain classified under this heading even when fortified with added alcohol or when their alcohol content has been increased by further fermentation, provided that they retain the character of products classified under this heading.*"

[13] When goods are *prima facie* classifiable under two or more headings, the CN rules require that classification is effected as follows: "*mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, (…), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable*".

[14] Commission Regulation (EC) No 1967/2005 of 1 December 2005 concerning the classification of certain goods in the Combined Nomenclature, OJ L 316, 2.12.2005, p. 7–9

products. This has been particularly observed in cases when high-strength mixtures emulated or directly competed with spirits or intermediate products which were taxed at a higher rate.

Member States authorities

As far as the disparities between customs and excise duties are concerned, businesses may be tempted to request a classification in jurisdictions where it is more likely to obtain a more favourable (tax wise) classification, in order to get competitive advantages across all EU national markets. Reportedly, there have been cases of ***'BTI shopping'***, i.e. demands submitted in MS where a favourable classification was considered more probable. However, the BTI rules and practices seem to be changing: BTI shopping has become less feasible, and some customs release BTI decisions only to products for export. Still, BTIs are not exempt from disputes, although concrete cases are rare, and customs authorities rarely challenge a BTI issued in another MS.

Besides the ***risk and the costs of disputes***, the lack of clear criteria and parameters for certain 'borderline' products makes the process complex, long, and unpredictable for all involved. Although it concerns formally the customs classification, it is the consequential excise duty categorisation that is primarily at stake, so the administrative burden caused by CN classification should be considered as directly related to the functioning of the excise duty system. ***Burdens and costs*** related to these uncertainties for administrations and businesses vary considerably between MS. The Study estimates the costs at EUR 1-1.5 million/year at EU level.

The bulk of the extra burden is borne by national authorities. Eleven MS consulted in the context of the Ramboll evaluation agreed or strongly agreed that the difficulties encountered with the classification of alcohol and alcoholic beverages ***were leading to increased administrative costs.*** These costs relate primarily to the additional efforts required to deal with complex classification cases, including laboratory tests and the extra labour to manage the dossier and liaise with the applicant. Unfortunately, none of the eleven MS were able to specify precisely to what extent their administrative costs were greater than they would have been otherwise. As for anecdotal evidence, French authorities reported that *'the dispute on the classification with the producer of a product of fermented base which has been elaborated to resemble distilled alcohol requires nine employees of the tax and customs authorities to be involved'*.

To cope with the mounting number of 'borderline products' various MS have established ad hoc expert groups responsible for defining detailed classification rules and procedures and ensuring consistency in their tax treatment. Typically, these groups operate at the central level, collating the difficult cases that cannot be solved by regional customs offices. An intensification of the collaboration and exchanges between customs authorities at EU and international level aimed at resolving the uncertainties in the interpretation of the subjective criteria concerning certain CN 2206 products, which also results in costs for MS has also been reported. Unfortunately the customs administrations interviewed were not in the position to estimate the frequency of problematic cases, and the administrative burden attributable to these dossiers.

The existence of tax incentives having a 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 (i.e. in the opinion of MS tax administrations and some competitors) circumventing the intention of the legislator of what should fall within the more favourable category. These manufacturers are exploiting the uncertainties and this is depriving MS of tax revenues. However estimates of ***foregone tax revenues*** are highly speculative and it is not feasible to determine precisely what share of these products have been developed purely for tax optimisation purposes, or what is the importance of an advantageous tax classification *vis-à-vis* other factors. Annex 9A presents the results of case studies relating to the classification issues with reported examples of specific products. In a nutshell, depending on the characteristics of the products (e.g. the alcohol content), the

determined CN classification, the country in which it is being sold and other individual variables of each case, the differences in applicable excises duties can vary between:

- 7.48 EUR/HL to 89.7 EUR/HL of finished product for ready-to-drink products (e.g. alcopops);
- 79.55 EUR/HL (a 10-12% ABV, "Irish cream" type product in the UK) to 256.864 EUR/HL (a cleaned up fermented alcohol at 14-15% with sugar, aroma, acidifier, colouring and fizz in France) of finished product for medium strength fermented beverages, and;
- 200.00/ HL (a 21% ABV, fermented beverage in PT) to 331.40 EUR/HL (a 22% special fermentation of 'made wine' decolourised and flavour stripped and then sold in Vodka style packaging in the UK) of finished product.

The lack of a harmonised approach for beverages containing AFC across MS could lead to ***adverse impacts on internal market functioning*** and tax revenues. In the absence of clear regulatory statue for AFC these products may be subject to classification disparities as well.

Finally the lack of a separate EPC for OFB is an issue for market monitoring and control purposes due to the ***lack of accurate data***. This could result in the incorrect calculation of excise duty due and the associated financial guarantee required for intra community movements, resulting in disputes (and costs) between tax authorities and businesses.

Businesses

The Ramboll evaluation concluded that the classification of most alcoholic beverages from an excise perspective was generally seen as straightforward and results in no administrative burden linked to the application of the obligations inscribed in the legislation. At the same time, the stakeholders pointed out that issues surrounding the "difficult to classify" products do however result in increased costs for all the stakeholders concerned; the high costs identified were the result of the complications and disputes arising from situations in which the stakeholders disagree on the correct interpretation of the provisions of the Directive. Nearly 30% of the economic operators consulted in the context of the evaluation reported that they had had difficulties with the assignment of alcohol and alcoholic beverages to the categories of the Directive. Difficulties were noted in all sectors but the beer sector indicated that these difficulties had led to increased administrative costs.

The costs implied for each organisation varies significantly depending on the evolution of a given case, the economic importance of the disputes, the willingness of the parties to settle the matter via the judicial system, etc.[15] A representative of a trade association in the area of spirit producers indicated anecdotally that a court dispute over the classification of a product of fermented base with added ethyl alcohol lasted for four years. In fact, only five out of 43 trade associations responding to this question did not report that their administrative costs had increased due to classification problems.

This lack of clarity and ***legal uncertainties*** resulted in numerous CJEU cases in the past and high costs for businesses. While the number of cases reduced since the judgment of the CJEU in case C-150/08, there are continued disagreements. However due to the high costs borne by certain businesses, which saw their turnover halved and in some case almost caused their bankruptcy, there is limited appetite for more litigation. In fact, businesses have become more risk wary.

[15] Precise monetary quantification of the expected cost has not been possible due to the varied nature of the cases reported according to the research conducted during the evaluation.

Launching new products in the absence of formal classifications may result in increased administrative burden and costs for businesses and delays in getting new products onto the market. According to stakeholders this is a serious issue as other countries' classifications, including third countries, are seldom the subject of legal challenges, thus creating competitive advantages for these businesses.

Misclassifications of products may result in higher excise duties for businesses and as a result higher financial guarantees may also be imposed. This may result in substitution effects if the higher excise duties are passed on in full to the consumers. There are conflicting data regarding substitution effects, however the introduction of the 'alcopop' tax in Germany is a classic example of how taxes can have a profound impact on substitution.

Box 3 – Possible substitution effects induced by the introduction of the 'alcopop tax' in Germany

Useful insights on substitution effects between different alcoholic products can be drawn from the review of the consumption trend of alcoholic beverages in Germany between 2000 and 2007. In the first three years of years 2000s, mixed drinks grew in popularity and their consumption recorded an impressive growth (about 78% per year, on average), which partly offset the decline in the volumes consumed of beer and spirits.

After the introduction of the alcopop tax in July 2004, consumers and the market responded negatively, and a major decline in consumption was recorded – i.e. amounting to some 50% per year between 2004 and 2006. Looking at the trend in consumption of other beverages, it seems that some previous drinkers of mixed drinks switched to beer as indicated by the slowing down of its declining rate.

The existence of a similar substitution effect has been confirmed by a 2010 study to assess the effects of the alcopops tax on alcohol consumption and beverage preference among adolescents in Germany.[16] Based on 2003 and 2007 data from the cross-sectional survey of the European School Survey Project on Alcohol and other Drugs, the study confirmed a partial substitution of alcopops by spirits and beer among 12–17-year-olds.

***Source**: EA, "*Study on Council Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages", 2017

In addition to the quantifiable difference in terms of applicable excise duty as explained above, economic operators interviewed in the context of the case study on classification issues conducted under the Ramboll evaluation, have reported barriers to conducting business across the EU resulting from uncertainty with respect to the treatment of their product (i.e. being treated as W200/2206 in the home country, but considered S200/2208 in other MS). Another negative consequence concerned unfair competition aspects of the internal market; according to economic operators reporting examples of such products, the existence of this classification issue affects competition in two different ways:

- firstly, it places producers of similar products which are entirely from alcohol of distilled origin (which compete on the same market) at a severe competitive disadvantage (see above the difference in duty levels);
- secondly, it undermines the excise category itself by allowing products to deliberately benefit from taxation at the same level as 'clear-cut' products whose protection the category itself was supposed to benefit.

Consumers/Citizens

The relationship between tax, affordability and consumption at systemic level is in research systematically confirmed weak (see Annex 9). Therefore, the overall impact on per capita consumption of alcohol possibly caused by the tax-induced substitution between 'standard' and

[16] Muller S, Piontek D, Pabst A, Baumeister SE, Kraus L., Changes in alcohol consumption and beverage preference among adolescents after the introduction of the alcopops tax in Germany. Addiction 2010; 105:1205–13.

'borderline' products is considered to be of modest magnitude. This does not evidently deny the existence of problems linked to the consumption of certain alcoholic beverages by certain socioeconomic segments of the population, which have been tackled *inter alia* through *ad hoc* national taxes, which was also confirmed by the public health stakeholders interviewed.

The lack of a direct correlation between tax policies and per capita consumption seems intuitively confirmed also by noting that the decline in the total alcohol consumption registered by WHO – Global Information System on Alcohol and Health (GISAH) was the strongest for spirits (-2.11% in seven years), but in almost the same period the registered increased in excise duty level was the lowest for this category (+ 2.4%).

Nevertheless, borderline products which enjoy a favourable tax classification may appeal to young people or vulnerable social categories with limited disposable income. Increase in the development of borderline products may result in increased consumption and overall create negative public health impacts.

2.4.3. *How will the problem evolve (baseline scenario)?*

Harmonised classifications of alcoholic beverages are of utmost importance for intra EU and international trade. In 2016, the value of alcoholic beverages exports and imports from/to the EU amounted to EUR 24 billion and 4.5 billion respectively. Classification uncertainties of alcoholic beverages may cause barriers to trade, market disruptions and enforcement problems.

The Study supporting this impact assessment suggests that the dimension of the categories containing borderline products are limited in volume terms. The mixed drink category amounts to an estimated 78 million litres that is approximately 6% of the 'fiscal' OFB category. In a micro perspective, mixed drinks with a fermented base may (and did) represent a cheaper alternative to spirit-based mixed drinks, thanks to the more favourable tax treatment, thus posing a potential competition issue.

Classification uncertainties and disputes are becoming less frequent due to the high litigations costs borne by certain businesses. As a result businesses including both brand owners, wholesalers and distributors have become more risk-wary towards the placement on the market of new products if not clearly identified. However the disparities persist due to the subjective rulings of the CJEU and new technological developments will continue to create uncertainties if the scope of the OFB category is not clarified.

Businesses are now using alternative methods, for which precise figures are not available. Some national customs have adopted rules and procedures to effectively operationalise these criteria. In FR, a specific platform, i.e. *Soprano*, has been established to this end. The platform allowed authorised businesses to submit classification dossiers to obtain a preventive opinion in a faster way. The pilot initiative was launched in 2017 and its use at the moment is voluntary, but if successful it might become the standard procedure for the submission of applications. In addition to preventing disputes, the expected benefits of Soprano also include a reduced length of procedures so a shorter 'time-to-market' for enterprises. Nonetheless, as the national approaches are non-harmonised at EU-level there remains the risk of different/incoherent legal interpretations and ensuing disputes, as well as incentives to continue to develop products exploiting these classification uncertainties.

Competitive advantages will persist for businesses who obtain a favourable tax classification, which will encourage 'classification shopping'. The nature of 'borderline' products is different across markets since it relates to specific consumer preferences and opportunities, but in general the problematic area seems to increasingly focus on fermented bases having undergone some form of concentration and/or cleaning, both traded as such or used in final beverages. Cases were

reported of products stored in the producers' tax warehouses as CN 2208, then dispatched to another country as CN 2206; beverages moved in a bordering country, re-bottled and re-imported, with a more favourable classification; trade of entirely fermented bases with ABV of 22% coded as CN 2206 etc. In this respect, the products covered by the CJEU rulings are no longer the core of classification uncertainties and issue, but other new challenges are seemingly emerging.

The unclear application of 'entirely fermented origin' and the absence of a separate EPC may cause some market distortions and monitoring / control issues for some products. With respect to future trends, two considerations apply: (i) an increasing number of MS have adopted a flexible approach to AFC, possibly in connection with the EU-level legislation. This trend is likely to continue, since MS that have not set explicit threshold for AFC are reportedly inclined to maintain margins of tolerance in the classification of these products. So disparities of treatment are progressively less likely; (ii) on the other hand, the market size of these products is growing, although moderately, so the risk of abuses may become more relevant in the future.

2.5. Problem 3 – Dysfunctional application of reduced rates

2.5.1. *The problem and its EU dimension*

The scope and application of reduced rates to some alcoholic beverages is a multi-faceted problem, which could be sub-divided into more specific aspects. Whereas the Studies and the stakeholders consulted, globally consent that the reduced rates framework is working, there are issues that are acute to a specific industry or to a specific aspect of the legal framework.

Unequal treatment of producers of alcoholic beverages

The first sub-problem within the application of reduced rates evolves from the ***unequal treatment of producers of alcoholic beverages which can lead to market distortions***. The Directive allows MS to grant reduced excise rates to small producers of beer (Art. 4) and ethyl alcohol (Art. 22) only; small producers of wine, OFB (including cider and perry) and IP are *not* subject to this provision. Even if the MS wanted to correct this imbalance, the Directive effectively prevents them from doing so. Ireland and the UK highlighted this unfair discrimination in the Ramboll evaluation. Detailed analysis of reduced rates and special schemes applied to all sectors of alcoholic beverages is included in Annex 10 with key aspects recapitulated here below.

When it comes to ***cider*** (and perry), in most countries, cider makers are not intermingled in complex relationships, and small cider producers make cider themselves, rather than providing products to larger companies. In terms of market structure, micro and small cider makers represent the vast majority of the population (96% in the UK, 99% in FR, 93% in IE), but a small share of the market.

The ***fortified wines*** industry includes growers, producers of the base wine and fortifiers. The vast majority of growers do not produce the end product. The number of small producers within this industry, who would be affected by the application of reduced rates is small.

For ***wine producers*** in MS applying a zero or near zero excise duty rate to wine, the introduction of reduced rates would bring no tax advantage to small producers and therefore the relative competitive position of drinks would not change. This is not the case in MS applying a positive excise duty rate. However in the view of stakeholders, the introduction of reduced rates for small producers of wine could result in the subsequent removal of the zero rate, an outcome which would negatively affect all businesses, both large and small.

Taking account of these factors, this impact assessment will focus on small cider makers only. For the sake of transparency and completeness the analysis of reduced rates for small wine producers and fortified wines together with options is presented in Annex 10.

Legal uncertainty

The second sub-problem area of the application of reduced rates concerns the ***lack of clarity of the current provision and the legal uncertainty*** thus created for the markets. The granting of reduced rates to small producers is conditional upon their independence in legal and economic terms from any other brewery and no operations under license. However, the Directive does not define the term 'legally and economically independent' and this has resulted in businesses consulting other EU law to resolve this[17]. With respect to beer brewed under licence, the issue has been largely resolved by existing guidelines and clarifications. Despite this, conflicts on the term 'legally and economically independent' between producers and authorities persist, which require legal proceedings, rulings and therefore litigation costs for both parties.

Box 4 – CJEU case C- 285/14: Brasserie Bouquet SA (FR)

Brasserie Bouquet operates a restaurant in which it sells beer it has brewed itself. It entered a membership contract with ICO 3B SARL, which authorised Brasserie Bouquet to use the trademarks, the commercial designation "Les 3 Brasseurs" and to receive ICO 3B SARL's know-how. In exchange Brasserie Bouquet paid an entrance fee and was required to exclusively obtain certain products from ICO 3B SARL.

Brasserie Bouquet considered it satisfied the conditions of the small brewery relief. The FR authorities challenged the application of the reduced rate that Brasserie Bouquet paid. The CJEU ruled that for the purpose of applying the reduced rate on beer the condition laid down in Art. 4(2) of the Directive according to which a brewery must not operate under licence, is not met if the brewery concerned makes its beer in accordance with an agreement pursuant to which it is authorised to use the trademarks and production process of a third party.

The UK businesses consulted confirmed that 'contract brewing' may still have a certain degree of subjectivity regarding whether a contract breaches the independence of each counterpart or not. French stakeholders reported that this issue should have been settled by a Customs Memorandum, but this has led to different interpretations by local customs offices.

In terms of the cross-border functioning of the reduced rates for small brewers, MS report ***implementation problems***, as customs authorities in the country where the product is released for consumption need to check the status of the brewer. UK authorities consider this to be a 'self-declaration' scheme, so that controls on businesses claiming the status of 'small producer' are risk based. In FR, a small brewer must make a one-off submission of a set of company documents.

In case of disputes, the customs authority in the MS of destination may submit a request for information to the customs authority in the country of origin to verify the status of a small brewer. This verification may be problematic in the case of businesses based in a non-EU country. However, most of the customs authorities interviewed do require a certificate from the brewers or their distributors, issued or stamped by the home country customs authorities. Businesses interviewed confirmed that, when moving products across borders, the local distributor may ask for such a certificate, but this does not always happen. A problem arises when (i) a small brewer established in a MS not requiring the certificate and not issuing the certificate to domestic manufacturers intends to enter the market of a MS requiring such a certificate; (ii) or when the MS of destination does not automatically recognise the status granted by the country of origin. FR allegedly does not accept self-certification and does not always recognise checks performed by

[17] Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises, C(2003) 1422, 6.5.2003 provides an explanation of when two companies should be considered partners or linked. It does not provide an explanation on 'brewing under licence' or 'contract brewing'.

the Belgian customs authority and this is affecting a significant number of Belgian producers. In this regard, BE noted during the Ramboll evaluation that at an administrative level there are a lot of problems regarding interpretation in order to determine the status of a 'small independent brewery'.

Even though the reduced excise rates for small breweries are estimated to cover only 5% of production, it is estimated that 95% of active breweries are covered by this relief. The problems described above may be of limited scope today. However with the continued increase in the number of small breweries and their growth into larger businesses, it is likely that cross-border trade flow will increase and the commercial relationships will become more complex. As a result these uncertainties are likely to evolve into bigger issues in the future.

The functioning of reduced rates for distilleries meets the same obstacle of an unclear definition of 'legally and economically independent' businesses. The rationale of this relief is to protect and preserve the traditional distilling culture. The distilleries benefiting from the reduction are the ones likely to work on an occasional basis, e.g. after fruit harvesting of grape pressing, selling their products, for the very local market. The threshold was therefore set much lower, making the commercial viability of such a scale of production extremely limited.

During stakeholder consultation most of producers in the ethyl alcohol industry expressed a negative opinion on the current threshold. While all considered that it was not fit for purpose the reasons differed. Most stakeholders showed limited, if any, interest in a revision of the threshold and most authorities expressed no intention to implement an amended provision at national level. Taking account of this, this impact assessment will not focus on this problem area.

Irrelevant and incoherent alcoholic strength thresholds for some product categories

The final problematic area of application of reduced rates relates to low strength alcoholic beverages. Art. 5, 9, 13, 18, and 22 of the Directive allow MS to apply reduced rates on **low-strength alcoholic beverages**, but the Directive is silent on the targets or objectives of these provisions. More specifically, it is not clear whether the option for reducing rates represents a tool to: i) tailor national taxation policies; ii) pursue objectives of industrial and agricultural policy; iii) incentivise product innovation; and/or iv) achieve health policy objectives. This is not generally perceived as an obstacle to its uptake in MS who are contented with the flexibility offered under the arrangements allowing them to pursue their own priorities and adapt the structure of the excise duty on alcohol to national needs. However the alcoholic strength thresholds to apply reduced rates are set at levels that are **largely irrelevant** for some product categories, while applicable to the entire market for other products. For example:

Wine, intermediate products, ethyl alcohol	The current thresholds for wine (8.5% vol.), IP (15% vol.) and ethyl alcohol (10% vol.), do not to reflect the features of products included in these categories. Very few products in these categories could fall below the threshold. In most cases, to comply with product definitions spelled out in EU law, such products must have an alcohol content above the maximum thresholds set by the Directive.
Beer	The current threshold allows the application of reduced rates mainly to radler and very few other products. It is too low to provide any tangible incentive for brewers to be innovative and create new low-strength products or for consumers to drink low strength beer.
OFB	The current threshold set for OFB (8.5% vol.), which covers almost the entire market for cider and perry and a portion of the market for fruit wine, appears to pose ***no policy problem***

It should be recalled that the present impact assessment does not touch upon the duty rates of excisable products but the excise duty structure. What is discussed in the present impact assessment is therefore *not* the levels of reduced rates for different categories of alcoholic beverages, but rather what products they may be applied to and under which conditions, including

thresholds. The concerns presented here do not relate to the functioning of the internal market as such – which is deemed to be functioning well given that whatever the national considerations, the excise duty is charged where the product is released for consumption – but to the effectiveness of the thresholds in helping the MS to set national policy objectives. As reduced rates are therefore irrelevant for producers of wine, ethyl alcohol and IP this impact assessment will not focus these products.

The key driver of the dysfunctional application of reduced rates relates to the obsolete and unclear provisions of the Directive, which is discussed in detail in Annex 11.

2.5.2. *Consequences: who is affected* and how?

Much of consequences of this problem, particularly with regard to the businesses and to some extent also the national administrations, has been explained in detail under the core problem definition. This is because how some of the stakeholders are affected constitutes precisely the problem at stake in the present impact assessment. To avoid repetitions, this section summarises the main impacts under headings relevant to specific type of stakeholders.

Member States authorities

The reduced rates for small producers and low strength alcohol reduce the revenue MS collect from excise duties. However, all customs authorities interviewed during the Studies supporting this impact assessment considered that the reduced rate schemes did not generate large costs for the public budget. Similarly, in terms of administrative burdens for businesses and enforcement costs for public authorities, the Studies confirmed that the reduced rates did not require unnecessary efforts, by either businesses or customs. Enforcement costs with respect to domestic producers were considered to be minimal by all tax and customs authorities interviewed. The UK noted in the context of the Ramboll evaluation that reduced rates for small cider makers contributes greatly towards rural economies, has a minimal impact on government revenue and has no adverse impact on intra-EU trade.

In the cross-border context, as described under the problem definition, the increase in the number of small producers of beer, their complex business structures and the increase in cross-border trade generates some problems for enforcement and implementation, as national authorities must determine if the producer is entitled to the reduced rates.

The uncertainty in the interpretation of 'legally and economically independent' results in legal proceedings and therefore costs for stakeholders. No specific estimates or anecdotal evidence was provided by the MS, which most likely stems from the fact that the administrations or companies do not keep such readily available statistics and disaggregating from other data is difficult.

Businesses

Findings show that the vast majority of active brewers, 97% in the EU, are eligible for the reduced rates scheme for small brewers and therefore subject to the legal uncertainties highlighted above. This uncertainty may hinder expansion and development of small brewers.

The competitive position of small cider makers vis a vis large producers is similar to that of small breweries. However, while small beer producers are entitled to enjoy reduced rates, the small cider makers are not. While the minimum rate for cider is zero, most MS with a traditional cider market apply a positive excise rate. As a result the zero excise rates is only applied to 9% of cider consumption.

Indeed, given the industry similarities between beer and cider, the competitiveness of the small cider makers could be explained through the proxy analysis done for the small breweries. The

latter, in the course of the studies supporting this initiative, were asked whether reduced rates supported their competitiveness or if the reduced rates were largely appropriated by distributors or passed on to consumers – resulting in a neutral effect on small brewers overall. Small brewers considered that the provision supported directly the competitiveness of small producers as the tax reduction was not passed through the value chain down to the consumers, and that the rebate was effective in counterbalancing lower costs enjoyed by large companies, in particular because of economies of scale and market access barrier.

While reduced rates have a clear positive impact on Small and Medium-sized Enterprises (SMEs) competitiveness, their effect on the entry rates in the beer industry is not univocal. There seems to be a trend towards the growth of the micro and small brewery segment, which is, according to businesses' view, largely driven by market demand, and which is even across countries, regardless of whether they have implemented the reduced rates or not. In FR and the UK, where the discount for microbreweries is significant (50% of the standard rate), their number has more than doubled over the 2010-2015 period (annual growth rate of respectively 16% and 19%). In AT, the number of microbreweries remained stable (+13% over 5 years); however, the discount for microbreweries in this country is significant (40% of the standard rate). In Italy, where there are no reduced rates, the number of microbreweries almost doubled in the 2010-2015 period. While businesses consider that reduced rates support the entry of new players, these data suggest that the provision of reduced rates is neither a necessary nor a sufficient condition, and that other national factors are also at play (again, consumer demand, as well as industry structure, market stability, type of beer consumed by the population, competition from other beverages). Overall the Ramboll evaluation concluded that it is unlikely that the presence of reduced rates creates market distortions by unduly advantaging smaller firms that benefit from the rates.

The threshold for low strength beer to apply reduced rates is low and as a result there is little incentive to develop this sector. Beer producers interviewed noted that producing low strength beers cost more than producing standard beers and therefore only certain large producers can absorb this cost. Low strength beer may also taste differently from regular beer due to the ABV.

Consumers

It is possible that small producers – of beer or cider - who fail to receive the reduced rates due to a different interpretation of 'legally and economically independent' or due to the lack of corresponding provisions allowing for duty reduction, may choose to absorb this cost as it has been described above. However as these are small producers, with tight margins, it could be assumed that the extra excise duty would (have to) be at least partially passed on to the final consumer. The small breweries interviewed for the supporting studies did not seem to confirm this, claiming small brewers are most likely to produce craft beer, as opposed to the mass products mostly marketed by large companies. As a consequence, price levels are different, and this reduces the incentive to pass-on the tax discount in order to remain competitive vis-à-vis larger players. Further empirical evidence is provided by an industry study on British small brewers, where most of the respondents indicated that the excise reduction was kept within the firm (e.g. for investment), and only 12% indicated that it led to a price reduction[18]. As above, it can be assumed that the cider market would behave similarly and is similarly impacted.

2.5.3. *How will the problem evolve (baseline scenario)*

With respect to small brewers, in most of MS analysed in-depth in the Studies for this initiative, the number of microbreweries is growing quickly. Even though the rate of growth is likely to

[18] SIBA, "British Beer: The Report on the 2017 Members' Survey of the Society of Independent Brewers"

diminish in the future as the market achieves a higher level of maturity, there is no indication at this stage that the phenomenon is halting[19]. So far, the growth in the number of small brewers was not matched by a parallel increase in their market share in the beer market. As such, there is a limited expectation that market effects (i.e. competitive distortions), costs to the public budget, or health impacts would become more prominent in the future.

At the same time, as the sector of small brewers achieve maturity and some players grow in size, it is likely that (i) cross-border trade flow augments, so that the not always smooth functioning of the scheme in MS other than that of establishment becomes a more significant problem; and (ii) the commercial relationships become more complex, and more forms of cooperation could be part of the grey areas identified above, if the provisions are unchanged.

With respect to small cider makers, the current imbalances within the markets will remain, should no change to the current situation be introduced. Although the cider industry is small and traditionally EU based[20] compared to other alcoholic beverages, the industry is one of the fastest growing in some MS[21]. As the industry grows, it is likely that players may wish to increase their cross-border trade to remain competitive. This may be difficult in the absence of reduced rates.

In terms of the thresholds for alcoholic strengths of certain beverages, many large beer producers are currently launching new beer with alcohol strength of 3.5% vol. Although above the reduced rate threshold these new beers could be considered as a competitive product to the current low strength beers on the market. Some MS (FI, SE, DK, IE and UK) support this extension and other MS pursuing healthier drinking policies may wish to promote this, but the Directive does not favour such objectives. Some other stakeholders argue that the application of reduced rates to low-strength alcoholic beverages may increase alcohol related harm as more affordable products may eventually encourage consumers to drink more.

2.6. Problem 4 – Unclear provisions to measure the Plato degree of sweetened / flavoured beer

2.6.1. *The problem and its EU dimension*

Art. 3(1) of the Directive allows for levying excise duty on beer with reference either to the Plato degree or ABV of 'finished product'. The term 'finished product' is not defined in the Directive and this results in three 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). The addition of sugar/flavour in the beer after fermentation may artificially affect its Plato degree, as the Plato method seeks to estimate the concentration of extract in a fluid as a percentage by weight. The three different methods result in non-uniform measurement of the degree Plato; depending on which approach is chosen. This, inevitably, leads to differences in the excise duty applied to products which can have the very same alcoholic content.

Different excise duties will be mirrored in retail prices and consumption of such products. Indeed, some beer producers have reported that accounting for the added sugar when measuring the Plato degree is technically wrong, and can lead to ***unfair competition*** among them and in particular in

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19 British Beer & Pub Association, "Small Brewer Relief and the impact on future market structure – Discussion paper", 2016.

20 The European Cider & Fruit Wine Association, European Cider Trends 2017 note that 57% of consumption in 2016 was in Europe. North America and Africa account for 11% of consumption each.

21 Per the European Cider & Fruit Wine Association, European Cider Trends 2017, the 5 year compound annual growth rate (2011 – 2016) was 156% in CZ, 122% in PL and 102% in RO.

comparison to beer mixes which contain artificial sweeteners instead of sugar; for the latter products the increased excise duty would not apply.

The problem has also led to conflicts between beer producers and tax authorities, which require legal proceedings and rulings and entail litigation costs. In Germany, a brewer went to court in 1997 seeking to have its radler (a type of sweetened beer) taxed based on the 'real extract' rather than the 'present extract' (see Annex 13 for further information on the approaches to measuring the Plato degree of sweetened/flavoured beer). The national court finally decided against the brewer's pleads only in 2004. Recently, a similar case has been brought to court by a Polish brewer (see Box 5). This case was referred to the CJEU (C-30/17 - Kompania Piwowarska) but only following 12 years of local legal proceedings in PL regarding the way in which excise duties on such beer should be determined.

Box 5 - Calculation of excise duty on sweetened/flavoured beer: The Polish case (C-30/17 - Kompania Piwowarska)

In this case the national Polish court requested a preliminary ruling concerning the calculation of excise duty on sweetened/flavoured beer. A Polish beer company producing sweetened/flavoured beer disagrees with the Polish tax authority on the measurement method. The different views of the brewer and the Polish tax authority can be summarised as follows.

The brewer argues that the strength of the sweetened/flavoured beer in Plato degree should be measured accounting for the 'real extract' (method B1) rather than 'present extract' (method B2) of the finished product. Including the sugar added after fermentation in the extract figure would be a technically wrong measurement, because this sugar does not add to alcohol formation. By contrast, the Polish tax authority requires method B2, i.e. measuring the Plato degree on the basis of the present extract, including the sugar added after fermentation.

The Polish case clearly demonstrates the importance of the problem for both beer producers and tax authorities. By adopting the brewer's approach, the beer producer (tax authorities) must pay (receive) PLN 87.8, whereas by adopting the tax authority's approach it must pay (receive) PLN 109.8 (figures correspond to the example provided in Annex 14) per hectolitre of beer. Different interpretation of the way of applying the Plato method to sweetened/flavoured beer can lead to differences in excise duties for the same product.

This example demonstrates the ***legal uncertainty for businesses*** associated with the co-existence of the different measurement methods, which constitutes an additional aspect of the problems related to the measurement of Plato degree of sweetened beer. The key driver of this problem is the divergent interpretations of the term 'finished product', which is discussed in Annex 12.

2.6.2. *Consequences: who is affected and how?*

Member States authorities

MS collect revenues from the excise duties. As shown in Annex 13 and 14, method B2 yields the highest excise revenue for the authorities. Moreover, approach A and B1 generate some problems for enforcement, as national authorities are reportedly unable to measure the Plato degree of the base beer, the real extract or the present extract by analysing the content of the bottled beer; any such checks must be done at the brewery by measuring both the Plato degree of the base beer and the quantity of base beer included in the end-product. In this context, enforcement problems become more prominent when it comes to applying excise duty on sweetened/flavoured beer moved from another MS, as tax authorities could hardly perform checks in breweries based in a different country. Approach B2 was therefore found to be the only one allowing for proper checks by customs laboratories, thus reducing room for tax fraud. It is also the method applied in the majority of the sample MS even though the industry is of the opinion that it is technically incorrect.

Finally, as described above, the legal uncertainty and the differences in interpretations lead to legal proceedings and therefore costs for tax authorities and beer producers.

Businesses

Some beer producers claim that the discrepancies may ultimately lead to distortions of competition caused by artificially – or mathematically - changing the Plato degree without altering the alcoholic content. There is no market data available which would distinguish the different types of sweetened/flavoured beers while taking into account their methods of production and measurement of the alcoholic strength to confirm those claims. The businesses interviewed in the context of the two Studies regarding the revision of the Directive often did not have readily available or shareable market analysis. A quick calculation of the different excises theoretically applied to sweetened/flavoured beer with alcoholic strength measured using the different methods, nevertheless highlights the disparities of treatment and potential for distortion (see Annex 14 for details).

On the other hand, it should be noted that sweetened/flavoured beer producers are free to use sweeteners (e.g. aspartame) to sweeten their products instead of sugar, if they want to avoid extra taxation on the added sugar. Unlike sugar, sweeteners do not increase the Plato degree when switching from approach B1 to approach B2. Tax authorities argue that given that only a few brewers use sweeteners instead of sugar, it shows that the extra excise duty is not a high burden for them. By contrast, brewers explained that the choice to use sugar rather than artificial sweetener is driven by marketing considerations, e.g. using only natural ingredients, rather than by cost considerations, e.g. tax savings.

Consumers

It could be argued that, in order to keep the competitive edge, the producers of sweetened/flavoured beer may have to choose to absorb the extra cost. Assuming nevertheless the excise duty is consistently passed-on to consumers in the retail price, it would affect the competitiveness of products and the related demand, causing ultimately potential distortion of the market. In any case, the additional cost of higher excise duty would not disappear and would have to be borne by one or the other party.

Any change in excise duty reflected in a change in price is expected to impact the consumption of sweetened/flavoured beer. This in turn can, albeit to a minor extent, engender public health policy issues. For instance, sweetened/flavoured beer is thought to be more attractive for women and young consumers, neither established beer drinking groups, which is confirmed by the fact that 40% of radler drinkers are new to the beer category. However, research has shown that marketing plays a greater role in attracting these consumer groups than the actual content/taste of a beer[22]. On the other hand, radler contains less alcohol (2-2.5% vol) than standard beer, so it may be desirable to promote a shift towards beverages containing less alcohol. This would eventually reduce the overall alcohol intake and ultimately result in positive public health impacts.

2.6.3. *How will the problem evolve in case of no-EU action (baseline)?*

Even though the EU market for sweetened/flavoured beer is relatively small – around 2.7% of the overall beer market in 2015 – it is growing faster than the beer market itself, which has actually stagnated in many industrial economies.

Sweetened beer is part of a strategy of brewers to innovate and regain market share; even the mainstream beer brands like Heineken or Peroni have introduced sweetened/flavoured beers, and

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[22] WHO ‘Global status report: alcohol and young people’, 2001; and: ‘Beer and Health: Moderate consumption as part of a healthy lifestyle’, at http://beerandhealth.eu/wp-content/uploads/2016/07/beer-and-health-web.pdf (last accessed on 10 July 2017). Stakeholders have also confirmed this statement.

especially radlers, in recent years. The IWSR database reports a market growth by 6% between 2015 and 2016 for sweetened/flavoured beer, and projects a market growth by 8.5% in 2017. A study[23] forecasts steady growth for sweetened/flavoured beer in Europe to 2020. Therefore what may seem a problem of a limited, local scope today, unaddressed could evolve to a much bigger impact on the future functioning of the internal market, even though estimates are not available.

The CJEU is called to rule on whether the Plato degree of sweetened / flavoured beer should be measured by considering the 'real extract' (approach B1) or the 'present extract' (approach B2). The awaited judgement of the CJEU on the prejudicial question of the Polish court may contribute to addressing - and eventually clarifying - the policy problems. At the moment, the baseline scenarios will be different for the MS, depending on which method of measuring Plato degrees they apply. Regardless of the ruling, some MS will need to adapt the methods in order to comply with the ruling. ***The extent to which the CJEU ruling will change the status quo is therefore presently unknown***.

2.7. Conclusion

It is apparent from the analysis of the problems above that the functioning of the current system for alcohol and alcoholic beverages is causing disturbance to both MS and businesses. These are problems that are exacerbated by the increase in cross-border activity that is the result of globalisation of the economy and the extension of the EU (from 12 to 28 MS) since the Directive was adopted. In some cases this also provides greater opportunities for fraudsters.

3. WHY SHOULD THE EU ACT?

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

When looking at the provisions related to denaturing alcohol and in particular PDA, the source of the current complications lays precisely in the absence of clear rules at EU level. Aligned to this, and because of that ambiguity, the MS are interpreting those current rules differently, and businesses therefore take advantage of the more flexible approaches used in certain MS. There is a lack of clear understanding of the rules on mutual recognition of denaturing methods between MS, which also causes administration problems for authorities and businesses alike. MS themselves highlighted the need for clear rules on the exemption of denatured alcohol. One MS noted for example that the "definition of rules at this [EU] level is of utmost necessity, otherwise each MS will have its own system, according to its national interests, and that will only complicate matters." Another MS remarked that "a common system established at EU-level will help the functioning of the common market and facilitate equal treatment. However, any rules must be detailed and clear enough to ensure they are interpreted the same way in all MS." The evidence from both Studies showed that clear rules, common for all MS would protect the single market. No bilateral or multilateral agreements could have the broad EU impact.

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[23] http://beer.drinks-business-review.com/news/demand-for-low-or-non-alcoholic-beer-to-grow-in-europe-through-2020-030117-5708450 (last accessed on 10 July 2017)

Decisions taken unilaterally by MS, such as issued BTIs for certain alcoholic beverages, create additional complexity. A solution that would clarify the scope of the current categories in agreement of all MS would provide a much more effective solution. Although rulings of the CJEU established criteria to classify borderline products from genuine OFBs, the subjectivity of the criteria has magnified the classification uncertainties. The Ramboll evaluation remarked that although little quantifiable data was available for analysis, taking up effective measures to resolve difficulties in classifying alcoholic beverages for excise purposes would reduce administrative costs both for the Member States' administrations and for the economic operators involved. It concluded there is significant added value from establishing common definitions of alcohol and alcoholic beverages for excise purposes at EU level.

When it comes to the reduced rates for small breweries, used by many MS, the lack of clarity of the term 'independent brewer' and the cross-border implementation of the reduced rates is problematic. In the Ramboll evaluation twenty MS strongly agreed that setting the basic rules at EU level would support the application of an uniform approach and would avoid distortion of competition. Furthermore the fact that this relief does not apply to small producers of other products also distorts competition within and between MS.

The reduced rates for low strength alcohol are irrelevant for most beverages as a result of other Union law. The threshold for beer does not encourage brewers developing low strength beers. BE and SE supported reduced rates for low strength alcohol in the Ramboll evaluation as they allow for the promotion of alternatives containing less alcohol. In their opinion this is better for consumers' health and is working towards a system of taxing products based solely on their alcoholic content.

With regards the measurement of Plato degree of sweetened / flavoured beer, the source of the current complications lays precisely in the absence of clear rules for 'finished product' at EU level. Because of that ambiguity, the MS are interpreting those current rules differently.

As with the subsidiarity test, it is not possible for MS to address the problems and problem drivers in isolation without a proposal to amend the structures Directive.

In conclusion, if the problems at hand are to be addressed in a coherent and meaningful fashion it can only be achieved through a legislative proposal supported by some non-legislative guidelines. Therefore, it is necessary for the Commission, which has responsibility for ensuring the smooth functioning of the internal market and promoting the general interest of the European Union, to propose action to improve the situation. The legal basis is Art. 113 of the Treaty on the Functioning of the European Union (TFEU).

4. WHAT SHOULD BE ACHIEVED?

As explained in detail under the problem definition, given the broad scope of Directive 92/83/EEC covering a variety of products and provisions, the problem areas under this initiative are, for the main, very divergent from one another, requiring dedicated specific analysis. The complex structure of this report is illustrated in Figure 2. As a result, the objectives are also drawn up in such a way that they correspond only to specific problems/drivers.

4.1. General objectives

The spirit of Directive 92/83/EEC and its general objective is the proper functioning of the internal market for alcohol and alcoholic beverages. In the context of this initiative, this objective is complemented by two other general objectives, which were identified applicable during the evaluation: safeguarding the revenues of the MS and contributing to protection of human health.

The last two objectives, although not directly relevant to all problem areas, are particularly important for some of them, as shown in Figure 2. It was therefore important to have them included in the scope of the analysis and propose measure with the aim of achieving them.

The ***general objectives*** behind the initiative are therefore as follows:

- ensuring the proper functioning of the internal market for alcohol and alcoholic beverages, free and undistorted movement of such goods within the EU (Art. 26 and 113 TFEU);
- safeguarding the revenue of MS;
- ensuring human health protection in Union policies and activities (Art. 168 TFEU).

4.2. Specific objectives

The general objectives translate – albeit not one-to-one (see Figure 2), into the ***specific objectives***, which can be defined as follows:

- ensuring fair treatment and similar economic conditions for businesses across all alcohol sectors, including small producers of all alcohol types;
- preventing and correcting any distortions of competition in the application of the exemption for different types of denatured alcohol, of the excise duty for sweetened beer, and of the reduced rates for low strength alcohol and small producers;
- providing clear rules on the scope, classification and calculation of excise duties for businesses and MS
- providing clear and efficient conditions to determine denaturation procedures for all types of denatured alcohol;
- reducing administrative burden and compliance costs for businesses and tax authorities, and providing legal certainty specifically in the area of classification and the exemption for denatured alcohol;
- strengthening the fight against fraud and tax evasion (including excise duty circumvention), through clear and consistent framework governing the calculation and collection of excise duties.

5. WHAT ARE THE VARIOUS OPTIONS TO ACHIEVE THE OBJECTIVES?

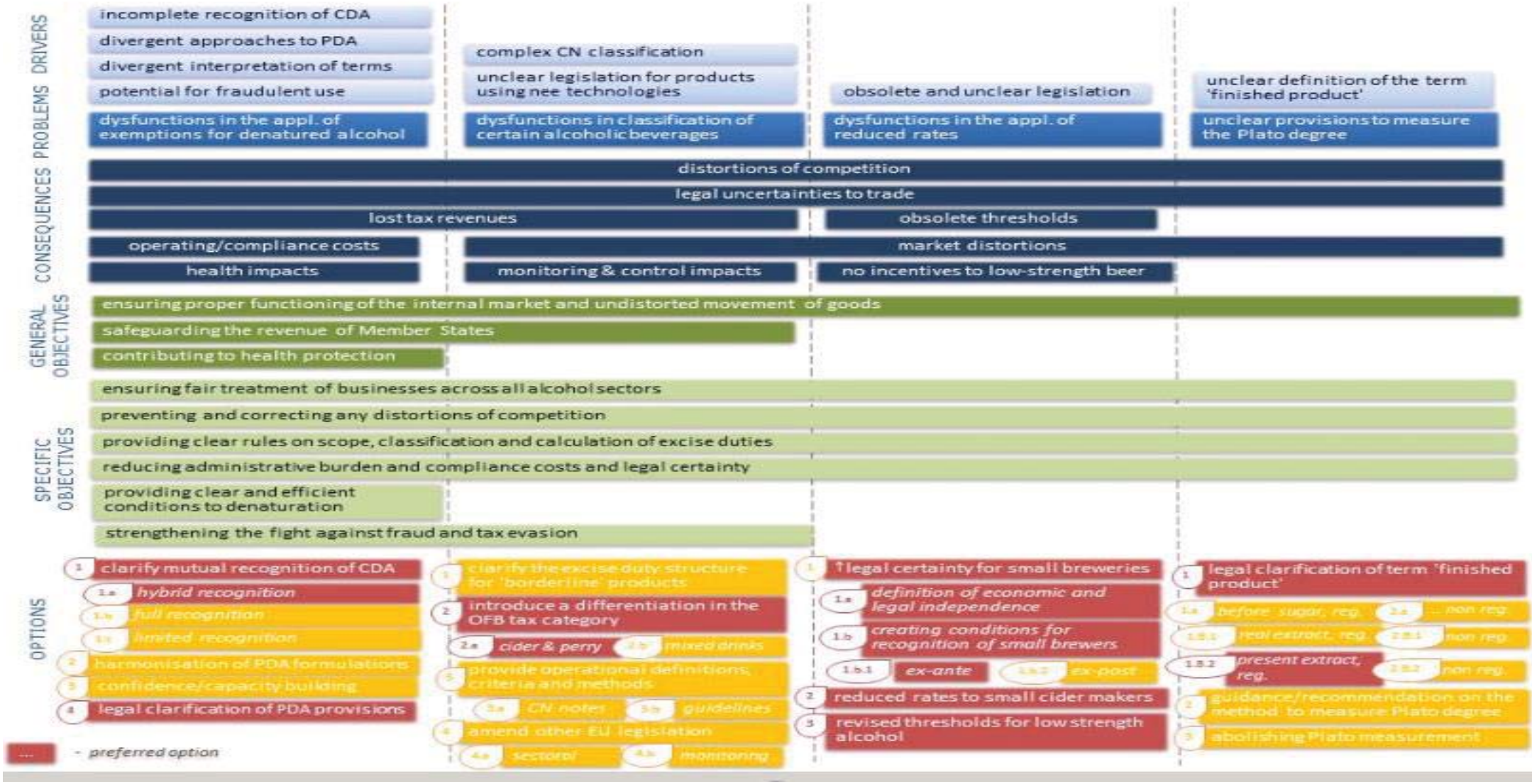
5.1. Link between problems/drivers and options

As detailed in section 2.1, the problems analysed in this report touch upon 4 distinctive areas: (i) exemptions for denatured alcohol, (ii) classification of certain alcoholic beverages, (iii) reduced rates for small producers and low strength alcoholic beverages, and (iv) measurement of Plato degree of sweetened/flavoured beer. These distinct problems, and their underlying drivers, need to be addressed in different ways, which influences the chosen aggregation of impacts into ***individual sets of measures targeting specific issues to be bundled together at the end of the analysis into packages***.

To illustrate this better, improving the provisions of Directive 92/83/EEC may be the solution to resolve some of the problems; for others, the solution may be found in legislation that is outside the scope of the present initiative. There are also specific areas where no alternatives other than acting/no-acting could have been identified. The report considers all possible policy options but focuses its analysis on the ones, which have been retained for the policy-makers. The reasons for discarding some options early on as well as considerations and constraints behind others are presented under each cluster.

For better illustration of the problems, their drivers, objectives and corresponding options are presented in Figure 2 below. The baseline scenarios have not been included in this figure although they are systematically described under each policy cluster and constitute the framework against which all options will be assessed.

Figure 2 – Overview of the intervention logic



5.2. Dysfunctions in the application of exemptions for denatured alcohol

When looking to resolve the issues with denatured alcohol, there is a need to balance between harmonising the understanding of the provisions to reduce the effects of the differing interpretation, maintaining flexibility for producers and users of denatured alcohol to have denaturants that match their products, and ensuring that customs authorities can implement sufficient control to limit the risk for abuse of the exemptions.

Ideally full harmonisation of CDA formulations would be the obvious policy option to resolve the legal uncertainties that persist around the mutual recognition of CDA. This would entail:

- Agreement on a single formulation, containing the same denaturants in the same concentration for CDA across the entire EU;
- Elimination of all remaining national formulations;
- Potentially a significant change in the wording of Article 27(1)(a) and 3 and 4, to reflect a new procedure for defining the common formulation, which would supersede the current process of notification by the MS.

There is strong opposition from a limited number of MS to the full harmonisation of CDA formulations. Even those in favour of full harmonisation may wish to retain control over possible future changes and therefore would not agree to a change to the notification process of Articles 27(3) and (4). Furthermore, findings of the Ramboll evaluation do not suggest that there should only be one denaturing method, neither to prevent fraud, nor to ensure fair competition between economic operators. Therefore this option will not be assessed further in this impact assessment due to the fact it is unlikely to be feasible at this time.

5.2.1. Option 0 – baseline scenario

The adoption of Regulation 2017/2236 on the mutual recognition of procedures for the complete denaturing of alcohol for the purposes of exemption from excise duty will greatly reduce problems arising from the unclear rules on recognition of CDA formulations. The possibilities for fraudsters to use the 'weakest' formulation will be reduced by the replacement of national formulation by the Eurodenaturant and thereby reducing the risk of fraud with CDA overall. However, the problems will not be fully eliminated and MS could re-introduce national CDA formulations, if they wish to.

The proliferation of national approaches to PDA will continue and possibly intensify for biofuels, which accounts for the largest proportion of PDA. Divergent interpretations in the area of PDA are likely to remain despite the exploratory work carried out by the Fiscalis Project Group and the uncertainty for cross-border trade will continue.

5.2.2. *Option 1 –clarify mutual recognition of CDA*

This option would clarify the rules in the Directive for mutual recognition of CDA in order to eliminate divergent interpretations. The identified possible approaches to clarify mutual recognition are the following:

'Hybrid' mutual recognition (option 1.a): Each MS would have to recognise CDA produced in another MS using the formulations notified by that particular MS, but not those notified by any other MS. This would mean that MS retain control over the CDA produced within their territories, while being obliged to also exempt any CDA legally produced in another MS.

Full mutual recognition (option 1.b): All MS would have to recognise all procedures notified by all MS, irrespectively of where the alcohol was produced / denatured. This would effectively

eliminate all national differences, and mean that a formulation notified by a given MS could be used by producers across the EU, and the resulting alcohol recognised as completely denatured by all MS.

Limited mutual recognition (option 1.c): Each MS would only be obliged to recognise its own formulation(s), irrespectively of where the alcohol was produced / denatured. This would mean that a producer in a given MS would have to use different CDA formulations for different national markets.

To illustrate the difference between the three approaches, consider the example of the remaining CZ national formulations: under the most ambitious approach 1.b, all MS would have to allow their economic operators to use these formulations. Under the approach 1.c, alcohol denatured in CZ using these formulations would not have to be recognised as CDA by any other MS, although producers in other MS would be able to produce and export this to CZ as CDA. Under the approach 1.a, the CZ formulations could only be used in CZ, but alcohol denatured in CZ using these formulations would have to be treated as CDA and therefore exempted by all MS.

The approach 1.b would effectively turn the remaining national formulations into additional Eurodenaturants, which many MS would not accept due to the concerns over the robustness of some formulations, which in their eyes hampers the national objectives of combatting fraud or protecting health. Approach 1.c on the other hand would be more restrictive than the current situation and authorities would face enforcement difficulties. Due to the lack of political feasibility for full mutual recognition and the restrictive characters of the limited mutual recognition, both of these options are *discarded* and will not be analysed further. The remaining option 1.a will be hence on presented simply as Option 1.

5.2.3. *Option 2 – Harmonisation of PDA formulations*

While full harmonisation is the preferred policy option to resolve the problems for PDA, this is currently not feasible despite the exploratory work carried out with the Fiscalis Project Group. This is due to the numerous national approaches which are currently extremely different and MS have indicated that they are not prepared to substantially alter their approach. Therefore this option will focus on partial harmonisation of PDA formulations and would consist of developing an harmonised list by the existing FPG or another expert group, that is applicable across the EU. This would enable MS, subject to certain conditions, to authorise different formulations, not included on the list, for specific uses where the fiscal risk is demonstrably low. This option would involve both a regulatory and non-regulatory aspect. The new approach would be included in the Directive. In addition criteria, guidelines and procedures would need to be adopted for determining low fiscal risk and amending the harmonised list. For this reasons the non-regulatory measures alone would not be a viable option to be deployed individually and is not considered as such in this analysis.

5.2.4. *Option 3 – Confidence / capacity building measures*

This option focuses on increasing trust and confidence between MS. Some stakeholders believe the current difficulties regarding the treatment of PDA are created due to a lack of trust between MS authorities. This arises due to the different supervisory approaches and a suspicion that some countries' procedures and formulations are ineffective. It has been suggested that this could be resolved by increased information sharing, working visits, twinning or exchanges. A separate option proposed by the Study involves the creation of a national PDA database. This option will not be analysed as the European alcohol denaturant database which is accessible to MS national authorities and the Commission, already exists. Currently this database, which had fallen into disuse by some MS, is being updated by all MS. An update to the database would enhance

transparency and allow economic operators to check whether a given formulation they would like to supply or procure is authorised in the relevant MS, thereby enhancing legal certainty and reducing barriers to trade.

5.2.5. *Option 4 – Legal clarification of terms relating to PDA*

The purpose of this option to clarify the legal base that relates to PDA (Art. 27(1)(b)). Overall the clarity of the legal base could be improved. In addition the terms 'used for the manufacture of' and 'finished product' would be clearly drafted. This would reduce the risk of divergent / arbitrary interpretations across the EU and ensure equal treatment of goods containing PDA.

The clarification of 'finished product' is particularly challenging as a finished product across the various product groups (i.e. cosmetic product and screenwash) is extremely diverse. The clarification would make reference to a 'recognisable finished product' or 'finished product' in order to provide MS with flexibility for the various product groups using PDA. This option could also define a quantitative line above which a product containing denatured alcohol must always be classified as CN 2207 20 00 (and therefore be considered an excise good and treated as such, similar to the clarification of mixtures containing ethyl alcohol used as raw material to produce fuels for motor vehicles[24].) This could be included as an amendment to the Directive or defined via a Commission Implementing Regulation (CIR) and / or a note to the CN). This option could also require such alcohol to move in accordance with Chapter IV of Directive 2008/118/EC. This option will focus on the latter amendment to the Directive in the interest of clarity and legal certainty.

All options put forward and retained are ***complementary*** and could be deployed together, affecting different aspects of the problem with denatured alcohol.

5.3. Dysfunctions in the classification of certain alcoholic beverages

5.3.1. *Option 0 – baseline scenario*

It is expected that national custom authorities will continue to adopt alternative methods for classification to deal with the subjective criteria given by the CJEU. It could also be envisaged that to solve the dilemmas created by innovative products which it is generally agreed should not benefit from the preferential treatment, MS could resort to unilaterally changing the rate of excise tax of OFB in order to bring the expected tax due under this category approximately into line with that applying to beverages of similar strength and falling under ethyl alcohol. If it came to this, MS acting purely to protect their national interests, would further erode the very rationale for the establishment of the category. As the current specifications of the EMCS lack the OFB category to distinguish OFB from wine (W200), moving away from an equivalence of taxation between wine and OFB would create an inconsistency within the system. These approaches are non-harmonised and the risk of different legal interpretations is likely to persist or grow, leading to different classifications and more abuse.

The adoption of a new note to Chapter 22 of the CN code to guide the classification may assist in reducing the uncertainty. However, the CN code is outside the remit of excise duty authorities

[24] Commission Implementing Regulation (EU) No 211/2012 of 12 March 2012 concerning the classification of certain goods in the Combined Nomenclature, *OJ L 73, 13.3.2012, p. 1–2)* and 626/2014 **(**CIR (EU) No 626/2014 of 10 June 2014 amending Annex I to Council Regulation (EEC) No 2658/87 on the tariff and statistical nomenclature and on the Common Customs Tariff, *OJ L 174, 13.6.2014, p. 26–27).*

and furthermore the notes to the CN code are not binding. Therefore this could furthermore increase the risk of disparities of interpretation.

Monitoring and evaluation of the French Soprano classification system launched in 2017 (see section 2.4.3) is necessary before proposing an EU wide adoption. Besides the fact, Soprano is only in its infancy, this platform is based on the FR approach to classification and therefore the risk of different legal interpretations together with ensuing disputes and incentives to develop products exploiting the ambiguity, persists.

Competitive advantages for businesses with a favourable tax classification obtained by 'classification shopping' are likely to continue. Moreover, due to the high costs, businesses will remain risk-wary towards the placement of new products on the market without formal classification from customs authorities.

MS will also continue to adopt national legal and administrative provisions to ensure a certain margin of tolerance for the addition of AFC. It is expected that MS with no formalised approach will also adopt domestic measures for AFC, with increasing cross-country disparities. The ambiguity with the legal text of the Directive would persist.

5.3.2. *Option 1 – clarify the excise duty structure for 'borderline' products*

This approach consists of refining the current definition of certain excise duty categories so as to reduce the risk of disparities of treatment and/or unduly favourable treatment of ‘borderline’ products, but without changing the five-category fundamental structure of the Directive.

The tax classification of these products would not be so strictly determined by the customs classification. The excise definition of products should evidently remain linked to the CN heading, but the criteria that today determine if a borderline product should fall under Art. 20 or not could be established explicitly in the tax legislation rather than derived from the prior CN code. Under the current system it is the customs classification which determines the excise duty category. Once a beverage is classified as CN 2208 (undenatured ethyl alcohol) it can be taxed only under Art. 20 (ethyl alcohol). If classified as CN 2206 (OFB) it may fall under Art. 12 (OFB) or Art. 17 (IP) depending on its strength, but not under Art. 20.

This would translate into introducing in the Directive the same CJEU principle that currently inform CN classification, which establishes that a fermented-base beverage that has lost its essential character (taste, smell, and appearance) can be assimilated to a distilled-base beverage, and subject to excise duty in accordance with Art. 20. This approach would require an amendment to the text of the Directive, so that:

- products that have lost their essential fermented character would be excluded from the scope of Art. 12 and 17; and
- products classified under CN 2206 of any ABV strength would be allowed under Art. 20 (the denomination of the category might be revised accordingly).

Under this approach, MS may consistently tax any ‘borderline’ product under Art. 20 that is considered as having lost its essential fermented character, regardless of the fact that it comes under CN 2206, with or without a BTI.

A further clarification of the excise structure would propose adopting a flexible approach toward AFC, allowing the addition of ethyl alcohol of agricultural origin to products of ‘entirely fermented origin’ (wine and OFB) to dilute or dissolve colorants, flavourings or any other authorised additives and not exceeding the dose strictly necessary. The principle can be established in the Directive in generic terms, as in Regulation 251/2014, or setting an upper limit

to the maximum contribution of AFC to the total ABV of the final products. This clarification would have limited impact on the disparities of treatment of 'borderline' products and may have unintended consequences for certain aromatised wine products. This element will not be assessed further in this impact assessment.

5.3.3. *Option 2 – introduce a differentiation in the OFB tax category*

This policy option consists of a possible extension of national approaches to the EU-level, which are

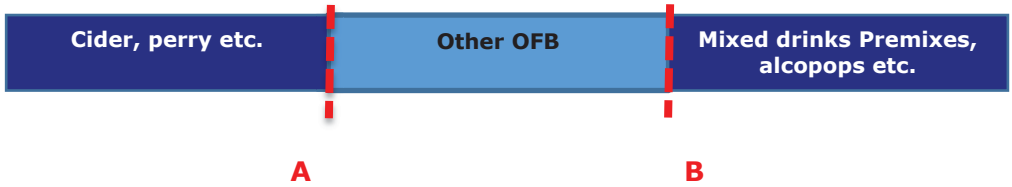
- distinguish for tax purposes traditional cider and other products defined in country-level sectoral legislation, from all other generic OFB, including 'mass-market' cider and the like
- apply additional consumption taxes on specific categories of mixed drinks to deter their consumption

These approaches aim to differentiate the OFB products that arguably correspond to the original definition and intention of the legislator from the 'novel' products that have been opportunistically designed to fit into it or simply that do not fit elsewhere. In fact, the two existing approaches have the same objective and result. The only difference between them regards which 'sub-category' is separately defined and excerpted from the standard one – i.e. the 'mixed drinks' (intended as 'pre-mixes, alcopops etc.) or the 'cider and perry'. In visual terms, the two approaches can be represented as in Figure 3 below, where their difference concerns where the demarcation line is drawn, namely:

- **Line A (Option 2.a)**: cider and perry (and specific OFB like mead, hydromel, certain fruit-wine etc.) v. Other OFB (including mixed drinks and possibly certain 'borderline' cider drinks).

- **Line B (Option 2.b)**: mixed drinks (pre-mixes, alcopops and the like) versus cider, perry and any other non-mixed OFB of any kind ('traditional' or not).

Figure 3 – The two possible approaches for differentiating the OFB category



The demarcation Line A would require adoption at EU level of a harmonised definition of cider, perry and the other OFB that correspond to the original scope of this category, matching as much as possible with the existing national definitions for these products. The demarcation Line B would require a harmonised definition to be adopted at EU level defining a mixed drink and the relevant criteria to allow for such a categorisation.

With the exception of FR, where both differentiation lines are in place, all other MS have opted for only one distinction. In this impact assessment, the third approach (based on the French practice), is not proposed as introducing two differentiations would excessively fragment a category that is currently small.

5.3.4. *Option 3 – provide operational definitions, criteria and methods*

Common rules and criteria would be necessary to establish/determine when a product has actually lost its essential fermented character irrespective of any legal changes to the excise

classification. Such criteria should not be in the text of the Directive but defined in detailed operational terms in guidelines, recommendations and/or explanatory notes to CN nomenclature.

Many tax administrations interviewed in the context of the supporting studies were of the opinion that a proper operationalisation of these criteria or any solution sought at the level of excise duty classification would fail, because there are uncertainties in the primary underlying CN classification. What is currently included in the explanatory note to CN 2206 00 reportedly leaves a wide margin for subjective interpretation. Simply introducing the CJEU jurisprudence principles in the Directive would still require clear, agreed, and robust criteria and analytical methods to be in place. Such criteria, conditions and methods could be established:

at the level of CN explanatory notes (option 3.a) or, in any case, within the customs classification system (revision of the CNEN 2206 00) where a robust distinction between fermented alcoholic products that may fall under CN 2206 and those that should be considered CN 2208 could be provided. A customs expert group (Customs 2020 Project Group) is currently discussing and drafting an implementing regulation to create a new additional note to Chapter 22 of the CN code to guide the classification of these alcoholic products. This note will focus on distinguishing between the CN codes and will also touch upon classification of new products using cleaned-up alcohol. The draft implementing regulation is scheduled for vote in the Committee meeting of June 2018.

through non-binding guidelines (option 3.b) –guidelines would be developed by a joint technical working group and adopted at ITEG level. These guidelines should, among other things:

- establish the criteria to differentiate between a 'genuine' fermented beverage and a beverage that has lost its essential character, which should be classified otherwise and provide guidelines to indicate how to weigh and balance the different aspects;
- set a threshold for the amount of distilled alcohol that can be added to a fermented beverage both in terms of contribution to the total ABV and/or overall volume of the end-product, and other parameters related to the appearance and taste of the product;
- establish if, and to what extent, the addition of other substances like water, sugar, cream etc. may *per se* affect the fermented character of a beverage or not, and the criteria thereof;
- establish analytical parameters to deal with 'cleaned-up' alcohol, both as an end-product or a base for other beverages;
- define common analytical methods to assess the composition of products in order to improve detection capacity and reduce uncertainties in laboratories' outcome.

These measures presented above do not require a revision of the Directive and can be self-standing options. They are however not strictly alternative to options 1 and 2, but rather complementary and in some case a pre-requisite for a successful implementation of the proposed Directive amendments.

5.3.5. *Option 4 – amend other EU legislation*

Sectoral regulation for cider and other specific OFB (option 4.a). This option envisages adopting at EU-level a harmonised definition of cider, perry and other specific OFB to distinguish them from other generic OFB like mixed drink, which are arguably taking advantages of the blurred boundaries of the current excise duty definition. This would complement option 2 above, which proposes a differentiation in the OFB category and would ensure the smooth operation of reduced rates for small cider makers, if reduced rates for small producers was extended to include small cider makers (see section 5.4.3 below).

Enhance monitoring and control (option 4.b). This option proposes introducing separate codes for OFB. This would address the lack of a specific EPC for OFB which is currently merged with wine. This amendment concerns Annex II, Table 11 (Excise Product) of Commission Regulation 684/2009[25], as well as of the EMCS and related systems, including MS authorities and businesses' excise systems.

A further aspect of this option proposes introducing, for statistical purposes, a collection of more granular data on excise goods volumes than current data, which is articulated only on EPC, and does not cover zero-rate products. This would assist tax authorities, who currently have a limited market intelligence of novel 'borderline' products to address problems effectively and consistently. This aspect will be discarded as the current procedures and administrative arrangements in MS vary substantially and an *one-size-fits-all* approach is not possible. Further consultation with MS would be necessary to introduce this.

5.4. Dysfunctional application of reduced rates

5.4.1. *Option 0 – baseline scenario*

The unequal treatment of producers of alcoholic products other than beer and spirits will persist. MS will be unable to correct this. Divergent interpretations in the area of economic independence and the uncertainty for cross-border trade are likely to increase as the number of small brewers continue to grow, which currently shows no sign of slowing. Conflicts between businesses and authorities will persist and may even increase as business structures increase in complexity.

The application of reduced rates to low strength alcoholic beverages will continue to apply to a limited number of beer products. MS will be prevented from achieving national policy objectives of encouraging consumers away from high strength alcoholic beverages.

5.4.2. *Option 1 – Increase legal certainty for small breweries*

The main regulatory failures for small brewers concern (i) the existence of grey areas in the definition of economic independence; and (ii) the implementation of the provision to cross-border businesses. This option would clarify the term 'legally and economically independent' and would provide a common EU method for proving the status of producers.

Option 1.a – Normalising the *definition of economic and legal independence at the EU level*

To address the problems described earlier, the term 'economic and legal independence' should be defined at EU-level. Such definition would encompass the general norms and principles as well as detailed technical specification outlining the legal conditions which could determine if companies are independent or not. Some aspects have already been clarified and several CJEU jurisprudence provide for the necessary guidance, which has been developed and consolidated over the years. Any further action would therefore refer to the existing acquis as much as possible while any gaps – e.g. with regard to the forms of cooperation – would need to be addressed. This could be done by consolidating the current practices on beer brewed under license – and the present national practices – as well as contract brewing.

Definition of economic and legal independence of small breweries could be done either through a ***legislative revision*** (option 1.a.1.) of the Directive or by means of a ***soft law instrument*** (option

[25] Commission Regulation (EC) No 684/2009 of 24 July 2009 implementing Council Directive 2008/118/EC as regards the computerised procedures for the movement of excise goods under suspension of excise duty.

1.a.2), such as non-binding guideline. Whereas these 2 instruments would in essence yield the same framework, they would differ in the effectiveness. It is therefore important for the analysis to retain that distinction for further comparison and identification of the preferred choice.

Option 1.b – Creating conditions for recognition of small brewers across borders

With respect to the means for proving the status of small brewers and the modalities for the exchange of information between tax or customs authorities, these could be specified along different, possibly complementary, lines:

Ex-ante approach (1.b.1): all small brewers would be identified through a uniform certificate, defined via a Commission Implementing Regulation, which would need to be presented when claiming reduced rates in a MS other than that of establishment. Such a certificate would state: (i) the brewery output level, as already communicated or available to the customs authority under tax warehouse obligations; and (ii) whether the brewer fulfils the criteria for economic and legal independence, based on additional documentation submitted by the economic operator. This certificate should be provided, upon request, by all customs authorities to all businesses up to 200,000 hl, regardless of whether they can access reduced rates in their country of establishment. This certificate could be developed through the Fiscalis programme.

Ex-post approach (1.b.2): as in the current framework, a verification of whether a non-domestic brewer meets the conditions for enjoying reduced rates would be done upon request of the authority of the MS of destination for specific players. However, these ex-post checks would be managed by an IT platform for the exchange of information, so that the authorities in the country of destination could inquire about an operator's annual output and independence. Alternatively, each customs authority could prepare a list of breweries which are both independent and with an output below 200,000 hl. Experience with the European alcohol denaturant database shows that this option would be of limited benefit, as MS often fail to update the data regularly. This option will not be assessed further in this impact assessment.

5.4.3. Option 2 – Extending the reduced rates to small cider makers

To address the unfair competition between small producers of alcoholic beverages, this option would amend the Directive to extend the reduced rates to small cider makers.

As for the small brewers reduced rates, this reduced rate would remain optional for MS. It would be based on the definition of an independent producer and a maximum discount rate compared to the standard rate would be fixed. The maximum yearly output threshold would be set in the Directive. One possible output threshold (100 hectolitres per year) would cover micro cider makers only. The second option would apply an output threshold of 15 000 hectolitres per year, which would extend the relief to small cider makers.

5.4.4. Option 3– Revised thresholds for low strength alcohol

This option aims to amend Art. 5(1) of the Directive and allow MS to apply reduced rates to beer with an ABV not exceeding 3.5% vol (instead of 2.8% vol).

5.5. Measurement of Plato degree for sweetened / flavoured beer

5.5.1. *Option* 0 – baseline scenario

Under this option MS will continue to have freedom in the interpretation of the term 'finished product' when measuring the degree Plato of sweetened/flavoured beer.

A case has been referred to the CJEU (C-30/17 - see Box 5) regarding the way in which excise duties on sweetened / flavoured beer should be determined. The precise scope and extent to which the CJEU will clarify the outstanding uncertainties of the Plato situation is unknown. If the CJEU rules contrary to the existing practice of measuring Plato degree after the addition of sugar, several Member States would be required to change their approach.

5.5.2. *Option 1 – Legal clarification of term 'finished product'*

This option implies clarification/definition of the notion of 'finished product' and when the measurement of Plato degree should occur when it comes to beer in the legal base (Art. 3(1) of the Directive). Defining 'finished product' could be done following any of the methods currently applicable to measuring the Plato degree:

- ***Option 1.a*** – *regulatory amendment* of the term 'finished product' where it would refer to the base beer before adding any additives, i.e. Approach A of measuring degrees Plato;
- ***Option 1.b*** – *regulatory amendment of* the term 'finished product' where the term would refer to the end-product that is released for consumption. This can be further subdivided in line with the two approaches B1 and B2 depending on whether the sugar/flavour added after fermentation would contribute (*option 1.b.2*) or not (*option 1.b.1*) to the Plato degree.

5.5.3. *Option 2 – Guidance/recommendation on the most appropriate method to measure Plato degree of sweetened/flavoured beer*

The non-regulatory option consists of providing guidance on the most appropriate approach to measure the Plato degree of sweetened/flavoured beer via non-binding guidelines/recommendation of the Commission. This option can be either alternative or complementary to option 1, in the sense that guidelines could also support the implementation of the revised regulatory provision, suggesting technical solutions, procedures and other best practices to national authorities. Similar to regulatory ***Option 1*** guidelines/recommendations could be made based on any of the three methods currently applicable, leading respectively to sub-options 2.a, 2.a.1 and 2.b.2.

5.5.4. *Option 3 – Abolish the Plato method for measurement of alcoholic strength in beer*

This option would amend the Directive, so that only ABV would be allowed by MS to measure the alcoholic strength of beer.

This option would reduce the additional administrative costs that producers measuring the strength of beer using the Plato method face when they sell cross-border as they are required to report data to EMCS using the ABV method, even when the movement of goods occurs between two MS using the Plato method. Furthermore in order to comply with food labelling requirements[26], all producers must display the ABV strength on beer labels.

While this option would reduce the legal uncertainty, distortion of competition and regulatory costs, the abolishment of the Plato method would be vigorously opposed by both the industry and

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[26] Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 Text with EEA relevance.

many MS on grounds of tradition. In fact, all relevant stakeholders interviewed for the both Studies have confirmed that there are no negative consequences for beer producers, because regulatory costs are negligible and do not constitute an obstacle in practice when it comes to selling in another MS. Taking account of the above, this option was discarded.

6. WHAT ARE THE IMPACTS OF THE DIFFERENT POLICY OPTIONS AND WHO WILL BE AFFECTED?

The impacts considered for the policy options belong to four main categories and span various categories (or even sub-categories) of stakeholders: (i) market effects (including Single Market functioning, distortion of competition, and SME competitiveness effects); (ii) regulatory costs and cost savings (including substantive compliance costs, administrative costs and enforcement costs); (iii) tax revenues; and (iv) indirect social effects (illegal activities and fraud, alcohol control policy objectives or health aspects where applicable).

Market effects concern distortions of the quantity exchanged and of the equilibrium price of the various products. Taxation, by definition, distorts any market from the equilibrium that it would reach based on the free adjustment of demand and supply. For this reason, the present impact analysis does not assess market distortions per se, but those that might go beyond the intended objectives of the legislator. Conversely, what the analysis does take into account are aspects such as (1) tax-induced substitution across products, (2) cross-border distortions and illicit trade, (3) Single Market functioning in terms of possible distortions induced by diverging legal treatments, uneven application of the Directive or other administrative obstacles, (4) SME competitiveness since certain impact may have a differential effects on small producers vs. large manufacturers.

Regulatory costs and savings concern the broadly understood compliance, enforcement and administrative costs and cost savings. Compliance costs have been considered with respect to the changes to business practices linked to the administrative requirements. Enforcement costs and benefits can either relate directly to the costs borne by public authorities to apply the revised Directive provisions, or judicial costs and cost savings borne by public authorities and economic operators related to the need to interpret unclear legal provisions and, in case of judicial disputes, uphold them in court, as well as benefits (cost savings) in case interpretations and judicial disputes are no longer needed after a clarification or legal revision.

Tax revenues comprise direct charges including taxes and fees paid by economic operators or consumers. By nature, tax revenues bear elements of trade-off: what is a benefit for tax authorities is a cost for consumers and/or manufacturers. In the assessment and comparison of policy scenarios these impacts where primarily examined from the perspective of tax authorities. Impacts on tax revenues can be triggered, apart from the tax rates which are not part of this analysis, by scope of the tax system (exemptions / inclusions) and of individual tax category, with the possible re-classification of certain products in different categories. It is also worth mentioning that these variations may also trigger other impacts, considered under market or social effects, such as tax-induced substitution between products, per capita consumption effects, demand for illicit products and fraud.

Indirect social effects include impacts that poorly lend themselves to quantification in monetary terms, but are nonetheless important since they concern the underlying values and principles of policy action that are linked to social well-being in broad sense. Two areas of social impact that have been considered related to the policy options at stake - although indirectly - namely: (i) public health (through alcohol control policy and measures); and (ii) tax fraud.

These broad impact categories constitute the general framework for impact analysis. Keeping in mind the complexity of the problem definition, the relative independence of the problem areas with distinct drivers, consequences and corresponding objectives, it should be recalled that ***not all***

of the impacts will materialise for all the problem areas and proposed options. For example, SME competitiveness is relevant but to the problem of reduced rates for small producers, the creation of a new fiscal category for certain product may generate administrative costs for economic operators who have to update their licenses and IT systems while health aspects are of relevance solely for the problem of denatured alcohol. However, where impacts might have been relevant but their nature cannot be defined (e.g. impacts on the consumption rates of alcohol after re-classification or changes in the scope of reduced rates), it is clearly stated so.

6.1. Dysfunctions in the application of exemptions for denatured alcohol

Mutual recognition of CDA

Option 1 would reduce the remaining *legal uncertainties* surrounding mutual recognition of CDA. There would be a reduction in any remaining trade barriers and *market distortions* as any restrictive interpretation of mutual recognition by some MS would be eliminated. This option would have no impact on most *businesses*, as this would only codify the approach taken by most MS. Some positive impacts for businesses involved in cross-border trade of CDA may also result. The impact of this option are summarised further in Annex 17.

PDA formulations

Market effects

All options would reduce, albeit to a different extent, barriers to intra-EU trade due to the greater transparency and legal certainty. **Option 2** would result in fairer competition between PDA producers and users in different MS. The impact of **Option 3** is uncertain, while information sharing could lead to fewer disputes / barriers to trade, this is dependent on MS adopting more consistent rules / practices. **Option 4** would ensure equal treatment of PDA for indirect uses across the EU.

Operating costs for business / conduct of business

Any increase in harmonisation would be beneficial for businesses that operate across the EU. **Option 2** may increase the access to wider range of PDA formulations and enable cross-border businesses to use the same PDA formulation in all MS, which would result in cost savings. There would be less legal uncertainty, which would reduce the risk and costs of supplying PDA intra EU. However this option may negatively impact businesses whose current formulation is not on the harmonised list.

The impact of **Option 3** is uncertain as confidence / capacity building measures may not necessarily translate into savings for PDA producers or users. However if consistent rules or practices were adopted this would lead to a reduction in costs for businesses.

Option 4 would result in cost savings for businesses using PDA in MS that do not exempt indirect uses of PDA. The enhanced legal certainty of this option would reduce the risk of potentially costly disputes in the future.

Enforcement costs

The development of a harmonised list of PDA (**Option 2**) would result in a significant investment of resources by MS and the Commission. While this would build on the work undertaken by the Fiscalis Project Group, this would still be a major commitment for all stakeholders. However a harmonised list would reduce the burden of customs laboratories in certain MS, where fraud with illicit surrogate alcohol is a significant problem.

Option 3 would have some costs for MS. This would be dependent on the frequency and intensity of information sharing events. In time this may result in reduce enforcement costs for MS, if consistent rules were applied across the EU.

The implementation of **Option 4** would have no additional burden on MS, who currently exempt the indirect uses of PDA. However for the other MS, this would involve updating legislation, adopting standard procedures and familiarise staff with the new rules and guidelines, which could constitute a small one off cost for the national authorities.

Fiscal fraud / Public health

Option 2 would not eliminate 'weak' formulations of PDA, which is the main source of fiscal fraud and negative health impacts. Some impact may be possible if a strict list of PDA formulations was developed and MS adopted their approaches to risk assessment and / or require stronger evidence before authorising an additional formulation. **Option 3** would have limited, if any, impact on the risk of PDA fraud. **Option 4** is primarily a fraud prevention measure and the requirement to move products containing alcohol over a suggested limit in accordance with Chapter IV of Directive 2008/118/EC would give authorities an effective weapon in the fight against fraud. The impacts of the various options are summarised in Annex 17.

6.2. Dysfunctions in the classification of certain alcoholic beverages

Tax revenues

The reclassification of certain products would have direct repercussions on the tax revenue for MS. The magnitude depends on the actual rates applied and the equilibrium of two opposite effects:

- A tax yield per product unit increases when the reclassification is to a higher taxed category
- A higher tax results in a higher price, which has a negative impact on demand.

Taxing borderline products under Art. 20 (**Option 1**) would result in a direct revenue loss of approximately EUR 126 million per annum. This is due to a reduction in demand triggered by higher prices reflecting the higher excise duties. The clarification of the term 'entirely fermented origin' would have a modest impact on tax revenues as few if any existing products would be reclassified. If a strict threshold was adopted, this may result in the taxation of AFC as ethyl alcohol.

Selecting **Option 2** (differentiation in the OFB tax category) may lead to yet more direct tax revenue losses, approximately EUR 250 million per annum. However, this estimate reduces to EUR 35 million if borderline cider is kept out of the reclassification process.

On the other hand, drawing on the experience from the introduction of relatively heavy alcopop / premix taxes in FR and DE, the medium-term to long-term net revenue losses may be much smaller. The introduction of a new tax in FR and DE did indeed, as expected, lead to the market collapsing quickly, and in a short time period the tax yield dropped to very modest contributions. Businesses largely withdrew products from the market that had become too expensive for the consumers and invested in other new products. This was the case with spirits-based alcopops which were replaced by malt- and wine-based pre-mix drinks after the introduction of the alcopop tax. Assuming similar market behaviour would follow from the reclassification (and thus new taxes), we can expect a similar process: a tax-shock would eventually result in the substitution of the target products with other products that remained in the favourable tax categories. The expected change in the excise duty revenues would depend primarily on which other products would be consumed and their level of taxation.

The non-regulatory **Options 3.a and 3.b** would not differ in terms of the nature of the expected impacts on the tax revenues. Those being operational measures, their deployment – be it independently or in conjunction with Options 1 and 2 - may reduce the risk of new misclassifications and bridge tax losses through smoother transition to new tax categories.

Introducing an EU wide regulation of cider and other specific OFB (**Option 4.a**) would have limited effects on tax revenues unless accompanied by the corresponding fiscal measures. The tax effects would depend on the final definition of cider, perry and fruit wines and could be similar to that of Option 2. Introducing a new EPC for OFB (**Option 4.b**) would have no impact on tax revenues, however it would provide enhanced data for national authorities to understand the OFB market better for tax policy decisions.

Competition and market effects

It is apparent that the reclassification of certain products into a different tax category with a different excise duty rate would have an impact on the market size and trends. Various steps were undertaken to assess the impact, which are detailed in Annex 15.

Option 1 would affect primarily borderline IP with an estimated reduction in sales volumes of approximately 36%. The collapse of this market is primarily due to the introduction of a higher excise duty on products that in various MS enjoy a zero or very low excise duty. It is further impacted due to the fact that the demand for these products is very elastic, so consumers would likely switch to other cheaper products.

The sub policy option of clarifying the term 'entirely fermented origin' would primarily have an impact on the certainty and consistency of rules across MS, but only limited market effects (0.3%) since the addition of AFC is, for the main, already accepted.

Option 2 would particularly impact very low strength mixed drinks and borderline cider, if included in the reclassification. The analysis estimates a decrease of between 46% (average scenario for very low-strength mixed drink) and 64% (average scenario for ‘borderline’ cider) in sales volumes. A moderate impact is expected for mixed drinks between 5.5% and 10% as these products are currently taxed as IP in some MS.

Both options may result in unintended effects on non-target products. Some AWP classified as CN 2206 may fall within the reclassification. Unintended effects are more profound under Option 2.

Overall both options have significant market impacts for the target products, since their demand is sensitive to price. The estimated decline in sales is substantial; however this is small when compared to the overall alcoholic beverage markets (less than 0.4% in the worst scenario). Similar impacts would be seen for the non-regulatory options, which aim to clarify the conditions under which certain fermented beverages should be treated like spirits.

Like above, the non-regulatory **Options 3.a and 3.b** would not differ in terms of the nature of the expected impacts on the tax revenues. Those being operational measures, their deployment – be it independently or in conjunction with Options 1 and 2 - may reduce the risk of new misclassifications and bridge tax losses through smoother transition to new tax categories.

Introducing a sectoral definition of cider and other specific OFB will have limited impact on the market, if its introduction is not accompanied by the corresponding amendment of the Directive. If the Directive is amended, the market impacts are similar to that of Option 2.

Administrative burden and enforcement cost

The policy options can have an ambivalent impact on administrative costs and burdens for businesses and competent authorities. They intended to reduce the current burden caused by classification issues and uncertainties. However the introduction of new measures may result in additional costs for adapting existing systems and implementing new rules. Since there was no sufficient and reliable data to calculate the burdens in monetary terms, any quantification attempts were only possible on the basis of hypothetical scenarios.

Option 1 would not impose new costs for all stakeholders beside the 'one off' need to familiarise with the new rules and guidelines, adopt standard procedures and train staff accordingly. As for businesses, the staff efforts required to familiarise and implement the new rules may vary by company size. The affected population encompasses in principle all those who produce 'borderline' CN 2206 products, these can be found primarily among OFB producers, but also among certain breweries and wine/liqueurs producers. The Study estimates that the familiarisation costs would amount to approx. € 4,500 per company. These costs are likely to be supplemented by the costs potentially incurred to review the production processes, economic portfolios or market strategies. The impact on competent authorities could not be quantified in the Study. However, in terms of unit costs it would be expected to be higher although – given that the affected population is limited - in aggregated terms it may be modest. The Study estimates that the aggregated benefits would possibly offset costs within a 5 – 6 year period.

Indirectly, Option 1 may reduce the number of complex dossiers by ca. 50%. That would lead to an estimated costs savings may amount to some EUR 1 - 1.5 million per year, for competent authorities. Non-quantifiable benefits for businesses in the same proportion can be assumed.

Option 2 is less oriented toward 'difficult-to-classify' products, and the burden due to the difficult distinction between CN 2206 and CN 2208 would persist. Moreover, distinction may create new 'borderline' products which could, in the worst case scenario, neutralise benefits of any new clearer definitions. It can therefore be reasonably assumed that the overall present burden would not change significantly (EUR 2 – 2.5 million). Option 2 would require various administrative actions, including familiarisation with the new rules and guidelines (similar to the costs associated with Option 1), amendment of legislation, updating the IT systems, training of staff, updating some national procedures for licensing and authorisations, etc. All the required action would be 'one-off', no relevant recurrent cost is envisaged. The affected population includes primarily OFB producers and the IT adjustment associated with changing of the EPC systems are estimated to amount to approximately EUR 800 per economic operator (weighted by enterprise size). The costs of this option would be offset by the benefits in 10 years or more, which is longer than option 1. Also in this case the impact on competent authorities cannot be quantified but the overall costs are expected to be modest.

Furthermore, there are some important considerations related to the choice of demarcation Line A or B for Option 2. The demarcation Line A would require the adoption at EU level of a harmonised definition of cider, perry and the other OFB that correspond to the original scope of this category and match as much as possible with existing national criteria for these products. This is far from being straightforward: national definition vary significantly, the industry calls for a permissive approach e.g. establishing no minimum amount of fresh juice, no limits to added sugar and water etc. – which is probably tantamount to shifting Line A to overlap with Line B; whereas certain consumers organisations consider most of the mass-market products not to be 'real' cider. It is apparent that the Directive is not the appropriate vehicle for product definition, which should instead be developed as sectoral legislation.

Analogically, the demarcation Line B would require the definition of what a mixed drink is and the relevant criteria to allow for such a categorisation. Also in this case various approaches exist

and an agreement should be reached among MS at the expert group level. The French definition seems more all-catching than other mixed drinks definitions in that it applies either to mixture of different beverages or to beverages with a certain amount of added sugar/sweeteners. In this respect, it may encompass also various 'mass-market' ciders - that means Line B shifts leftward to nearly coincide with Line A.

The administrative burden of **Option 3.a and 3.b** would require efforts and resources in all phases of their development and implementation cycle. There is no precise estimate of the overall cost, but Options 3.a and 3.b would be in line with the expected costs and benefits of Option 1. As noted above Option 3.a is currently underway. The development of a sectoral regulation (**option 4.a**) for cider, perry and other specific OFB without the corresponding amendment in the Directive would have no benefit from a tax perspective. As a complimentary measure, it would result in similar cost / benefit to that of Option 2.

The costs of a new EPC (**Option 4.b**) include the update of the existing excise systems used by both businesses and MS. The change envisaged is minimal, however all IT systems, templates, manuals etc. should be updated to include the new EPC. The administrative burden for authorities is possibly greater and involves the amendment of regulation and standard operating procedures, informing and training businesses at all levels, and obviously the direct costs of updating the IT systems. The unit cost per MS would vary in accordance with the specificities of the administrative system in place and the size of the country, but interviewees were not able to provide a quantitative estimate.

While there are costs associated with the introduction of a separate EPC for OFB, its introduction would bring significant added value in terms of monitoring and control of the market and excise duty trends. Currently tax authorities are seldom able to differentiate, and therefore to appreciate the market trends of OFB, which is the category that mostly contains new and 'borderline' products, so they have access to limited data evidence to support their tax policy decisions.

In the event of further changes of the excise duty structure, such as new tax categories to differentiate among OFB, the revision of EPC would become necessary for a proper management and monitoring of products movements, so this option would become justified also in costs/benefit terms. The impacts of the various options are summarised in Annex 17.

6.3. Dysfunctional application of reduced rates

6.3.1. Option 1 – Improve the functioning of reduced rates for small breweries

Competition and market effects

As described in the baseline analysis, the small brewers market is growing at a very fast pace and most likely the frequency of cross-border trade will increase. It is logical to presume that, left unfixed, the dysfunctional application of the reduced rates for small brewers will increase and may lead to unfair competition in the single market.

The clarification of the conditions at which a small brewer shall be considered independent will benefit the public authorities called to implement these provisions, as well as to small brewers. Indeed, should this clarification be introduced, it would be easier for public authorities and businesses to determine whether certain business models or decisions are compatible with the reduced rate schemes.

For small brewers, this would reduce the risks connected to the entering into certain trade relationships, as well as the litigation costs associated with cases where the interpretation of the customs authorities will be challenged by the operator. Also, the discrepancies between MS or

between regions of the same MS – which have been sporadically reported – will be tackled, reducing the risk of an uneven treatment of similar situations.

An improvement in the legal clarity of the provision for cooperating breweries, and a smoothing of the procedures for intra-EU trade are a positive factor for the competitiveness of SMEs. In particular, this would benefit larger players across the SME population, which are more likely to enter into cross-border trade or into more complex contractual relations, favouring their business growth. At the same time, increased ease of doing business for intra-EU traders could have a positive market effect for cross-border businesses, and eventually result in an increase of intra-EU trade flows. However, the scale of the problem at stake is modest, meaning that the procedures to apply the reduced rates do not represent a high barrier to the functioning of the single market. Hence, benefits are likely to be modest.

Administrative burdens and enforcement costs

Any clarification to how reduced rates should be applied to businesses established in a different country than that in which the beer is released for consumption would affect the administrative burdens borne by businesses and the enforcement costs borne by public authorities.

Under Option 1.b, a uniform certificate issued by customs authorities upon request to any EU brewer could serve as a means of proving the status of small brewer. Such a certificate could be designed at EU level, included in a binding norm, and would be accepted by all customs authorities in the MS of destination. Such a certificate should provide information on the annual output and the independent status of the brewer.

Under this approach, companies which are already small brewers under national rules would incur limited administrative or enforcement costs (i.e. the costs of requesting the certificate). Total burdens for the 675 operators in the sample MS would amount to approximately EUR 13 000 or 2% of the burdens estimated for the overall scheme. The situation would be different for businesses who are not small businesses in their country. Therein, to claim the reduced rate, the brewer would need to prove his/her status as an independent economic operator, by submitting the customs authority the required documents (company registration, information on shareholding, company charter etc.). Administrative burdens for the 180 operators not under the scheme are estimated at EUR 32 000 or 5% of the burdens estimated for the overall reduced rates schemes. Overall, the additional administrative burdens seem limited for this policy option.

Enforcement costs for public authorities are considered to be modest, when dealing with businesses already benefitting from reduced rates in their country of establishment. There would be some further administrative burdens for businesses and enforcement costs for public authorities as a legislative revision would be needed to introduce a uniform certificate, so that the format and content of the document could be fully harmonised at EU level. The impacts of the various options are summarised in Annex 17.

6.3.2. *Option 2 – Extending the reduced rates to small cider makers*

Competition and market effects

In terms of market competition, small cider makers would gain relatively to large ones, either because they are able to reduce their price or increase their profit margins (or a combination of both). The reduction compensate for higher costs of production due to diseconomies of scale, which mirror those suffered by small brewers. The sheer difference in size between industrial producers and small cider makers, and the very small market share retained by the latter imply that reduced rates would hardly represent a significant competitive threat for large players.

The competitiveness of SMEs in the cider industry would be enhanced by the provision. Impacts could be estimated to be analogous to those enjoyed by small breweries, given the similarities in terms of market structures.

Administrative burdens and enforcement costs

As far as administrative burdens are concerned, it is assumed that the annual burdens per small cider maker would be similar to those incurred by small brewers, estimated at EUR 178. The EU population potentially covered by the provision is estimated at about 1 145 small cider makers.[27] Total burdens are thus estimated at about EUR 200 000. Considering the market share of small cider makers in MS applying a positive tax rate, and thus potentially affected by the provision, costs per unit of production would amount to 0.32 EUR/hl.

Finally, in terms of enforcement costs, public authorities would have to deal with a new scheme, and thus with the associated demands to obtain the reduced rates. This would engender additional costs, but the number of players at stake is so limited that those costs would not be large. Extra-EU imports of cider represent 0.1% or less of EU consumption and only a share of that might be produced by small cider makers; hence no significant hurdle is expected in the management of possible applications from non-EU small suppliers.

Tax revenues

Forgone tax revenues are unevenly distributed due to the dimensions of the EU cider market. MS where the cider market is large and the excise duties are high, such as IE and the UK, the total forgone tax revenues based on a 50% reduced rate for small cider makers are estimated to be EUR 1.3 million and 9.7 million, respectively. Impacts are estimated to be less than EUR 0.5 million in MS such as PL and FR with small cider markets and low excise duties.

Health impacts for consumers

The effects on per capita alcohol consumption, and consequently health impacts, are expected to be negligible. The portion affected by the extension, estimated at 4.6% of the cider market, is too small to affect the overall price and consumption of cider. In addition, cider represents a relatively smaller market compared to other alcoholic beverages in most of the MS. Only countries with a very large cider market, the UK and IE, could see noticeable negative health effects, if the reduction was introduced. The impacts are summarised in Annex 17.

6.3.3. Option 3 – revised threshold for low strength beer

This option is expected to generate impacts in terms of: (i) tax revenues, as larger shares of the market could benefit from reduced rates compared to the baseline; (ii) market effects, as lower taxation may lead to lower price for low-strength beer, hence an increase in demand; and (iii) ambivalent public health effects, as increased consumption of low-strength beer may (or may not) reduce the per capita intake of pure alcohol and, through higher availability, may increase the number of alcohol consumers, particularly among price sensitive consumers such as young people, heavy drinkers and people from lower socioeconomic groups.

[27] Based on the estimated number of small producers in the 5 MS and their share of consumption over total EU consumption

Competition and market effects

It is apparent that the market share for low-strength beer between 2.8% vol and 3.5% vol across all MS is modest; nonetheless, it is reasonable to assume that the adoption of the 3.5% threshold would develop a new 'niche' market immediately below this limit.

Tax revenues

The total foregone tax revenues (including VAT paid on excise duty) are expected to amount to less than 1% of the total tax revenue from consumption of beer in the selected MS. Foregone tax revenues might be even lower, if one considers that the new market for low-strength beer could partially flourish on top rather than at the expenses of the market for standard beer.

Health impacts for consumers

Considering the above analysis of market effects, and more specifically the possible limited increase in *per capita* consumption of low-strength beer (from 0.02L to 0.10L per year), any public health impact, either positive (where the additional consumption of low-alcohol beer is 'at the expense' of standard beer and other stronger alcoholic beverages) or negative (where low-strength beer substitutes soft drinks, or increase the overall consumption of alcoholic beverages and facilitates the drinking initiation of young people), can be considered negligible. The impacts are summarised in Annex 17.

6.4. Unclear provisions to measure of Plato degree for sweetened / flavoured beer

As discussed above, all options and sub-options (except the baseline) revolve around the selection of one of the three existing approaches to measuring Plato degree and, therefore, they would have the same type but not magnitude of impact. The analysis presented here is based on the sample of 6 countries selected for the case studies under the Study (AT, BE, DE, IT, PL and RO). These countries represent the large majority of the sweetened/flavoured beer market in the EU countries that have adopted the 'Plato' method.

Tax revenues and market effects

As described in the baseline analysis, the EU market for sweetened/flavoured beer is expected to grow fast in the coming decade and most likely the frequency of cross-border trade will increase. Whereas precise estimates are not available, it is logical to presume that unfixed, the problem may lead to unfair competition in the domestic and single markets if alcoholic strength is calculated based on different methods.

It should be noted that the present appreciation of impacts on tax revenues and market effects has a domestic market angle. Impacts are country-specific and depend not only on the approach applied to measure Plato degree of sweetened/flavoured beer, but also aspects such as the level of excise duty, VAT and market segments.

Selecting ***approach A or B1*** would result in an overall reduction in tax revenues (excise duty and VAT on excise duty) from sweetened/flavoured beer of more than EUR 30 million (about -25%), compared to the baseline situation. Consumption, on the other hand, might increase by approximately 100 000 hl in the 6 countries combined, i.e. less than 2% of the total consumption of sweetened/flavoured beer. Limited changes in consumption reflect limited changes in prices. Selecting ***approach B2*** would result in minor changes as opposed to the baseline approach as this is the approach currently in force in most of MS considered. Expressing the changes as a percentage of the total beer market, the impacts become rather negligible: between +0.2% (moving to approach B2) to -1% (selecting approach A or B1) for tax revenues (including VAT on excise duty), and between almost nil (selecting approach B2) to +0.1% (selecting approach A or B1) for consumption volume.

Different MS will have different baseline scenarios, depending on which method they currently use and to which method they would need to switch (see Annex 14). As approach B2 generates the highest excise revenues, countries that will need to change away from this method are likely to experience some revenue decrease (as it is confirmed by the analysis of DE, AT and to a lesser extent PL and BE). Countries currently using another method than B2 would see a sharp increase in the excise revenues, for example in RO.

Analogous patterns are also observable for the price and consumption changes. Countries which would decrease their excisable tax base (discarding approach B2) should expect a drop in price for sweetened/flavoured followed by corresponding increased consumption. In countries like RO, this effect would be reversed.

While approaches A and B1 lead to similar value of the Plato degree of sweetened/flavoured beer and somehow reflect its actual alcohol strength, approach B2 leads to higher Plato degree, possibly greater than the Plato degree of a standard beer with an equivalent alcoholic strength. For instance, approach B2 results in almost double the Plato degree of a typical radler when compared to approach A or B1.

In principle, approach B2 is therefore more prone to generate possible ***distortion of competition*** between standard and sweetened/flavoured beer. However, as the impact analysis showed, the actual changes in price level that can be expected from switching between different approaches are rather modest, and of limited importance vis-à-vis other competitiveness factors. Overall there is a negligible risk of an excessive market distortion caused by the selection of any of approaches.

Public health

Any significant impacts potentially stemming from the harmonised adoption of any of the three approaches considered appear to be unlikely or limited. In fact, based on Eurostat date for total population above 15 years, the annual average per capita consumption of sweetened/flavoured beer in the six surveyed MS would range from 2.67 litres per annum (selecting approach B2) to 2.73 litres per annum (selecting approach A or B1). The difference is clearly negligible when compared to average per capita consumption of 'traditional' beer, which in sample MS exceeds 78 litres per annum.

Enforcement and legal costs

When it comes to ***enforcement***, any change in current approaches would require some MS to adapt their monitoring and control procedures. As mentioned, approach B2 is the most used, so the overall number of countries that would have to modify their systems would be limited when approach B2 is defined as most appropriate. Moreover, approach B2 allows authorities to perform checks directly on the end-products, with no need for on-site inspections and/or measurement during the production process, and is therefore considered more cost-effective than the other approaches. For these reasons, the selection of approach B2 at EU-level would have little or neutral effect on the enforcement costs for MS authorities.

Conversely, the customs authorities interviewed explained that, as things now stand, it is not possible to compute the parameters required to apply approach A or B1 by analysing the bottled 'end-product', since the current analytical methods do not allow for it. Therefore, the enforcement of approaches A and B1 would require checks at the production facilities, and these may generate new one-off costs, such as the devising of operational rules and the installation of measurement equipment, as well as recurring costs in the form of on-site inspections. An additional issue concerns sweetened/flavoured beer produced in another MS or third country, since the authority of the MS where the product is released for consumption could not directly conduct inspections and would be reliant on the information provided by the businesses and/or, in certain circumstances, by the authority of the producing country.

Finally, the selection of a harmonised approach to measure the Plato degree of sweetened/flavoured beer would increase ***legal certainty*** and eventually reduce the risk of disputes between tax authorities and brewers. All impacts are summarised in Annex 17.

7. HOW DO THE OPTIONS COMPARE?

As regularly recalled, the issues at stake in the present initiative are relatively independent from one another. Therefore, the comparison of options has been performed for each thematic area separately, rather than in a cumulative way. For the sake of transparency and clarity, all objectives are considered in the analysis of effectiveness even though some of the options were never designed to meet them. However, care was taken to ensure that all of the options are at least neutral (no impact) towards any of the objective.

This is reflected in the comparison table at the end of this section, while the narrative of the analysis focuses only on the objectives and impacts relevant to the particular policy option.

7.1. Dysfunctions in the application of exemptions for denatured alcohol

7.1.1. *Comparison of options*

Mutual recognition of CDA

A regulatory amendment (**Option 1**) of the Directive will ensure that divergent interpretations involving MS that have notified CDA formulations other than the Eurodenaturant will be eliminated and legal certainty will be achieved.

This option is in line with the approach with most MS and as a result it will have little impact on tax revenues of MS and it will not increase costs for businesses. For the main this option is codifying the existing practice. This option will reduce any remaining trade barriers and distortions and consolidates MS desires for a harmonised solution for CDA into a legal text.

PDA formulations

Effectiveness

The extent to which **Option 2** or **Option 3** would effectively meet the policy objective of legal certainty is limited. Option 2 would increase the transparency and certainty surrounding PDA formulations, however there is no guarantee that legal certainty would be achieved. While the list would be agreed by all MS, MS would retain flexibility to authorise other formulations in cases where the fiscal risk is demonstrably low. This concept of low fiscal risk currently varies significantly between MS and the possibility to authorise other formulations limits the transparency.

Option 3 is effectively a complimentary measure and would be ineffective in creating legal certainty. **Option 4** would enhance the clarity surrounding the legal meaning and uses of PDA. This would eliminate ambiguity and uncertainty that currently exists in relation to PDA.

Efficiency

Option 2 would result in fairer competition between businesses in different MS, however the costs for MS and the Commission would be significant. These costs would be balanced by the savings / benefits of a harmonised lists, which would reduce the workloads of custom laboratories and the risks associated with cross-border trade that currently exist for businesses. The confidence / capacity building measures of **Option 3** would be efficient in terms of increasing the trust between MS, however as an independent option, the overall efficiency is highly uncertain.

Option 4 would be efficient as the costs of clarifying the legal base for PDA would result in benefits for businesses in terms of legal certainty. This would ensure equal treatment of goods containing PDA across the EU and reduce the risk of costs associated with disputes between businesses and national authorities.

Coherence

As noted above **Option 2** and **4** would result in improving the functioning of the single market. **Option 3** may assist in increasing information flows between MS, however the overall coherence with other EU policy objectives is highly uncertain.

7.1.2. *Stakeholders views*

Mutual recognition of CDA

Most stakeholders interviewed as part of the Study, as well as a small majority of respondents to the OPC, were in favour of the harmonisation of CDA formulations. However there was strong opposition from a limited number of MS. The response to the OPC attracted a low response level and for the main a neutral response was adopted. In the case of continued uncertainty regarding the mutual recognition of CDA, 41% (38 respondents) agreed that the continued use of national formulations causes legal uncertainty, with only 7% disagreeing.

PDA formulations

The development of a harmonised list for PDA was strongly opposed (73%) by industry stakeholders with an interest in the production or end use of industrial alcohol. Overall a small majority (51%) of respondents to the OPC disagreed with this option.

The industry also expressed a strong disagreement with a strict interpretation of the legal base for PDA formulations. Instead respondents (85%) supported capacity and confidence building measures in order to improve the understanding of MS' approaches.

7.1.3. *Comparison summary and preferred option/package of options*

Option EFFECTIVENESS	1 - CDA	2 – PDA list	3 – capacity building	4 –PDA terms	No change
ensuring fair treatment of businesses across all alcohol sectors	++	+	**0**	++	**0**
preventing and correcting any distortions of competition	++	+	**0**	++	**0**
providing clear rules on the scope, classification and calculation of duties for businesses and MS	++	+	**0**	++	**0**
providing clear and efficient conditions to determine denaturation procedures	++	+	**0**	++	**0**
reducing administrative burden and compliance costs for businesses and tax authorities	**0**	**0**	-	+	**0**
provide legal certainty	++	**0**	**0**	++	**0**
strengthening the fight against fraud and tax evasion	+	+	+	++	**0**
improving human health protection	**0**	**0**	**0**	+	**0**
EFFICIENCY					
administrative burden	**0**	**0**	-	+	**0**
tax revenues	**0**	**0**	**0**	**0**	**0**

COHERENCE					
	++	+	**0**	+	**0**
OVERALL	++	**0**	**0**	++	
STAKEHOLDERS OPINION	+	-	++	-	

In terms of CDA, **Option 1** of amending the Directive to clarify the mutual recognition of CDA (hybrid recognition) is the only and the preferred option to ensure legal certainty within this area. For the record, alternative modalities of improving the mutual recognition were analysed and discarded early on in the process.

The preferred option in terms of PDA is **Option 4** to clarify the unclear wording of the Directive to increase the legal certainty for its indirect uses and finished product containing PDA. The capacity / confidence building measures under **Option 3** is also an option that is worthwhile, however this option will be complimentary as its success as a standalone approach would be mininal.

The ***package of options*** under the cluster of measure relating to the treatment of denatured alcohol is therefore composed of the bundle of **Option 1 + Option 4 accompanied by Option 3**, on a complementary basis.

7.2. Dysfunctions in the classification of certain alcoholic beverages

7.2.1. *Comparison of options*

Effectiveness

In terms of legal costs, the overarching rationale for all options is to reduce legal uncertainties and disparities of interpretations of certain products. The effectiveness of the various options appears uneven with not one option achieving this without negative impacts.

Option 1 would reduce the disparities of tax treatment of similar products as the classification for excise purposes would not be so strictly determined by CN codes. Instead the classification would also be linked to the CJEU rulings in this area. This option alone, as it was flagged out by stakeholders (especially in tax administrations), would not bring the desired effects as the current uncertainties in the underlying CN classification would persist. Due to the subjective nature of the CN explanatory note and the CJEU principles leaving ample room for interpretation, there would be a need for robust guidelines on the conditions, criteria and methods to treat the borderlines products (offered by options under cluster 3). For the internal market to correct the discrepancy, it would be most effective across the EU if customs classifications also took account of the CJEU criteria, which is currently underway (**Option 1 + Option 3.a/3.b**).

The final element of Option 1 which involves clarifying the term 'entirely fermented origin' in relation to AFC would remove the degree of uncertainty that the current ‘patchwork’ of national solutions inevitably cause, which may create unnecessary hurdles and delays in operations and eventually constrain the full deployment of the market potential.

Options 2.a and 2.b would result in legal certainty at EU level and a consistent treatment of borderline products across MS since it would make the current national level non-harmonised distinctions unnecessary. As with Option 1, Options 2.a and 2.b would be most effective if accompanied by robust definition for the new category, with available guidance on conditions and criteria allowing classification under that or another tax code (**Option 2.a/2.b + Option 3.a/3.b**). At the same time, implementing new tax category would necessarily impose an administrative cost and burden on businesses and tax authorities as they would need to review

their existing national excise duty systems from a legal and technical perspective, which is further analysed under efficiency.

Under approach 2.b (demarcation line at borderline products of mixed drinks), in order to avoid competitive distortions, the structure (and level) of taxation would most likely be in line with that applicable to ethyl alcohol. It would however increase the complexity of the excise law and create incongruity for the EMCS, which does not distinguish between OFBs (traditionally closer to wine) and wine. Resolving the EMCS would not only be costly but also undesirable as the original intention of the OFB category was to protect other traditional products of fermented origin – for example cider and perry - from higher taxation. For these reasons, in order to avoid instituting differences in the tax category which may unintentionally exclude some eligible products, erode this tax category in legal terms and increase the overall complexity of the system, the preferred approach is the approach 2.a distinguishing for tax purposes traditional cider and perry from all other OFB.

This will enable MS to introduce such differentiation into the OFB tax category and enable them to apply different excise rates to these products if so desired. Furthermore this differentiation will ensure the application of reduced rates (see section 5.4.3) is restricted to (small) cider and perry makers. Put differently, it is considered more effective to increase legal certainty to sub-define the OFB products that lend themselves to more distinct definition without deeper fragmentation of this tax category.

Options 3.a and 3.b – although viable on their own – would alone yield equally uncertain benefits albeit for different reasons. As for **Option 3.a**, its strength lies in mitigating the negative results of the current CN code uncertainties which would thus not be replicated to the excise duty level, and the risk of more severe legal disputes may be avoided. Revision of the CNEN towards closer correspondence in the interpretation of the CJEU principles in both excise and customs classification, would therefore eliminate the very source of disparities, being thus very effective. **Option 3.b**, consisting of non-binding guidelines, would necessarily leave a certain room of interpretation to MS authorities. Therefore, this sub-option would be comparatively less effective in ensuring a harmonised treatment of the same products across different MS. The BTIs would no longer constrain the tax categorisation and their use would likely reduce, but the absence of this practical instrument may eventually trigger the perception of a higher degree of uncertainty and unpredictability by businesses. Moreover, the risk of non-robust definitions or non-compliance (given the non-mandatory nature of the guidelines) may constrain the effectiveness. If the tax categorisation remains determined by the unchanged CN codes, non-harmonised national measures for special products may persist or even accelerate.

Depending on the scope of Option 3.a and 3.b, it could be argued that at best, they could together pre-empt the need to amend the Directive and would also result in sufficient legal certainty at EU level. However, as these options are outside the Directive, this would require the involvement and consensus of several different services of the national and European administrations, which will naturally impact negatively the efficiency of its implementation.

Option 4.a involves the adoption of a sectoral definition, which would assist when categorising OFB within the Directive, however as a standalone option, it would not address the current problem of different classifications of alcoholic products. An amendment to the Directive would still be necessary.

Option 4.b would enable tax authorities to enhance the data they currently receive through the existing excise systems. This would improve their tax policy decisions.

Efficiency

Option 1 would transpose the CJEU rulings into the Directive and would impose 'one off' minimal costs and burdens on businesses and national administrations. Due to the subjective nature of the CJEU criteria, the overall efficiency of this option is questionable, as variances between MS will persist and disputes may continue.

As briefly mentioned under the effectiveness criterion, implementation of **Option 2.a and 2.b** would trigger adjustment costs and burdens to businesses and national administrations alike, stemming from separating the category into cider/perry from other OFB. This is because there seems to be (i) relevant disparities in the legal definitions that already exist in the different MS, which should be aligned; and (ii) diverging views between producers of 'mass-market' products and their trade associations, and small 'traditional' producers and certain consumers' organisations.

Furthermore, with some exceptions (e.g. IE, UK) these products are typically regulated in national food and agriculture legislation, so the Directive does not seem to be the most appropriate vehicle for establishing a common product definition. At the same time, there might be some rationale to pursue an EU-level definition of cider etc. outside of its fiscal treatment. Cider has historically never been clearly defined in its own right - it follows (along with OFB) the rules on rates for wine. As the cider industry has developed, there has become a need for a more efficient structures regime to define cider (& perry, fruit wines and mead) separately within the category of OFB especially mixed products.

In the case of mixed products, the main challenge would consist in adopting a definition that does not simply create tax incentives to develop substitute products, as it happened for instance with the 'alcopop' tax in Germany. On the scope of this category, MS may have different views related to the specificities of the national industry and market and might want to include or not malt-based mixed beverages and so called 'wine-coolers'.

Option 2.a would be more efficient and easier to implement than option 2.b. Adopting a definition for alcopops runs the risk of creating a new tax incentive to develop substitute products. This would result in further amendments to take account of future developments. Cider and perry are traditional products and the basis of their production remains the fermentation of apples and pears.

Implementation of **Options 3.a and 3.b**, as they fall outside of the remit of the excise duty system, would require a larger consensus at the international level, in order to avoid any hurdles and uncertainty affecting the international trade. **Option 3.a** is currently underway and expected to be completed by June 2018 and will complement the final option chosen.

Both options may result in reductions in demand for borderline products, which would negatively impact tax revenues of MS and the changes analysed would likely not lead to beneficial effects. Furthermore, the only benefits would come from products that would be unintendedly affected (e.g. AWP). There is some reasoned expectation that consumers' preferences would largely shift to other alcoholic beverages, so the net tax loss would be mitigated. Overall however, a minor tax loss can be expected, since the main alternatives to borderline products are more lightly taxed.

All options would have the recurring benefit of a reduction of administrative burden and would involve one off costs. As a result the balance of costs and benefits would shift over time. The costs of **Option 1** would be offset within 5 – 6 years, whereas **Option 2** would take longer (10 years or more). **Options 3.a** and **3.b** require more effort and resources of more stakeholders and therefore it is difficult to estimate the balance of costs and benefits of these options beyond a reasoned assumption that their implementation could be significantly hampered.

Coherence

All policy options have competition and market effects. **Option 1** would negatively impact the demand for borderline products and may impact non target products unintentionally. Furthermore in the absence of robust criteria this could have a severe impact on trade as the BTI tool would no longer ensure the same tax treatment of a product across the EU (including imported products). **Option 2** would increase harmonisation across the EU market but like option 1 may unintentionally impact non target products. **Option 3** would be effective as the uncertainties relate to customs classification and the differentiation of EPC and these options would improve the functioning of the internal market.

All options may be seen through the eyes of stakeholders as incoherent in terms of correspondence with the present national legislation or practice. Defining a product definition or providing guidance on classification will inevitably impact some countries more than others, depending on which approaches and definitions are chosen. However, given that the lack of coherence in applying tax and customs treatment to the products broadly classified under OFB is the very problem at stake behind the present initiative, the coherence aspects should be seen from the perspective of the single market. In that case all options are coherent with the objective of ensuring smooth functioning of the internal market and ensuring coherence of product treatment in each geographical market. The difference will lie in the effectiveness and efficiency with which this sought for coherence will be achieved, which distinction is duly analysed under the two other respective comparison criteria.

All options are also broadly coherent with the Council conclusions calling for the necessity to prevent ambiguities leading to distortions of competition between businesses and to apply harmonised conditions and rules for taxing alcohol and alcoholic beverages. The Council specifically recognised the need to clarify and to harmonise further the classification rules for products manufactured as mixtures of different categories of alcoholic beverages or as mixtures with non-alcoholic beverages or OFB in order to unify the treatment for excise purposes of the same products across the MS, and so ensure legal certainty and clarity for businesses.

Option 1 would be coherent with the CJEU rulings and is likely to be less disruptive to MS as this is the current criteria used by MS to classify these products. However the current work on the CN codes (**Option 3.a**) would also need to be incorporated into **Option 1** to ensure consistency of approach. Defining cider, perry and fruit wines (**Option 2.a**) would be in line with other alcoholic beverages such as wine and spirits, which have sectoral definitions. Aligning a sectoral definition with a new category for traditional OFB would ensure coherent across EU legislation (**option 4.a)**.

7.2.2. *Stakeholders views*

The level of agreement between the OPC respondents is mixed and can be easily related to the perspective of specific segments of the industry and / or interest of other nature. Respondents often conceded that there can be added value in a general clarification of the current situation, however they believe that the perceived risks of a legislative change tend to outweigh the perceived benefits across all respondent groups with the exception of private individuals. A clear majority of industry respondents believe that a revision of the OFB tax category would generate negative effects on all fronts, including adverse effects on international trade, classification uncertainties and disputes and market distortions.

Almost half of respondents (48%) agree that beverages like cider and perry should be defined separately and not under the generic OFB label (24% disagreed with the option). This increases to 53% of stakeholders with an interest in the cider sector with the remainder neutral and to 68% of private individuals.

In terms of the approach to the classification of certain alcoholic beverages, 68% of respondents agreed, if not strongly agreed with incorporating relevant parts of CJEU judgements into the Directive. The option of creating a new category for cider, perry and fruit wine was positively received by the beer and cider industries (56% and 64% respectively) but only 35% and 38% of wine and spirits producers agreed with this option. However private individuals strongly supported the new category with 69% in favour of this option.

73% of respondents to the OPC would like the meaning of the concept of 'entirely of fermented origin' clarified so as to define the status of products containing AFC, with only the spirits industry expressing a more cautious opinion. A mixed response was received in relation to non-regulatory options.

41% of respondents to the OPC supported the amendment to the EPC to separate OFB from wine. A further 29% expressed a neutral position, while 30% of respondents disagreed.

7.2.3. *Comparison summary and preferred option/package of options*

Option **EFFECTIVENESS**	**1 – CJEU rulings**	**2a– new sub category for cider/ perry**	**2b– new sub category for other mixed drinks**	**3a – CN EN**	**3b – non binding guidelines**	**4a – sectoral definition**	**4b - EPC**	**No change***
ensuring fair treatment of businesses across all alcohol sectors	-	++	+	-	-	-	**0**	**0**
preventing and correcting any distortions of competition	-	+	+	**0**	-	-	**0**	**0**
providing clear rules on the scope, classification and calculation of duties for businesses and MS	-	+	-	-	-	-	**0**	**0**
providing clear and efficient conditions to determine denaturation procedures	n/a							
reducing administrative burden and compliance costs for businesses and tax authorities	**0**	-	- -	**0**	+	**0**	-	**0**
provide legal certainty	-	++	+	**0**	**0**	**0**	**0**	**0**
strengthening the fight against fraud and tax evasion	n/a							
improving human health protection	n/a							
EFFICIENCY								
administrative burden	**0**	-	- -	**0**	+	**0**	-	**0**
tax revenues	**0**	-	-	-	-	-	**0**	**0**
COHERENCE								
	+	+	+	++	++	+	+	**0**
OVERALL	**0**	++	+	**0**	**0**	**0**	**0**	
STAKEHOLDERS OPINION	++	+	**0**	**0**	**0**	+	+	

The preferred option whose deployment would be crucial to achieve the objectives is **Option 2.a** splitting *the OFB category into two subcategories* of which one would maintain the current treatment, while the other would ideally comprise of all traditional OFB products (i.e. cider and perry etc.) which would be defined and treated separately. While this option has downsides, including increased burden on businesses and tax authorities, this is the preferred option as this

would reduce the disparities of treatment of similar products and would ensure the effective operation of the reduced rates for small cider makers (if introduced).

Work is currently underway in improving the CN explanatory notes (Option 3.a), which as a complimentary option would assist in reducing classification disparities. Therefore, this approach alongside the non binding guidelines under Option 3.b could also form part of the preferred option package as they can improve the overall effectiveness of the functioning of the OFB category through providing operational definitions, criteria and methods, irrespective of what changes to this category will have been made. In other words, Options under cluster 3 would work just as well with Option 1 as with Option 2 or independently (albeit less effectively) and there is no reason to not include them in the preferred package. Options under cluster 4 could also form part of the preferred package going forward. Also these are complimentary options which would improve the functioning of Option 2.

The ***package of options*** under the cluster of measure relating to the classification issus is therefore composed of the main ***Option 2.a*** accompanied by ***Option 3.a /Option 3.b/Option 4.a/Option 4.b*** on a complementary basis.

7.3. Dysfunctional application of reduced rates

As the problems related to the application of reduced rates are multifaceted and independent from one another, the options are compared in sub-clusters related to the specific problems, following as well the logic of the presentation of impacts earlier on.

7.3.1. *Comparison of options*

Options under cluster 1: Improve the functioning of reduced rates for small breweries

Effectiveness

In terms of legal costs, the overarching rationale for both options and sub-options is to reduce the legal uncertainties and disparities of interpretations of 'legally and economically independent' and to improve the cross-border functioning of the scheme. The choice of the means to introduce this policy option – hard versus soft law – would have impacts over the level of legal certainty achieved.

Option 1.a.1 would involve a regulatory amendment of the Directive, which will ensure the policy objective of legal certainty is achieved. However due to the fast changing industry, this may result in a definition becoming obsolete with new developments. Option 1.a.2 would allow for a degree of subjectivity, which could quickly address any new market developments. This would enable MS to resolve any new issues without resorting to binding legislation, based on the consensus of national authorities. However MS would retain the power to apply it or not. The creation of an uniform certificate (option 1.b) for recognising small brewers would be a regulatory amendment and therefore ensuring legal certainty for businesses.

Efficiency

Currently the reduced rates for small brewers works well for the main and does not generate unnecessary administrative burdens or enforcement costs. The clarification of the term 'legally and economically independent' would not result in any increased costs for the various stakeholders but would improve the overall efficiency of the relief.

The verification of small brewers would have some administrative burdens or enforcement costs for ecomomic operators or public authoritites. The development of a certificate would result in a small increase in administrative burdens for ecomomic operators (estimated at 7.5% of total

burdens from the scheme). Public authorities would incur modest additional costs, which would be higher for an uniform certificate.

Coherence

All options would improve the domestic and cross-border functioning of the small brewers relief. The increased legal clarity of the regulatory options would increase the ease of doing business for cross-border businesses and ultimately improved their competitiveness. The impact of the non binding options are similar to the regulatory options but the magnitude of their effects may be lower if MS chose not to implement the guidelines.

Option 2: Extending the reduced rates to small cider makers

Effectiveness

The aim of the existing reduced rates scheme for small brewers is to support the competitiveness of SMEs vis à vis large players. The extension of this scheme to small cider makers would enhanced the competitiveness of these producers with limited adverse effects in terms of foregone revenues and administrative burdens.

Efficiency

This option would impact tax revenues for public authorities, however on the whole these impacts are negligible with modest impacts in the traditional cider MS of UK and IE. Small cider makers would gain relatively to large producers but market effects are estimated to remain small, given the limited amount of sales covered by the reduction.

In terms of costs for businesses, these would be similar to that of small brewers, which are negligible at EUR 0.32/hl. From an enforcement perspective, due to the numbers of businesses involved, the amount of excise revenues involved and the marginal role of cross-border trade there would be no significant requirement for additional resources.

Coherence

The public health effects of the reduced rates would be limited with only noticeable impacts in the traditional cider MS, such as IE and the UK.

Option 3: Increasing the threshold for low strength alcohol

Effectiveness

Low strength alcohol provisions are largely unused due to the low threshold which is irrelevant for most of the beer market, with the exception of radler and a few other beers. The brewing industry has reacted to the health conscious consumer and is developing more low strength beers. It is more costly to brew low strength beers and this relief would support the competitiveness of these products with limited adverse effects in terms of foregone revenues and administrative burdens.

Efficiency

As this option would reduce the rates for low strength alcohol, it would impact tax revenues for public authorities. These impacts are negligible for MS due to limited volume of sales that would be covered by increasing the threshold at which reduced rates apply for low strength alcohol. There would be no significant, if any, requirement for additional enforcement resources. Similarly there would be little, if any, additional costs for businesses.

Coherence

It is not clear in the Directive as to the objective of this reduction and therefore it is difficult to judge its coherence. However reduced rates promote an alternative to high strength beers in line with public health objectives.

7.3.2. *Stakeholders' views*

Respondents to the OPC agreed with the option clarifying the rules for the cross-border recognition of small producers, as well as the rules to determine when a producer is independent. The consensus is almost unanimous within the beer industry, where more than 90% of respondents are in favour of these changes, without significant differences between SMEs and other entities. Also taking into account the whole sample of respondents, more than 60% of them agreed or strongly agreed with this option. The provision of non-binding guidelines while leaving the legislative text unchanged was also positively assessed by respondents, from both the beer industry and the overall sample. However, the support for non-binding guidelines was milder, with about half of the respondents agreeing to this.

The response to the OPC in relation to extending the reduced rates to cider was small and mixed. Producers of OFB (or representative thereof) were somehow more negative than others. However, industry responses should be considered cautiously, as only one respondent out of 31 is exclusively active in the OFB market. Tax authorities either welcomed or did not oppose the possibility of granting reduced rates to small cider makers.

Results from the OPC conducted on the revised threshold for low strength beer also provide a mixed picture. While 47% of participants who responded to this question welcome an increase in the threshold of low-strength beer from 2.8% to 3.5% vol, 44% of participants disagree with this policy option. Most respondents who support the raise in the threshold for low-strength beer are beer producers, while most respondents against it are other alcoholic beverages producers.

7.3.3. *Comparison summary and preferred option*

Option **EFFECTIVENESS**	**1.a.1 – amend Directive**	**1.a.2 – non binding guidelines**	**1.b.1 - recognition**	**2 – small cider makers**	**3 – low strength**	**No change***
ensuring fair treatment of businesses across all alcohol sectors	++	++	+	+	+	**0**
preventing and correcting any distortions of competition	++	++	++	++	+	**0**
providing clear rules on the scope, classification and calculation of duties for businesses and MS	+	+	++	+	++	**0**
providing clear and efficient conditions to determine denaturation procedures	n/a					
reducing administrative burden and compliance costs for businesses and tax authorities	+	+	+	**0**	**0**	**0**
provide legal certainty	++	+	++	++	+	**0**
strengthening the fight against fraud and tax evasion	n/a					
improving human health protection	n/a	n/a	n/a	0	0	0
EFFICIENCY						
administrative burden	+	+	+	**0**	**0**	**0**
tax revenues	**0**	**0**	**0**	**0**	**0**	**0**
COHERENCE						**0**
	+	+	+	+	**0**	
OVERALL	+	++	++	++	++	
STAKEHOLDERS OPINION	++	+	+	+	+	

Defining the term 'legally and economically independent' is the ultimate aim of option 1.a, which could be achieved by a regulatory or non-regulatory approach. It should be noted that a certain level of consensus already exists among MS authorities and as non-binding interventions have already proved effective in defining the conditions of applying reduced rates to small brewers, therefore the net benefits of using a non-binding instrument would seem to outweigh those of a legislative revision.

In terms of improving the cross-border implementation of this relief, the regulatory ex-ante approach (**Option 1.b.1**) as a complement to **Option 1.a.2** is preferred to the current absence of a harmonised approach, as this would ensure consistency throughout the EU. The preferred option is therefore a combined **Option 1.a.2 + 1.b.1**.

Option 2 on the extension of the reduced rates to small ciders makers and the increase of the alcoholic threshold (**Option 3**) to which reduced rates are applicable for beer are the policy choices for their respective problem areas.

The ***package of options*** under the cluster of measures relating to reduced rates issues is therefore composed of the combination of **Option 1.a.2, 1.b.1, Option 2 and Option 3.**

7.4. Unclear provisions to measure Plato degree for sweetened / flavoured beer

7.4.1. *Comparison of options*

Effectiveness

As discussed above, policy option 1 and 2 have the same target (i.e. selecting a harmonised approach for the measurement of Plato degree of sweetened/flavoured beer) but are based on different measures: a regulatory amendment of Art. 3(1) (option 1 and its sub-options) or non-binding guidelines (option 2 and its sub-options). The extent to which the options will meet the policy objectives clearly depends on the degree of adoption / compliance across MS. In the case of option 1 we can assume full compliance by all authorities, while the adoption of guidelines (option 2) would not be mandatory, so MS may not conform to the suggested measurement approach. This distinction is particularly important when it comes to impacts on legal certainty, since the persistence of disparities of interpretation across the EU may eventually encourage rather than decrease the risk of disputes between businesses and tax authorities, especially in MS that would eventually not adopt the Commission's guidance. As noted above all stakeholders interviewed advised that they would only reluctantly switch away from their current approach unless binding changes are made in the Directive.

Efficiency

Policy options 1 and 2 do not pose any (in)efficiency problems although both would require some adjustment costs in the adaptation of some control and monitoring processes. It should be recalled that different MS will have different baseline scenarios, depending on which method they currently use and to which method they would need to switch. From the analysis of impacts it is apparent that selecting ***approach A or B1*** would result in an overall decrease in excise receipts from sweetened/flavoured beer of more than EUR 30 million (about -25%), compared to the baseline situation. Selecting ***approach B2*** would result in relatively smaller changes since this is the approach currently in force in most of MS and also the one generating the highest excise revenues. Moreover, approach B2 that allows authorities to perform checks directly on the end-products, with no need for on-site inspections and/or measurement during the production process, would be more cost-effective. It could be argued that ***approach B2***, as less disruptive and more widespread already, would be, collectively, more efficient.

Coherence

Directive 92/83/EC gives MS the choice to levy excise duty on beer on the basis of either the number of hectolitres/degrees Plato or the number of hectolitres/degrees of ABV. The coexistence of the methods was analysed in the Ramboll evaluation, which concluded that this situation created no major difficulties or negative consequences for the internal market. This conclusion was widely supported by MS and beer producers as the Plato measurement is based on long-standing tradition in many MS.

None of the retained options clarifying the measurement method stand in contradiction to this preference and all options are therefore in principle coherent with the legislation and with the smooth functioning of the single market. As stated in the present impact assessment, the problem at stake regarded not the relevance of existence of the Plato/AVB methods but the stakeholders – authorities and businesses - understanding of Art. 3(1) with regard to at what point in the production process the degree Plato should be measured.

Since the choice of option implies switching to one or the other Plato measurement approach, it will inevitably impact some countries more than the others. From the perspective of countries which will need to adjust their processes and procedures to comply with the new approach, the options could be perceived as incoherent in terms of correspondence with the present national practice. However, given that the lack of coherence in application of the Plato measurement method is the very problem at stake behind the present initiative, the coherence aspects should be seen from the perspective of the single market. In that case all options are coherent with the objective of ensuring smooth functioning of the single market and ensuring coherence of product treatment in each geographical market.

In terms of external coherence, the Plato measurement, being of technical nature, has no perceived impact on other EU policies, regardless of the chosen option.

7.4.2. *Stakeholders views*

The level of agreement of the OPC participants varies. A small majority of respondents (53%) believe it is necessary to amend Art. 3(1) of the Directive and to clarify the term ‘finished product’ with regard to sweetened/flavoured beer; however, 38% disagree with it. The percentage of stakeholders against an amendment of Art. 3(1) grows if only beer industry respondents are considered (56%, against only 37% in favour of a policy change).

There is instead greater consensus on the need to provide non-binding guidance on this issue: 61% of respondents (and 70% of beer industry stakeholders) are in favour of non-regulatory approach under option 2 and its sub-options. In their qualitative contribution to the OPC, several industry players mentioned the need to adopt either approach A or B1, as approach B2 in their view is ‘technically incorrect’. Interestingly, some respondents have emphasised that the most effective solution would be the application of the ABV method to sweetened/flavoured beer. A few respondents were concerned of the uncertainty and believe that significant room for tax fraud would be generated by selecting approach A or B1.

In some MS included in the studied sample, all stakeholders (including beer producers) would only reluctantly switch away from approach B2. In other MS, brewers exerted some pressure to stop using approach B2, despite the latter being the preferred approach by tax authorities; these countries may be more open for a change. MS currently adopting approach A or B1 are unlikely to change to approach B2 unless binding changes are made in the Directive.

7.4.3. *Comparison summary and preferred option*

Option: A (before sugar) B1 (real extract) B2 (present extract)	**1.A – reg.**	**2.A – non reg.**	**1.B.1 – reg.**	**2.B.1 – non reg.**	**1.B.2 – reg.**	**2.B.2 – not reg.**	**No change***
EFFECTIVENESS	*regulatory (reg.) and non-regulatory (non reg.)*						
ensuring fair treatment of businesses across all alcohol sectors	++	+	++	+	++	+	**0**
preventing and correcting any distortions of competition	++	+	++	+	++	+	**0**
providing clear rules on the scope, classification and calculation of duties for businesses and MS	++	+	++	+	++	+	**0**
providing clear and efficient conditions to determine denaturation procedures	n/a						
reducing administrative burden and compliance costs for businesses and tax authorities	+	+	+	+	+	+	**0**
provide legal certainty	++	+	++	+	++	+	**0**
strengthening the fight against fraud and tax evasion	n/a						
improving human health protection	n/a						
EFFICIENCY							
administrative burden	+	+	+	+	+	+	**0**
tax revenue	-	-	-	-	**0**	**0**	**0**
COHERENCE							
	+	+	+	+	+	+	**0**
OVERALL	**-**	**0**	**-**	**0**	**++**	**+**	
STAKEHOLDERS OPINION	+	++	+	+	+	++	

The objective of legal clarity in this area is necessary as divergent interpretations of the term 'finished product' exist within the EU. While the regulatory and non-regulatory options would result in similar impacts on the markets, the compliance with these options may differ. Given the clear benefits for all of legal certainty, the options of amending the Directive are the preferred option as being the only one that would ensure compliance. When it comes to choosing between approaches B1 and B2, the key distinction between the two is the efficiency of their implementation. As argued above, the approach B2 is considered – collectively - less disruptive to the internal market as a whole and raising most excise revenues for the MS.

Taking these considerations into account, the ***preferred option*** appears to be a legislative revision of the Directive, standardising approach B2 of Plato measurement – ***Option 1.B.2***.

It must be recalled at this point in time that the preferred option stems directly from the objective analysis but it does not take into account the upcoming CJEU ruling. The precise scope and the extent to which the CJEU will clarify all outstanding uncertainties of the Plato situation is unknown. If the CJEU rules contrary to the preference stated above, the former will take precedence and the jurisprudence will be duly reflected in the revised Directive.

7.5. Summary of preferred package of options

This paragraph provides an overview of the preferred options corresponding to the identified problems.

7.5.1. *Dysfunctions in the application of exemptions for denatured alcohol*

Mutual recognition of CDA

The preferred option is a regulatory amendment of the Directive to ensure that the divergent interpretations involving MS that have notified CDA formulations other than the Eurodenaturant will be eliminated and legal certainty will be achieved **(Option 1).** This option means a codification of the existing practice. Each MS would have to recognise CDA produced in another MS using the formulations notified by that particular MS, but not those notified by any other MS. This would mean that MS retain control over the CDA produced within their territories, while being obliged to also exempt any CDA legally produced in another MS. This option will reduce any remaining trade barriers and distortions and consolidates MS desires for a harmonised solution for CDA into a legal text.

PDA formulations

The preferred option is a regulatory amendment of the Directive to clarify the unclear wording of the Directive to increase the legal certainty for indirect uses and 'finished product' containing PDA **(Option 4)** accompanied on an optional basis by **Option 3** (capacity/confidence building measures). The clarification would make reference to a 'finished product' in order to provide MS with flexibility for the various product groups using PDA. This option would also define a quantitative line above which a product containing denatured alcohol must always be moved in accordance with Chapter IV of Directive 2008/118/EC. This will be included as an amendment to the Directive. This option would eliminate the ambiguity and uncertainty that currently exists in relation to PDA. Moreover, it would ensure equal treatment of goods containing PDA across the EU and reduce the risk of costs associated with disputes between businesses and national authorities.

7.5.2. Dysfunctions in the classification of certain alcoholic beverages

The preferred option is to split *the OFB category into two subcategories* of which one would maintain the current treatment, while the other would ideally comprise of all traditional OFB products (i.e. cider and perry etc.) which would be defined and treated separately (**Option 2.a**). This option aims to differentiate the OFB products that arguably correspond to the original definition and intention of the legislator from the 'novel' products that have been opportunistically designed to fit into it or simply that do not fit elsewhere. This option would result in legal certainty at EU level and a consistent treatment of borderline products across MS since it would make the current national level non-harmonised distinctions unnecessary. This option can be complemented, on an optional basis, by **Option 3.a /Option 3.b/Option 4.a/Option 4.b**.

7.5.3. Dysfunctional application of reduced rates

Legally and economically independent small brewer

The preferred option is to define the term 'legally and economically independent' by non-binding guidelines (**Option 1.a.2)**. Such definition would encompass the general norms and principles as well as detailed technical specification outlining the legal conditions which could determine if companies are independent or not. There is already a certain level of consensus among MS authorities and non-binding interventions have already proved effective in defining the conditions of applying reduced rates to small brewers.

To ensure that the conditions for recognition of small brewers are the same in each MS, the preferred option is to identify small brewers through a uniform certificate, defined via a Commission Implementing Regulation (**Option 1.b.1**). This certificate would need to be presented when a small brewery would like to claim reduced rates in a MS other than that of establishment. This certificate should be provided, upon request, by all customs authorities to all businesses up to 200,000 hl, regardless of whether they can access reduced rates in their country

of establishment. This certificate could be developed through the Fiscalis programme and would guarantee equal conditions for small brewers active across borders.

Extending reduced rates for small producers to other sectors

To address the unfair competition between small producers of alcoholic beverages, the preferred option is to amend the Directive and extend the reduced rates to small cider makers (**Option 2**). As for the small brewers reduced rates, this reduced rate would remain optional for MS. It would be based on the definition of an independent producer and a maximum discount rate compared to the standard rate would be fixed. The maximum yearly output threshold would be 15 000 hectolitres per year to allow small cider makers to benefit from the reduced rates if MS make use of the option to apply a reduced rate. This option has limited impacts in terms of costs and would improve the competitiveness of cider makers.

Increasing the threshold for low strength beer

The preferred option is to increase the threshold to which reduced rates are applicable to beer as this would encourage the development of low strength beers **(Option 3).**

7.5.4. Unclear provisions to measure Plato degree for sweetened / flavoured beer

The preferred option is to clarify the definition of 'finished product' by outlining when the measurement of Plato degree should occur (Art. 3(1) of the Directive) (**Option 1.b.2**). This option consists of a regulatory amendment to clarify that the term 'finished product' refers to the end-product that is released for consumption, meaning that that sugars or flavours added after fermentation would contribute to the Plato degree. This option would provide legal clarity of the term 'finished product'. The regulatory amendment will ensure full compliance and is the least disruptive of the internal market, taking account of the current approaches on national level.

8. REFIT (SIMPLIFICATION AND IMPROVED EFFICIENCY)

8.1. Context, methodology and constraints

Revision of Directive 92/83/EEC on the structures of excise duty on alcohol and alcoholic beverages is part of the Commission's REFIT programme. One of the original objectives behind the Ramboll study was to identify weaknesses in the legislative environment caused by the Directive resulting in negative consequences for the stakeholders (e.g. obstacles to the functioning of the internal market, competitive disruptions, administrative and compliance costs.)

Before analysing further, it is important to understand that despite this original level of ambition, the Ramboll evaluation[28] and the Study clearly concluded that, overall, ***Directive 92/83/EEC did not directly impose compliance costs on economic operators***. Instead by including certain products in the scope of excise duty, the Directive indirectly subjected those products to the provisions of Directive 2008/118/EC, which sets out the rules and conditions for holding and moving excise goods. Additionally, MS exercise some level of flexibility regarding provisions at national level and requirements regarding certain procedures (see below).

[28] See: Chapter 2.5, p. 36 of the Ramboll evaluation

The resulting room for diverging interpretation since 1992 involuntarily allowed economic operators, as well as national tax administrations, to establish their own *modus operandi*. Most of the problems identified – as described in the problem definition section – were specific to certain markets or certain products. In terms of REFIT objectives, these focused particularly on those areas where economic operators reported burdens. Taking into account the considerations presented above, in the case of Directive 92/83/EEC the REFIT discussion is therefore shifted from not so much the *excessive* costs and burdens to *unnecessary* costs and burdens, which could be avoided if the Directive functioned better.

Overall, evidence collected in the Ramboll evaluation, the Study and feedback gathered from the day-to-day application of the Directive's provisions led to the conclusion that there was nevertheless a perceivable – albeit hardly quantifiable – ***lack of legal certainty*** over the treatment of specific products, leading in turn to potential additional costs to economic operators. The lack of certainty could be classified under the 'hassle' or 'irritation' costs, which are often linked to administrative burdens and constitute residual category of direct costs, which are difficult to quantify or monetise and to relate to a specific information obligation. Such costs could include administrative delays, opportunity costs of waiting time, etc. The stakeholders were not in a position to provide any estimates of the monetary impacts of the lack of legal certainty; what we have obtained were the subjective opinions of the best placed stakeholders: the economic operators and administrations. These aspects are nevertheless an important indicator of the 'well-being' of the stakeholders.

As stated above, the majority of problems relate to the legal uncertainty that the economic operators experience with production, use and/or movement of some alcoholic products (governed by different law even though the stakeholder may not be aware of it). For example, in the area of denatured alcohol, the main concern of the economic operators regarding administrative burdens was linked to the specific requirements regarding supervision of production and movement of products containing denatured alcohol, which cannot be directly linked to the provisions of the Directive 92/83/EEC, and which represented a mix of compliance with the above-mentioned Directive 2008/118/EC or the national-level response of some MS to their estimations of the risk of fraud. In the area of classification, the Ramboll evaluation concluded that the classification of most alcoholic beverages from an excise perspective was generally straightforward and resulted in little to no direct administrative burdens. It identified at the same time ***costs resulting from the complications and disputes*** arising from situations in which the stakeholders disagree on the correct interpretation of the provisions of the Directive.

Therefore, in the context of the present initiative, the ***REFIT aspects related predominantly to identifying opportunities for simplification, reduction of inconsistencies, gaps and other ineffective measures*** which can lead to unnecessary costs. Most of the opportunities are linked to elimination of the legal uncertainty over the interpretation of certain ambiguous provisions.

Both the Ramboll Evaluation and the Study attempted to gather estimates of these costs. Unfortunately, only anecdotal evidence (and without monetised disadvantages) was available where the problems resulted in legal disputes before the CJEU. For example, in terms of the classification problems, the economic operators were not in a position to provide precise monetary quantification of the expected cost due to the varied nature of the legal cases reported (e.g. depending on the evolution of a given case, the economic importance of the disputes, the willingness of the parties to settle the matter via the judicial system, etc.). Some anecdotal evidence was provided by a few MS or economic operators, relating to specific cases. Such evidence is duly reported under the problem definition of this report to illustrate the problems, but cannot stand for the baseline against which any cost and burden reduction measurement could be calculated.

Having no baseline, it was equally, if not more difficult to estimate any potential benefits of the proposed changes. This difficulty is reflected in the table below, where the analysis of the expected regulatory benefits is presented qualitatively. Any estimates provided are often hypothetical, based on a rigorous set of assumptions which were explained under each specific option under the analysis of impacts. Moreover, most of the quantification relate to the cost side of the REFIT given that most of the benefits did not have a quantifiable base to start from. That should by no means indicate that there would be no REFIT-type benefits stemming from the initiative. To the contrary, the Study concluded that the additional regulatory costs to comply with any new rules are mostly one-off and not significant in the broader scale, quickly offset by the benefits. The difficulty lays in the lack of numerical baseline values for most of the data.

To conclude, it should also be noted that the burdens stemming from (mostly) legal uncertainty would have been burdens only to the businesses operating fairly in the markets. The burdens for them would however be an opportunity for those businesses who intended to profit from the unclear legislation by, for example, marketing products that would resemble high alcohol content products taxed at a higher rate but which would fall under the preferential OFB category. In such situations, the net beneficiaries of the initiative would be the honest businesses trying to comply while being exposed to unfair treatment. Since the Study concluded that the additional costs and burdens for any solution were found marginal and off-set by benefits, it could be concluded that the net outcomes will be globally positive for all stakeholder negatively affected by the status quo.

Summary of REFIT costs and costs reduction

REFIT Cost reduction – Preferred Option(s)				
	Description	**Estimates**	**Comments**	**Main beneficiaries**
PROBLEM 1 Denatured alcohol	Minor positive impacts for producers that sell **CDA** to MS with different national formulations, and users of CDA in these MS stemming from lower risks of disputes with authorities of the receiving MS	n/a	The reduction of the hassle costs – and subsequently elimination thereof - associated with the disputes and delays due to non-recognition of CDA methods were not possible to estimate	CDA producers operating cross-border
	Cost savings stemming from enhanced clarity surrounding the legal meaning and uses of PDA which would ensure equal treatment of goods containing **PDA** across the EU and reduce the risk of costs associated with disputes between businesses and national authorities	n/a	The savings stemming from the legal costs related to disputes over the PDA and their use in other products - and subsequently elimination thereof- are case-specific and the baseline values were not reported by the stakeholders to allow for estimations of benefits	PDA users and producers operating cross-border National administrations (customs laboratories)
PROBLEM 2 Classification	Legal certainty at EU level and consistent treatment of **borderline products** across MS. However, the distinction between the products may lead to the creation of new borderline products which could, in worst case scenario,	**Overall burden** not expected to change significantly (€ 2.0 – 2.5 million) **Familiarisation cost**: approx. €4,500 per company (including	One-off reclassification costs of familiarisation costs, updating of the IT systems, and national procedures, training for economic operators are to be expected. These costs would be offset by the benefits in 10 years or more	Cider/perry producers across the EU National administrations

	neutralise benefits of any new clear definition	overheads) or aggregated burden of € 4.5 million **IT updates**: approx. €800 per company or aggregated burden of to € 6.9 million.		
PROBLEM 3 Reduced rates	In terms of recognising the status of a legally and economically independent brewery, more legal clarity and ease of doing business for cross-border economic operators will result thanks to the **EU-wide certificate** for small breweries	**Recognised small brewers**: total burdens for 675 operators in the sample MS: approx. €13 000 or 2% of the burdens estimated for the overall scheme; **Not yet recognised small brewers**: total burden for 180 operators in the sample MS not under the scheme: approx. €32 000 or 5% of the burdens estimated for the overall scheme.	Established / recognised small brewers would incur limited administrative or enforcement costs (equalling to asking for the certificate), while these who are not recognised as small brewers would need to prove their status first	Small breweries across the EU
	In terms of extending the reduced rate scheme to small cider makers, the burdens associated with compliance with the scheme would be similar to those incurred by small breweries	**Annual burdens per small cider maker:** approx. €178 per economic operator or an aggregated total for the sector of €200,000 annually		Small cider producers across the EU
PROBLEM 3 Plato degree	Legal certainty and reduction in legal costs of judiciary disputes stemming from eliminating disparities of interpretation of **Plato measurement methods** across the EU	n/a	The amount of legal costs related to disputes over the measurement method for excise tax base were not provided by the stakeholders, which makes it impossible to estimate savings linked to their elimination	Breweries National administrations

9. HOW WOULD ACTUAL IMPACTS BE MONITORED AND EVALUATED?

The monitoring of the implementation and functioning of the revised rules will be role of the ExComm, an advisory committee on excise issues chaired by the Commission in which representatives of all MS participate. The ExComm will report on any problems with the implementation and the evolution of problems with the functioning of the Directive as addressed in this impact assessment, and discuss and clarify possible interpretation issues between MS regarding the new legislation. In case new legislative developments are required, the ITEG might be further consulted.

MS and the Commission will evaluate the functioning of the evolutions provided for in the new legislation. To that purpose, MS will communicate to the Commission any relevant information as regards the level and the evolution of the regulatory costs, legal certainty, economic distortions and market abuse, excise fraud, etc. necessary for the evaluation of the effectiveness, efficiency,

coherence with other interventions with similar objectives, and continued relevance and EU added value of the new legislation. The evaluation should also seek to collect input from all relevant stakeholders as regards the level and the evolution of their administrative burden and compliance costs or instances of market distortions. The Commission will prepare the evaluation at the earliest 5 years after its entry into force, allowing the markets to adjust and the results and impacts to materialise.

Without prejudging the exact scope and extent of the future evaluation and the ongoing monitoring, both of which will live and evolve together with the functioning of the revised Directive, the tables in Annex 18 provide an indicative overview of key expected ***results*** and/or ***impacts*** and accompanied by examples of possible indicators expected to feed into their assessment.

The indicators are set either at the ***result-level*** (e.g. *number of instances of non-compliance, number of law cases, existence and number of diverging interpretations, reduced cross-country disparities*, etc.) or at the ***impact-level*** (e.g. *changes in the market structure of the OFB, revenues from excise duties, improved competitiveness, reduced scope for misclassification, costs savings and investment,* etc.). The result-level indicators can and will be regularly reviewed through the works of the committees and the Commission and will feed into the future evaluation. The impact-level indicators, given their far-reaching nature, sheer complexity and burdens associated with their collection and/or assessment, will only be analysed at the moment of the retrospective evaluation through a multi-pronged approach involving many stakeholders and detailed data. This distinction is marked in the monitoring and evaluation table in Annex 18 and is important to retain.

Additionally, since the industry producing and/or using alcohol and alcoholic beverages is active and closely follows the work of the Commission, it is expected that any issues related to the application of the new rules, would be reported without much delay directly by the stakeholders. That could be done either by contacting the respective Commission services or through tabling of motions for actions through the REFIT Platform, for example[29].

It would have been preferable to set success criteria and benchmark values for the expected changes. However, having no firm value for most of the problems (detailed analysis and explanations are included in the annexes relating to drivers of the problems as well as Chapter 8 on REFIT considerations), it is unfeasible to set measurable targets. Presently, it is only possible to foresee analysis of trends or market structures, which would be done mostly through a full economic study accompanying the future evaluation.

[29] Proposals tabled to the REFIT platform already took place in the excise duty on alcoholic beverages: XVIII.12.b on reducing the room for diverging interpretations of rules for the wine and spirits industry and XVIII.12.a from the whiskey producers;