



Consultation paper

Review of existing legislation on the structures of excise duties on alcohol and alcoholic beverages

Note

This document is being circulated for consultation to public concerned by the plan to review the current excise structures set out in the Council Directive 92/83/EEC adopted on 19 October 1992.

The sole purpose of this consultation is to collect relevant evidence and information from stakeholders to help the Commission develop its thinking in this area.

This document does not necessarily reflect the views of the European Commission, and should not be interpreted as a commitment by the Commission to any official initiative in this area.

The stakeholders concerned are invited to submit their comments no later than 27/11/2015.

This PDF version is for visualisation purposes only. Only contributions received online can be taken into account.

LANGUAGE SELECTION

Please select language / Bitte wählen Sie Ihre Sprache / Veuillez sélectionner votre langue

- English
- Français
- Deutsch

INTRODUCTION TO OPEN CONSULTATION

This open consultation is part of the evaluation of the alcohol structures Directive (92/83/EEC), under the recently adopted Commission's Better Regulation Framework. It seeks to capture the views of all interested parties.

Your contribution will automatically be registered upon completion of this online survey.

The Commission services would like to point out that this is an open public consultation. A targeted consultation is being conducted simultaneously with interested stakeholders from industry and from the administrations in the Member States.

The **targeted consultation** of stakeholders directly impacted by Directive 92/83/EC which seeks to capture the views of the categories of stakeholders below can be accessed here: <https://www.survey-xact.dk/LinkCollector?key=EWE3XHUQ329K>

- Producers of beer
- Producers of wine / winegrowers
- Producers of fermented beverages other than wine or beer
- Producers of intermediate products
- Producers of spirits
- Producers, importers, distributors or users of denatured alcohol
- Organisations representing the interests of the abovementioned stakeholders

Stakeholders are invited to reply to those questions that are of concern for them. Figures and concrete examples of fraud, evasion and abuse, and the distortion of competition within the internal market or of specific problems encountered due to the current excise rules would be highly appreciated.

As already indicated above, it is important to keep in mind that this public consultation is part of the assessment process and that no policy decisions have been taken at this stage.

1. IDENTIFICATION OF THE STAKEHOLDER

The Commission services would be interested in receiving contributions from all interested stakeholders on the issues described below. In order to analyse the responses, it will be useful to group the answers by type of respondent. For this reason, you are kindly requested to complete the following form.

- **You are included in one of the following groups:**
 - Citizen / Consumer
 - Multinational enterprise
 - Large company
 - Small and medium sized enterprise (SMEs) ¹
 - National Association
 - European Association
 - Non-Governmental organisation (NGO)
 - Tax advisor or tax practitioner
 - Academic
 - Others. Please specify.....
- **Name of your organisation/ entity/ company**

- **Country of domicile**
 - Austria
 - Belgium
 - Bulgaria
 - Croatia
 - Cyprus
 - Czech Republic
 - Denmark
 - Estonia
 - Finland
 - France
 - Germany
 - Greece
 - Hungary
 - Ireland
 - Italy
 - Latvia
 - Lithuania
 - Luxembourg
 - Malta
 - Netherlands
 - Poland
 - Portugal
 - Romania
 - Slovakia

¹ According to the Commission Recommendation (2003) 361 of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (its Annex, Title I, Article 2), SMEs are defined as enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million, and a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.

- Slovenia
- Spain
- Sweden
- United Kingdom
- Other, please specify

• **Do you agree to the publication of your personal data?**

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• Belgium	3
• Bulgaria	3
• Croatia	3
• Cyprus	3
• Czech Republic	3
• Denmark	3
• Estonia	3
• Finland	3
• France	3
• Germany	3
• Greece	3
• Hungary	3
• Ireland	3
• Italy	3
• Latvia	3
• Lithuania	3
• Luxembourg	3
• Malta	3
• Netherlands	3
• Poland	3
• Portugal	3
• Romania	3
• Slovakia	3

- Slovenia 4
 - Spain 4
 - Sweden 4
 - United Kingdom 4
 - Other, please specify 4
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-

2. CURRENT EU LEGISLATIVE FRAMEWORK

The general objective of the Directive on the structures of excise duty on alcohol and alcoholic beverages is to provide a harmonised effective legal base for the EU excise duty system for alcohol products in terms of its capacity to safeguard Member States' budgetary objectives, and ensure the proper functioning of the Internal Market while avoiding distortions in competition. To ensure equal fiscal treatment, fair competition and level playing fields, as preventing fraud, evasion and abuse of the regimes.

There are five broad categories of alcohol and alcoholic beverages defined in the Directive:

1. Beer
2. Wine
3. Fermented beverages (other than beer and wine)
4. Intermediate Products
5. Ethyl alcohol

Classification of alcohol and alcoholic beverages

The definitions used for classifying products are to a large extent reliant on how a product would have been classified, at the time the Directive entered into force, under the customs nomenclature headings 2203, 2204, 2205, 2206, 2207, and 2208. When declared to customs in the Community, goods must generally be classified according to the Combined Nomenclature (CN). Imported and exported goods have to be declared stating under which subheading of the nomenclature they fall. This determines which rate of customs duty applies and how the goods are treated for statistical purposes:

2203	Beer made from malt
2204	Wine made from fresh grapes, including fortified wines ; grape must other than that other heading 2009
2205	Vermouth and other wine of fresh grapes flavoured with plants or aromatic substances
2206	Other fermented beverages (for example cider, perry, mead); mixtures of fermented beverages and mixtures of fermented beverages and non-alcoholic beverages, not included elsewhere specified or included
2208	Undenatured ethyl alcohol of an alcoholic strength by volume of less than 80% vol; spirits, liqueurs and other spirituous beverages

The structures for classifying products under Directive 92/83/EEC are categorised, in broad terms, as follows:

Article	Product	Detail
1-6	Beer	The definitions & Combined Nomenclature (CN) codes - CN heading 2203 and beer mixed with non-alcoholic beverages classified to 2206 Chargeability, reduced rates and own consumption / private production.
7-10	Wine	The definitions & CN codes - All products classified to 2204 and 2205 not exceeding 15% alcohol by volume (abv) provided that the alcohol is entirely fermented; or not exceeding 18% provided that the alcohol is entirely fermented and no enrichment has been used Chargeability, reduced rates and own consumption / private production for wine
11-15	Fermented beverages other than wine or beer	The definitions & CN codes - Those products, not falling as beer and wine, which are classified to 2204, 2205 and 2206 and do not exceed 10% abv; or not exceeding 15% abv provided that the alcohol is entirely fermented; Chargeability, reduced rates and own consumption / private production
16-18	Intermediate products	The definitions & CN codes - All products between 1.2% and 22% abv classified to 2204, 2205 and 2206 which do not fall under the beer, wine and fermented beverage categories. Member States also have discretion to treat products that would fall under the fermented beverages category as Intermediate Product so long as the product exceeds 5.5% abv and the alcohol is not entirely of fermented origin Chargeability and reduced rates
19-23	Ethyl alcohol	The definitions & CN codes - (a) All products classified to 2207 and 2208, even when they form part of a product that is classified under another chapter of the nomenclature. (b) Any product classified to 2204, 2205 and 2206 that exceeds 22% abv. Chargeability, reduced rates, and certain derogations
24-26	Miscellaneous category	Includes the application of refunds
27	Exemptions	Across a range of issues, including the application of the exemption in the area of completely and partially denatured alcohol.
28	Derogation (UK)	To apply an exemption for concentrated malt beverage, and aromatic bitters.

3. THE QUESTIONNAIRE

3.1 Classification of alcohol and alcoholic beverages

Some producers can be inclined to alter their alcoholic products so that on appearance (taste, appearance, consistency, etc.) they resemble one product but are effectively taxed as a different product. It is not illegal to do so but can bring about two distortive consequences. Firstly, these products will be altered only slightly as to, typically, fall into a lower tax or customs duty category (e.g. through modifying the alcoholic strength, sugar content or alcoholic base of the drink), and thus causing revenue loss. Secondly, they are misleading the consumers into buying unknowingly and involuntarily a product different from the one intended. The 2 CN codes in this section are 2206 (Intermediate Product) and 2208 (Undenatured alcohol)

Question 1.1 – Given the current classification system, the consumer has enough information about what the types of alcohol they are buying and consuming?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain more about the availability of the information <Write answers here>

Question 1.2 – There is enough information readily available in your country about classification of alcohol products produced domestically or for any other Member State?

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain more about the availability of the information <Write answers here>

Question 1.3 I have seen / purchased alcoholic products which were packaged to look like their equivalent higher strength spirits but lower priced than the equivalent products in the higher tax band?

- Very often
- Often
- Rarely
- Sometimes
- Never
- Don't know

If relevant, please provide additional information <Write answers here>

Question 1.4 – In your view, is it easy to classify alcohol and alcoholic beverages under the headings listed above (for example 2206 – intermediate product, 2208 - spirit)?

- Very easy
- Easy
- Neither easy nor difficult
- Difficult
- Very difficult
- Don't know

Please explain more about the availability of the information <Write answers here>

Question 1.5 - Can you give us examples of drinks where it is not immediately obvious to you what classification they fall into and how they compare in terms of price to the similar products?

Answer Yes
 No

If yes, please give examples

In the Siebrand case, the European Court of Justice (ECJ) ruled that the decisive criterion for the classification of goods for customs purposes is in general to be sought in their “objective characteristics” and that it was necessary to identify, from among the materials of which they are composed, the one which gives them their “essential character”.

**Question 1.6 – Please indicate to what extent you agree with the following statement:
The criteria of the ECJ in Siebrand reduces any present and future classification problems**

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please explain <Write answers here>

Question 1.7 – In your opinion, if you agree that there is a problem, what would be the best solution to solve these issues?

- The ECJ continues providing its rulings on a case by case basis
- The customs common nomenclature (CCN) for classification of products should be the only classification system
- More precise criteria for product classification should be established
- Other, <Write answers here>

3.2 Reduced rates for small producers of beer and ethyl alcohol

For small producers the Directive allows Member States to introduce reduced rates in respect of certain alcoholic product categories:

- For beer, Article 4 of Council Directive 92/83/EEC gives Member States the option to apply reduced rates to brewers producing no more than 200,000 hectolitres (20 million litres) per year.
- For ethyl alcohol (spirits), Article 22 gives Member States the option to apply reduced rates to distillers

producing no more than 10 hectolitres (1,000 litres) of alcohol per year, or 20 hectolitres (2,000 litres) if already provided when the Directive was adopted

With regard to the other three categories of alcohol products (Wine; Fermented beverages other than Wine and Beer; and Intermediate Products) there are simply no reduced rate provisions specifically aimed at small producers.

Question 2.1 – Please indicate to what extent you agree with the following statement:

There are overall benefits of establishing common EU rules for the application of reduced rates to small producers across the EU

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please say why <Write answers here>

Question 2.2 – Please indicate to what extent you agree with the following statement:

The rules for small producers should apply to all categories of alcohol and alcoholic beverages

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

Please say why <Write answers here>

Question 2.2 - Are there any concrete situations that you are aware of whereby the application of a reduced rate on certain alcohol and alcoholic beverages for small producers by one or more Member States is resulting in distortion of competition within the Single Market? Please explain and, if possible, give an indication of the economic impact of the distortive effects

Answer Yes

No

I don't understand the question

Free text field

3.3 Exemptions

Denatured alcohol (or non-commercial / industrial or "surrogate" alcohol) that is used in the manufacture of some products not destined for human consumption, (for example screen wash, anti-freeze, hand sanitizer, mouthwash, nail varnish remover, perfumes and aftershaves) is exempt from excise taxes. As a tax-exempted finished product, it is moved between the EU countries outside of the EU monitoring system for excisable products (Excise Movement and Control System - EMCS), meaning with little or no fiscal control. Those same products are often targeted by criminals to be reverted / "cleaned up" into drinking alcohol and sold on as such to shops, restaurants and/or bars. In most cases where alcohol is sold very cheaply, the consumer may know he/she is probably buying illegal alcohol, but not necessarily know that it may also actually be industrial alcohol "cleaned up" for drinking purposes, unaware of the

genuine provenance and safety of the "drink".

Question 3.1 – Are you aware that the fraud described above is happening?

- Answer Yes
 No
 I don't understand the question

Question 3.2 – Have you, your friends, or any member of your family ever been offered / bought very cheap (for example, less than supermarket prices) spirit?

- Answer Yes
 No
 I prefer not to say

Please indicate to what extent you agree with the following statements:

- i The problem of denatured alcohol being reverted into spirit and sold illegally is widespread?
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
 - Don't know

If possible, please provide evidence <Write answers here>

- ii. The trade and consumption of illicit alcohol can be justified
- Strongly agree
 - Agree
 - Neither agree nor disagree
 - Disagree
 - Strongly disagree
 - Don't know

Please say why <Write answers here>

- iii. How important it is for you to know that the alcohol you are drinking is both legitimate and safe to drink?
- Very important
 - Important
 - Neither important nor unimportant
 - Not important
 - Don't know

Please say why <Write answers here>

Question .3.3: Are you willing to pay more for the certainty to know you are buying a legitimate product?

Y/N/ Don't know

Question 3.4: Are you aware that there are potentially serious health risks of consuming some of the types of illicit alcohol (for example blindness, even death)?

Y/N

Question 3.5: What in your opinion could be done to solve this problem? What do you expect the Member States to do and what should the EU do?

Free text

3.4 Own consumption / private production

The Directive allows an exemption for the private production and own consumption (by the producer, members of his family or his guests) in the categories of beer, wine and fermented beverages.

Question 4.1: Are you aware of this exemption in these categories?

Y/N/No opinion

Question 4.2: Do you think the exemption should be extended to all the categories i.e. also include Intermediate Product and Ethyl Alcohol?

Y/N

Question 4.3: Would any extension of the provisions encourage fraudulent production and sale of ethyl alcohol? Could it also impact if there was cross-border activity with such alcohol?

Y/N/ No opinion

3.5 Excise structure's importance for policy making

Question 5.1 – In your view, can the structures of excise duties on alcoholic beverages have an impact on any other policy aspects (e.g. health policy, social policy, cultural policy, agricultural policy, revenue raising, etc.)?

- Significant impact
- Some impact
- No impact

PLEASE EXPLAIN YOUR CHOICE: <WRITE ANSWERS HERE>

Question 5.2 – Do you agree that the calculation of excise duty based on the volume of the product rather than the actual alcoholic content is in line with the health policy in your country.

- Strongly agree
- Agree
- Neither agree nor disagree
- Disagree
- Strongly disagree
- Don't know

PLEASE EXPLAIN YOUR CHOICE: <WRITE ANSWERS HERE>

Beyond the answers and comments provided above, if you wish to submit any other comments on the functioning of the Directive, please do so here?

<WRITE HERE>

4. SOME IMPORTANT MESSAGES ABOUT THIS CONSULTATION

The Commission would like to thank you for taking part, your views will be an important contributor to the evaluation. The Commission services would like to point out that this is an open public consultation. A targeted consultation is being conducted simultaneously with interested stakeholders from industry and from the administrations in the Member States.

Stakeholders are invited to reply to those questions that are of concern for them. Figures and concrete examples of fraud, evasion and abuse, and the distortion of competition within the internal market or of specific problems encountered due to the current excise rules would be highly appreciated.

As already indicated above, it is important to keep in mind that this public consultation is part of the assessment process and that no policy decisions have been taken at this stage.

5. FINAL OBSERVATIONS

It is important for contributors to identify clearly: name, address, e-mail, activity, other information and, in the event of representative organisations, the level of representation.

It is important to read the specific privacy statement on how your personal data and contribution will be dealt with on the following website: http://ec.europa.eu/taxation_customs/index_en.htm.

In line with the specific privacy statement of this open public consultation, respondents should be aware that **contributions received will be published on the website of DG TAXUD** together with the identity of the contributor **unless the contributor objects to the publication of his personal data** on the grounds that such publication would harm his or her legitimate interests. In this case the contribution may be published in anonymous form. Otherwise the contribution will not be published nor will its content be taken into account.

The results will be summarised in a report to be published on the same website. Feedback would also be presented in the impact assessment report and explanatory memorandum relating to a Proposal for a Directive if the Commission decided to pursue this avenue.