



Impact Assessment Institute

The Institute for Impact Assessment and Scientific Evaluation of Policy and Legislation

“Impartial Analysis for Policy Making”

Study scrutinising the

Inception Impact Assessment:

Structures of excise duties on alcohol and alcoholic
beverages - 2017/TAXUD/002

Main Findings

This study scrutinises the European Commission Inception Impact Assessment (IIA) 'Structures of excise duties on alcohol and alcoholic beverages', which concerns a possible revision of Directive 92/83/EEC, as part of the REFIT program. The IIA presents the evidence and the process in a mainly consistent manner, with an appropriate level of detail for this stage of the process and mostly leaving space for further assessment. A number of issues of concern were identified, which should be considered as this work continues.

The legislative proposal and Impact Assessment are planned for publication in Q4 2017, seven to ten months after the March publication date of the IIA. This is significantly less than the 12 months recommended in the Better Regulation Toolbox and risks being insufficient for processing of the evidence and to allow full account to be taken of stakeholders' contributions to the consultation.

The problem definition is in general coherent, but some of the statements, for example on market distortions, public health and sweetened beverages are not accompanied with fully-evidenced reasoning. The issues identified are relevant, but additional evidence on the extent to which they require a policy response is required as the legislation progresses. A similar absence of explicit evidence is found in the statements in the subsidiarity check regarding distortion of competition and the assessment of economic impacts regarding changes in rates for low strength alcohol, small producers and exemptions for private production.

One of the asserted main intentions of the revision is to link the Directive's provisions to a public health protection objective. This applies specifically to the area of reduced excise rates for beverages with low alcoholic strength, whose potential effects on public health are presented in the IIA. This area requires robust data gathering and evaluation of the evidence, including the potential for unintended consequences.

Further, it is significant that the option of eliminating product categories and applying excise duties proportionally to the alcoholic strength has not been further considered. Even if it is eventually decided that this option is not taken forward into the legislative proposal, assessment of its impacts would be important in order to inform policy makers and stakeholders fully of the effects.

When evaluating the results of the public consultation, care should be taken to ensure that statistical data on the multiple-choice responses is utilised in a coherent manner. This information can be used to inform policy making, which should be based on facts and data within the prevailing political framework.

Visualisation

The following table provides a visual overview of the results of this report for each element of the evidence presented in the Impact Assessment, using an assessment from 1 to 7 to indicate the level of confidence (1 = highest, 7 = lowest confidence level).

Element	Assessment level & description (1...7)		Notes
Rhetoric	2	Minor questions identified on analysis and/or evidence	The language used is generally balanced and neutral. Some cases of imprecise wording are present.
Assumptions	3	Several questions identified on analysis and/or evidence	The text is in generally consistent with the REFIT evaluation but several statements are not fully based on evidence.
Background data	2	Minor questions identified on analysis and/or evidence	The REFIT evaluation is thorough and generally supports what is stated in the IIA. The need to collect further data in some policy areas is correctly highlighted.
Analysis	4	Concerns identified with analysis and/or evidence	Not every policy option has been duly taken into account.
Results	3	Several questions identified on analysis and/or evidence	Expected impacts are assessed with an appropriate level of detail, but they are not always supported by explicit evidence.
Conclusions	2	Minor questions identified on analysis and/or evidence	Despite the highlighted shortcomings, the IIA leaves room for different policy paths and options.

Key to assessment levels

1	2	3	4	5	6	7
Correct analysis, fully evidenced	Minor questions identified on analysis and/or evidence	Several questions identified on analysis and/or evidence	Concerns identified with analysis and/or evidence	Substantial concerns identified with analysis and/or evidence	Serious concerns identified with analysis and/or evidence	Incorrect analysis / evidence absent

1. Introduction and General Comments

This study scrutinises the Inception Impact Assessment (IIA) ‘Structures of excise duties on alcohol and alcoholic beverages’, which concerns a possible revision of Directive 92/83/EEC.

The IIA offers an appropriate level of detail for this stage of the policy process, especially with regard to the identification of the Directive's shortcomings. This was possible because significant research work has already been carried out, through an external evaluation.

The IIA was published on 1st March 2017 and according to information given on page 1, the legislative proposal and Impact Assessment report will be published in Q4 2017. This time frame is significantly less than the 12 months recommended in the Better Regulation Toolbox and it risks being insufficient to allow full account to be taken of stakeholders' contributions to the consultation and for robust processing of the evidence.

An important element of this IIA is the intent to link the Directive's provisions to a public health protection objective, which is not explicitly stated in the current Directive. This applies specifically to the area of reduced excise rates for beverages with low alcoholic strength. The expected positive impact on public health is projected to derive from a switch, in consumers' choice, from stronger, and potentially more harmful, alcoholic beverages to beverages with a lower alcoholic strength. This is based on the assumption that the price differential will influence behaviour.

It is very important to consider, however, that Directive 92/83/EEC does not set the actual excise rates, but only general provisions regarding their determination. The minimum excise rates that Member States have to apply to each product category are set by Directive 92/84/EEC. Member States are then free to decide the actual rate, without an upper limit.

This can potentially lead to very different treatments of the same beverage across the EU. For example, since the minimum excise rate for wine is set at € 0, a hectolitre of still wine with 18% of alcohol by volume is currently tax-free in Italy, while it is charged with a € 616 excise duty in Ireland. A spirit with 50% of alcohol by volume is charged with a € 743 excise duty in Romania and € 5.385 in Sweden¹.

¹ See European Commission Excise Duties Tables, http://ec.europa.eu/taxation_customs/sites/taxation/files/resources/documents/taxation/excise_duties/alcoholic_beverages/rates/excise_duties-part_i_alcohol_en.pdf

This raises serious questions about how the policy objective to protect public health at European level could be reached through a simple revision of Directive 92/83/EEC without revising the whole framework.

Moreover, this IIA does not take into account the option of radically changing the current framework, eliminating product categories and simply applying excise duties based on alcoholic strength. This option would provide a proportional link between excise duties and public health objectives, while eliminating uncertainties and legal disputes concerning product categories.

The Commission has argued that the outcomes of implementing this option would be uncertain and that Member States strongly support current rules. But when specifically asked about this option to better achieve public health objectives, eight Member States out of the seventeen that took a position and the majority of respondents to the public consultation (set aside the “don’t know” option) expressed their support for it against the current framework².

No justification has been provided for not considering this option. Notwithstanding the known objections to such a policy, analysis could be expected to provide a useful and material contribution to the policy assessment.

Additionally, with Implementing Regulation (EU) 2016/1867 of 20th October 2016, which will come into force from 1st August 2017, national remaining formulations for completely denatured alcohol have already been eliminated and a new and simplified “Euro” denaturant formula has been introduced. Therefore, one of the evaluation's recommendations (number 7) has already been implemented. However, the IIA does not acknowledge this policy step, containing references to issues regarding completely denatured alcohol and simplification of the “Euro” denaturant formula, which now appear to be superfluous.

² See pages 123-24 of the evaluation final report.

2. Evaluation of Content of Inception Impact Assessment

The four sections A, B, C, D of the IIA are assessed qualitatively in terms of the appropriateness of the rhetoric, assumptions, data and analysis presented.

2.1. Section A: Context, Problem definition and Subsidiarity Check

2.1.1. Context

This introductory part provides stakeholders with a useful overview of the legislative framework of this initiative, which is informative and clearly presented.

2.1.2. Problem the initiative aims to tackle

Shortcomings deriving from Directive 92/83/EEC, identified in the external evaluation, are presented in this section. The six highlighted points are in general coherent with the evaluation's findings. However, some statements lack evidence-based grounds, while others are not well reasoned, as explained below.

The introductory sentence states:

“It is clear that there are areas of weakness and ambiguity in the current arrangements which give rise to market distortions, unfair competition, legal uncertainty, protectionist measures and can also hinder the detection and prevention of fraud”

This assertion is not sufficiently supported by the evidence provided in the evaluation, where protectionist measures are not fully documented and assessed. It would therefore have been more correct to present it here as a possibility rather than a certainty.

Point 2 correctly reports the lack of a clear and explicit rationale in the Directive concerning reduced rates for low strength alcohol, especially with regard to public health. The final sentence,

“The Directive has not necessarily kept up with important market developments, with fiscal and public health impact, such as the very important growth in recent years of micro-breweries and distilleries (doubling in several countries in just the last 5 years)”

however, seems out of context here. The diffusion of micro-breweries and micro-distilleries³ is not considered, in the evaluation, as a source of problems or something which the Directive is not keeping pace with. Nor it is clear how the diffusion of micro-breweries can be linked to public health issues, since no further reasoning is provided. On the contrary, the growth in the number of small producers could be considered a direct consequence of the Directive's provisions, which allow Member States to grant small producers reductions on excise duties. In point 4 the reference to completely denatured alcohol issues and "Euro" denaturant is no longer relevant, considering the Commission Implementing Regulation (EU) 2016/1867 (see "Introduction and general comments" part).

A correlation between sweetened alcoholic beverages and young consumption is stated in point 5. Even if this intuitively appears to make sense, a reference to an available study on this subject would have been useful, providing stakeholders with additional evidence-based information.

In point 6 it is stated that there is evidence that the lack of provisions to allow exemptions to private producers of ethic alcohol is "a growing problem in some MS". A reference is not provided and this information cannot be found in the evaluation.

2.1.3. Subsidiarity check (and legal basis)

The assertion of a general good functioning of the Directive is coherent with the evaluation's findings, whilst the reference to Binding Tariff Information issued unilaterally by Member States for single alcoholic products provides a good example of an approach which would not adequately tackle problems at a broad European level. Subsidiarity is in general therefore well-presented and argued. Two assertions can however be questioned:

When addressing reduced rates for small breweries, the text states:

"the limits for reduced rates in the Directive ensure that reduced rates cannot be set at a level where they would present a distortion to competition".

The evidence provided in the evaluation does not permit this level of certainty. Even if reduced rates for small producers have been object of a specific case study in the context of the evaluation, the analysis was limited to five Member States. It is premature, for this reason, to

³ It has to be noted that the link provided to document the growth of micro-breweries is not useful. That information (which not refers to distilleries), can be found in "Beer Statistics - 2016 edition", page 23, table "Microbreweries 2010-2015": http://www.brewersofeurope.org/uploads/mycms-files/documents/publications/2016/stats_2016_web.pdf

draw conclusions on this subject, especially if the trend towards the diffusion of micro-breweries and distilleries will continue. It cannot be excluded that market shares will change significantly in the future.

In the same paragraph, the last sentence states:

“Consistent limits across the EU ensure that competition within and between the Member States is not distorted and that public health is protected at EU level”

Again the link between public health protection and small producers is not automatic (see remarks made above on point 2 of “Problem the initiative aims to tackle”). Further, consistent limits and public health issues are relevant to the whole Directive, not only to this provision for micro-breweries.

2.2. Section B: Objectives and policy options

2.2.1. Objectives

The general objectives are consistent, stemming from the Treaties, correctly identifying protection of the internal market, safeguard of the revenue of MS and protection of human health as the main goals of a Directive's revision.

The specific objectives are coherent with the general ones, but do not appear to include all material aspects. There is no reference to providing a greater legal clarity (with impacts on internal market and revenue of MS) through the revision of product categories. Further, there is no reference to the objective of granting equal treatment for private production and own consumption of alcoholic beverages across all sectors (as it is done in the case of small producers).

When presenting the objective of identifying possibilities of improving human health protection, it is not clear why this is supposed to be achieved only through a redefinition of reduced rates for low strength alcohol. Other parts of the Directive are likely to have impacts on human health (e.g. extending the exemptions for private production to ethyl alcohol and intermediate products, which could lead to an increase in alcohol consumption). When defining objectives it is appropriate not to limit the policy options.

2.2.2. Policy options

The baseline scenario is presented with a neutral and balanced wording. A reference to the impact on public health of maintaining the status quo could have been inserted here.

Each of the options on improvement/simplification of existing legislation can be linked to the stated specific objectives and are coherent with the external evaluation's recommendations.

Importantly however the option of applying excise duties proportionally to alcoholic strength, eliminating product categories, is not inserted among the options (see "Introduction and general comments" part).

Among the "Alternative policy approaches" the possibility of revising some of the Common Nomenclature (CN) codes is missing. This is relevant, since product categories in the Directive are defined with reference to CN codes and the evaluation has pointed out that some of the product classification issues could be approached through a revision of the codes affected.

2.3. Section C: Preliminary Assessment of Expected Impacts

The first section of this part addresses only the revision of the "other fermented beverages" category and issues concerning denatured alcohol. If the aim is to provide a general introduction to the possible impacts of the policy options, it is not clear why this has been limited to these two subjects. The possible impacts of redefining "other fermented beverages" category are correctly identified in terms of excise revenues and competitive effects, but this information can be given in the "likely economic impacts" subsection (where, in fact, it is stated again).

2.3.1. Likely economic impacts

The possible economic impacts of changes in classification categories, the area of low strength alcohol, reduced rates for small producers and exemptions for private production are consistent with the evaluation and make qualitative sense.

The statement:

"Changes in the areas of low strength alcohol, reduced rates for small producers and the exemption for private production / own consumption would not create any significant adverse effects / impacts on the EU market as a whole when initially assessed during the evaluation"

is not fully supported by evidence. The evaluation's findings are only that "it seems *unlikely* that the presence of reduced rates for small brewers and small distilleries has caused any negative competitive distortions within their markets" (page 134 of the evaluation final report). Regarding the extension of the exemptions for private production, the evaluation states that an "in-depth investigation should look not only at possible positive impacts, but also consider carefully the risks implied by such a proposal, not least in relation to the potential for fraud and abuse" (page 136).

The impact on excise revenues deriving from a recalculation of excise duties on sweetened beer when using the Plato method, which is among the policy options, should be taken into account here.

2.3.2. Likely social impacts

The potential health impacts deriving from a revision of various provisions of the Directive (such as changes in the area of product categories, low strength alcohol, reduced rates for small producers and exemptions for private production) are clearly presented, with both positive and negative effects taken into account. This area will require in-depth assessments and a careful examination of the interactions among the policy options. For example, the effects on overall and age-group specific consumption of an extension of incentives for low strength alcohol and the consequences for health impacts requires robust investigation.

2.3.3. Likely environmental impacts

Possible environmental impacts related to the changes in the area of denatured alcohol will require assessment in much greater detail. It seems premature to predict positive environmental impacts without specifying in which terms art. 27.1 (b), on partially denatured alcohol, is intended to be modified.

2.3.4. Likely impacts on fundamental rights

No impacts are expected.

2.3.5. Likely impacts on simplification and/or administrative burden

The evaluation has identified administrative and compliance costs not directly imposed by the Directive, but *"the result of the complications, disputes and the inconsistent application of the*

Directive's provisions that arise from situations in which stakeholders disagree on their correct interpretation" (page 129 of the evaluation final report). Further analysis of this will be necessary in the full Impact Assessment, in order to determine the full effects.

2.4. Section D: Data Collection and Better Regulation Instruments

2.4.1. Impact Assessment

The information provided on the Inter-Service Steering Group omits some important elements (e.g. the Commission DGs are involved, its composition and working methodology). This information is highly relevant considering that public health protection is among the Directive's objectives and the information about the Commission services involved is highly relevant in the policy formulation process.

2.4.2. Data collection

This section is clear, except for the reference to completely denatured alcohol (see remarks above).

2.4.3. Consultation strategy

The text makes clear how the consultation strategy is to be conducted. Involvement of stakeholders in the area of public health (both national authorities and private organisations) is duly considered.

A further look at the online consultation⁴ shows that every aspect considered in the IIA has been brought to stakeholders' attention, and that a clear and informative introduction is provided to each of the consultation sections.

The decision to use a multiple choice questionnaire could prevent stakeholders to express their articulated views on issues that could be technical and multifaceted. The results should therefore be used carefully to ensure that invalid conclusions are not drawn from the resulting statistics. Statistical consultation results provide input but do not in themselves constitute evidence.

⁴ https://ec.europa.eu/eusurvey/runner/Structures_excise_alcohol

Study on Inception Impact Assessment on Excise Duties on Alcohol

The opportunity to upload a three-page document in the last section of the consultation is a beneficial complement, enabling stakeholders to provide a certain level of detailed information in addition to their multiple-choice answers.

Annex 1: Accompanying statement

This report has been written according to the guiding principles of the Impact Assessment Institute: transparency, objectivity, legitimacy and credibility. It analyses the subject matter from a purely factual and scientific point of view, without any policy orientation. In respecting these principles it has been compiled following its written Study Procedures⁵.

The analysis is open to review and criticism from all parties, including those whose work is scrutinised. In performing this work, the intention of the report is to be constructive in assisting the authors of the subject document and its background information as well as all relevant stakeholders in identifying the most robust evidence base for the policy objective in question. It should therefore be seen as a cooperative contribution to the policy making process.

This report is also to be considered as a call for additional data. Peer review is an essential step laid down in the procedures of the Impact Assessment Institute and this is manifested in the openness to further review and to identify new data. Input received in response to the draft version of this report is detailed in Annex I. Even at publication of the final version, the report remains open to newly arising data, information and analysis, which could be taken into account in a future revised version.

The Impact Assessment Institute is a private foundation incorporated in March 2016 under Belgian law, number 0650.623.342. The Institute is inscribed in the EU Transparency Register, number 993290221302-35.

⁵ "Procedures for Conduct of Studies", Impact Assessment Institute, December 2015 (<http://www.impactassessmentinstitute.org/#!procedures/c1q8c>)