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#### COVER NOTE

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From: Secretary-General of the European Commission,  
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 25 May 2018

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of  
the European Union

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Subject: COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY  
OF THE 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

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Delegations will find attached document SWD(2018) 258 final.

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Encl.: SWD(2018) 258 final



Brussels, 25.5.2018  
SWD(2018) 258 final

**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE 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) 259 final}

## Executive Summary Sheet

Impact assessment on a proposal for the revision of Council Directive 1992/83/EEC on the harmonisation of the structures of excise duties on alcohol and alcoholic beverages

### A. Need for action

#### Why? What is the problem being addressed?

According to the Commission Report submitted to Council in October 2016, which was based on an independent study carried out in 2014/2016, Directive 1992/83/EEC has proven to be effective and generally appropriate for the collection of excise duties on alcohol and alcoholic beverages.

Nevertheless some problems have been identified and inefficiencies persist causing possible distortions of the internal market:

- Dysfunctions in the application of exemptions for denatured alcohol
- Dysfunctions in the classification of certain alcoholic beverages
- Dysfunctional application of reduced excise duty rates
- Unclear provisions to measure the Plato degree of sweetened / flavoured beer

#### What is this initiative expected to achieve?

The initiative seeks to achieve:

- the equal fiscal treatment of economic operators across all alcohol sectors, including small producers of all types of alcohol
- the prevention and correction of any distortions of competition in the application of exemptions for denatured alcohol and reduced excise duty rates
- the provision of clear and efficient rules for all types of denatured alcohol and its uses
- the reduction of administrative burdens and compliance costs for economic operators and tax authorities
- legal certainty in the area of classification, the exemption for denatured alcohol and the Plato degree of sweetened / flavoured beer
- the reduction of fraud and tax evasion, specifically in the area of denatured alcohol.

#### What is the value added of action at the EU level?

It is apparent that the functioning of the current EU legislation for the structure of excise duties on alcohol and alcoholic beverages is causing disturbance to both Member States and economic operators. No action at EU level coincides with the business-as-usual situation, where:

- divergent interpretations and legal uncertainty will persist
- adverse impacts on the internal market functioning will continue
- competitive distortions will persist
- implementation problems will remain resulting in administrative burdens and compliance costs for economic operators and Member States

### B. Solutions

#### What legislative and non-legislative policy options have been considered? Is there a preferred choice or not? Why?

Dysfunctions in the application of exemptions for denatured alcohol

- Both legislative and non-legislative options were considered in addressing this problem. The capacity / confidence building measures as a standalone option was considered, however as a standalone option its success would be minimal. Therefore the preferred option is to clarify the wording of the Directive to increase the legal certainty within this area.

Dysfunctions in the classification of certain alcoholic beverages

- The preferred option is an amendment of the Directive to create a new category for traditional fermented beverages such as cider and perry. This would ensure consistency of implementation across all Member States. Adopting guidelines and other non-binding instruments are complimentary options which will form part of the preferred option going forward.

Dysfunctional application of reduced rates

- The options considered to ensure legal certainty in the operation of the reduced rates for small producers included a regulatory and non-regulatory option. Due to the success of previous non-binding interventions and the speed of developments in this area, the non-regulatory option is the preferred.
- Improving the cross-border functioning of reduced rate scheme could be addressed by non-binding instrument

<p>or an amendment to the Directive. In the absence of a harmonised approach, the legislative option is preferred as this would ensure consistency throughout Europe.</p> <ul style="list-style-type: none"> <li>• To ensure the equal fiscal treatment of economic operators, the preferred option is a legislative amendment to extend the reduced rates to small cider makers and to increase the alcoholic strength threshold to which reduced rates may be applied.</li> </ul> <p>Unclear provisions to measure the Plato degree of sweetened / flavoured beer</p> <ul style="list-style-type: none"> <li>• Different policy options were considered to address this issue. An amendment to the Directive is preferred, as economic operators would only reluctantly switch away from their current approach. Therefore non-binding guidelines would not achieve the objective of legal certainty.</li> </ul>
<p><b>Who supports which option?</b></p> <ul style="list-style-type: none"> <li>• Dysfunctions in the application of exemptions for denatured alcohol</li> </ul> <p>Member States support a stronger common approach in this area due to the high risk of fiscal fraud and enforcement costs in this area. Economic operators prefer the capacity and confidence building measures in order to improve the application of this exemption.</p> <ul style="list-style-type: none"> <li>• Dysfunctions in the classification of certain alcoholic beverages</li> </ul> <p>Respondents to the Open Public Consultation conceded that there can be added value in a clarification of the current situation. However they believe that the perceived risks of a legislative change tend to outweigh the perceived benefits, with the exception of private individuals. The creation of a new category for traditional fermented beverages is supported by the cider and beer industries. Feedback from Member States included that the current provisions do not fully protect their financial interests in relation to the collection of excise duty revenue and that the classification provided by the Directive is ambiguous.</p> <ul style="list-style-type: none"> <li>• Dysfunctional application of reduced rates</li> </ul> <p>Both economic operators and Member States support the options to improve the functioning of the reduced rates scheme for small producers. Both supported the extension of the relief to small cider makers. Increasing the threshold for low strength alcohol was supported by beer industry but opposed by the spirits industry.</p> <ul style="list-style-type: none"> <li>• Unclear provisions to measure the Plato degree of sweetened / flavoured beer</li> </ul> <p>A small majority of respondents to the Open Public Consultation support a regulatory amendment to clarify these provisions. Both Member States and economic operators support an amendment which is in line with their current approach.</p>
<p style="text-align: center;"><b>C. Impacts of the preferred option</b></p>
<p><b>What are the benefits of the preferred option (if any, otherwise main ones)?</b></p> <p>The benefits of the preferred options include:</p> <ul style="list-style-type: none"> <li>• Increased legal certainty</li> <li>• Reduced distortions of competition</li> <li>• Reduced administration burdens and compliance costs</li> <li>• Strengthen the fight against fraud and tax evasion</li> </ul>
<p><b>What are the costs of the preferred option (if any, otherwise main ones)?</b></p> <p>Adjustment costs for each of the preferred options would result due to the adaptation of some control and monitoring processes. These costs are mainly negligible. For a detailed breakdown of costs for each problem area, please see the Impact Assessment, Annex III.</p>
<p><b>How will businesses, SMEs and micro-enterprises be affected?</b></p> <p>The increased legal certainty would ensure a consistent treatment of economic operators throughout the EU, which will reduce cross-border disparities and distortion of competition.</p>
<p><b>Will there be significant impacts on national budgets and administrations?</b></p> <p>No significant negative impact is expected on national budgets and administrations.</p>
<p><b>Will there be other significant impacts?</b></p> <p>Excise and custom national authorities, economic operators and consumers are the main stakeholders in relation to the problems and options of this initiative. A reduction in denatured alcohol fraud will have a positive impact on public health. No impact is expected on other policy areas.</p>
<p style="text-align: center;"><b>D. Follow up</b></p>
<p><b>When will the policy be reviewed?</b></p> <p>The Commission will prepare a retrospective evaluation of the functioning of the new legislation at least five years after its entry into force, allowing the markets to adjust and the results and impacts to materialise.</p>