Appendix 1 – Evaluation Matrix and Evaluation Design

Specific contract No12 under FWC
TAXUD/2012/CC116
1. **Objectives and scope of the present evaluation**

The subject of the contract is the retrospective evaluation of Directive 92/83/EEC and its functioning under the existing legal framework.

The objective is to provide the Commission with the economic information to adapt their policy on the structures of alcohol excise duties.

In this respect, the evaluation:
- Assesses the extent to which Directive 92/83/EEC meets the objectives it sought to achieve
- Verifies whether the original objectives are of continued relevance
- Identifies weaknesses in the legislative environment caused by the Directive which result in negative consequences for stakeholders (e.g. internal market, competitive disruptions, administrative and compliance costs, etc.);
- Assesses the coherence of the Directive’s provisions with EU and international law
- Examines the added value of establishing common rules at EU level
- Formulates recommendations, based on the collected evidence, on how best to address identified issues.

1.1 **Legislative coverage**

The present study is intended to be a complete evaluation of Directive 92/83/EEC. However, a preliminary analysis of the key issues has helped the design of questions which evaluate in greater detail the functioning of certain provisions. These are:
- Section VI covering the exemption from excise duty of denatured alcohol, in particular Article 27.1(a) and (b);
- The categorisation of products as beer, wine, other fermented beverages, intermediate products or ethyl alcohol which is set in Sections I to V;
- Reduced rates for small breweries and distilleries which are foreseen under Article 4 and Article 22.
- Articles 5.2, 10 and 14 providing for exemptions for own consumption /private production
- Reduced rates under the derogations provided for fruit growers in Articles 22(6) and 22(7).

1.2 **Geographical and linguistic coverage**

The evaluation covered the EU-28 through a consultation of all Member States’ administrations and economic operators active in all Member States. Member States and economic operators have been given the opportunity to provide written answers to questionnaires and the survey in English, French and German.

Desk research, economic data and thematic, in-depth, studies have complemented the sources of data.

The results of the open public consultation which was conducted in parallel to the survey to economic operators will also be integrated in the results of the evaluation. Given the technical nature of the Directive, it will be given a lower weight in the analysis.

1.3 **Approach**

As indicated in Figure 1, the study has been arranged around the following main phases:
- Inception
- Data collection
Appendix 1 - Evaluation Matrix and Evaluation Design

- Analysis, conclusions and recommendations

Figure 1: Overall organisation of the work

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<th>PHASE 1</th>
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<tr>
<td>Inception</td>
<td>Data collection</td>
<td>Analysis, conclusions, recommendations</td>
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</tbody>
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**STEP 1** Design of the study

- Kick-off meeting
- Refinement of work programme
- Assessment of legal basis
- Reconstruction of intervention logic
- Exploratory interviews
- Review of literature
- Fiscalis Seminar (LV)
- Identifying key aspects
- Development of evaluation matrix
- Inception Report
  - SG Meeting

**STEP 2** Stakeholder Consultation

- Drafting and approval of survey questionnaires
- Survey to MS tax and health administrations
- Online survey to economic operators
- Open Public Consultation

**STEP 3** Case studies

- Progress report
  - SG Meeting
  - Planning and carrying out case studies
  - Case study on classification issues
  - Case study on reduced rates
  - Case study on the management of exemptions for
    - Denatured alcohol
    - Alcohol for private consumption

**STEP 4** Analysis & Assessment

- Analysis and triangulation of data
- Preliminary Conclusions
- Policy recommendations
- **Draft final report**
  - SG Meeting

**STEP 5** Finalisation

- Final report

During the inception phase, a review of existing literature and reports was conducted and a number of exploratory interviews with Commission staff, Member States representatives and economic operators from multiple industries were performed in order to reconstruct the intervention logic, develop the evaluation matrix and that ensure key aspects which require further investigation are adequately reflected by the evaluation questions.

Figure 2: Approach to inception phase

The data collection phase involved, as a first step, the consultation of all relevant stakeholders (Member States tax and health authorities, economic operators and associations representing them) as well as the implementation of an open public consultation process in accordance with the European Commission’s Better Regulation Guidelines.

The second step of data collection involved the in-depth analysis of four different issues (classification, reduced rates, management of exemptions for denatured alcohol and management of exemptions for private production). These in-depth studies employed a range of activities and multiple sources of data, including semi-structured interviews with a variety of stakeholders and analysis of economic data.

The final conclusions are based on the triangulation of data from several sources (e.g. different types of stakeholders) from several methods (e.g. survey as well as
economic or legal analysis) and have been subject to the interpretation and judgement of the authors of this study.

Figure 5: Principle of triangulation as applied in this evaluation

1.4 Health aspects associated with the evaluation

While concerns over the health and well-being of EU citizens can be an important factor for Member States when setting excise duties, the role of excise rates in deterring excessive consumption will not be addressed in the present evaluation. This issue is closer linked to Directive 93/84/EEC which sets the minimum rates.

Nevertheless, Directive 92/83/EEC on the structure of excise duties for alcohol and alcoholic beverages creates the underlying rules for the calculation of duty rates and can influence the options of Member States to use taxation for reducing alcohol related harm.

Due to the manner in which excise duty is structured (e.g. per volume of finished product, rather than real alcohol content) the provisions of the Directive may impact the ability of Member States to enact a coherent health strategy.

Where categories, reduced rates and exemptions are defined at EU level, they determine the applicable excise duty rate and thus may limit the possibility of Member States to follow a strategy at national level. Health concerns have been taken into account when looking at the classification of products and the differences in duty calculation based on product categories.

Implicitly, health aspects are linked to the effectiveness of the provisions regarding exemptions of denatured alcohol. Where fraud takes place and consumers drink denatured alcohol that was made potable through chemical processes they are exposed to a certain risk for their well-being. This will be acknowledged when assessing the provisions concerning denatured alcohol.

2. Reconstructed intervention logic

The intervention logic, far from being a purely theoretical exercise, guides the development of the evaluation matrix and forms the basis by which the effectiveness of the interventions embodied in the legal base are assessed. By laying down and describing the theoretical links between the provisions of the Directive and the practical outputs as well as overarching aims of this legal act, the intervention logic provides a basis to use qualitative and quantitative evidence in a coherent, transparent and confident manner to answer to the evaluation questions.
The intervention logic was developed based on the Directive itself, highlighting the objectives specifically stated in its preamble and its explanatory memorandum. It summarises how the Directive was intended to function when it was first put in place. The intervention logic is structured presenting firstly the Directive itself and the legal acts framing it in form of inputs. The outputs of the Directive are the expected concrete consequences of its different provisions. These are intended to create outcomes for all stakeholders. General objectives are targeted which in turn should lead to the overarching intended impacts. At the same time the created outcomes have to fulfil a set of conditions to ensure that intended objectives and impacts are reached.

Section 2.1 presents the impacts sought by the Directive. In Section 2.2, the necessary conditions are reflected, followed by Section 2.3 linking outputs and outcomes to each other. The figure below provides a full picture of the intervention logic.
Figure 6: Intervention logic

INPUTS

- Directive 92/83/EEC

Context
- Directive 2008/118/EC on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products
- Directive 92/84/EEC on the approximation of the rates of excise duty on alcohol and alcoholic beverages
- Regulation 2505/92 on the tariff and statistical nomenclature
- Regulation 162/2013 on the mutual recognition of procedures for the complete denaturing of alcohol

OUTPUTS

- Common definitions of alcohol and alcoholic beverages for the propose of calculating excise duties are set
- The classification of alcoholic beverages for excise purposes is based on the Combined Nomenclature
- Exemptions are applied to alcohol from private production intended for own consumption
- Member States apply reduced rates to products not exceeding a certain alcoholic strength
- Reduced excise duty rates are applied to small producers of beer and ethyl alcohol
- Reduced rates are applied to ethyl alcohol produced by fruit growers in some Member States
- Reduced rates or exemptions for certain products of regional or traditional nature are applied
- Member States grant exemptions to completely denatured alcohol and to denatured alcohol not intended for human consumption
- Denaturing requirements to apply exemptions are notified by each Member State

OUTCOMES

- The scope of the application of excise duties is clearly identified
- A comprehensive and clear classification of products for excise purposes is provided
- Uniform classification for excise purposes of identical products (within the EU and in relation to third countries) is ensured
- Conditions for applying reduced rates are harmonised
- The economic burden for small producers is reduced
- Protection of regional products is ensured
- Costs for industries using alcohol in their production process are reduced
- The risk of fraud with exempted alcohol is reduced while not creating high additional costs for the industry

OBJECTIVES

- A clear and consistent legal framework for the calculation and collection of excise duties is provided
- Fair competition between economic operators is ensured
- The risk for circumvention of excise duty is reduced
- The proper functioning of the internal market is ensured
- Budgetary objectives of Member States are safeguarded

IMPACTS

- Conditions
  - Administrative and compliance costs are limited
  - Distortion of competition is avoided
2.1 Impacts and objectives

To understand the overall aim for and the reason behind legislating at EU level on excise duty for alcohol and alcoholic beverages, it is necessary to consult its legal basis.

The EU right to act in the area of excise duties is established in Article 113 of the Treaty on the Functioning of the European Union, which specifies that “the Council shall adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.” At the same time excise duties are intended to safeguard the budgetary objectives of the Member States.

These considerations are presented in the intervention logic as the impacts targeted with the Directive. A balance should be struck between harmonisation of legislation to ensure a functioning internal market and maintaining Member State’s flexibility to set excise duties at a level responding to their needs.

The proper functioning of the internal market for alcohol and alcoholic beverages can be achieved by reaching three objectives:
- a clear and consistent framework for governing the calculation and collection of excise duties;
- fair competition between all economic operators;
- reducing risk of circumvention of excise duties.

By defining the scope of excise duty, classifying products, and setting conditions for reduced rates and exemptions, the Directive ensures that clear rules are available to Member States and economic operators on how alcohol and alcoholic beverages should be treated for excise purposes in the EU. Such clear conditions are the basis to allow trade of products within the internal market.

As the Directive sets these clear rules, it also ensures similar conditions for economic operators across the EU. Their products are taxed based on principles that apply in all Member States.

Furthermore, the Directive does not only create a level playing field between economic operators of different countries, by setting reduced rates and exemptions certain producers and traders which are more vulnerable to strong competition are supported. Finally, the functioning of the internal market is ensured when the risk for fraud to evade excise duties on alcohol and alcoholic beverages can be kept at a low level.

At the same, the Directive has to allow Member States to safeguard their budgetary objectives. Excise revenues accrue to the Member State where the goods are released for consumption and are seen as an important source of revenue. They make up, on average, approximately one quarter of the revenue from consumption taxes. The Directive aims to ensure that clear and common rules are in place defining the goods for which no excise duty or a lower rate has to be paid. The provisions regarding denatured alcohol more specifically foresee ways to ensure that Member States can fight against misuse of exemptions.

3 This article is equivalent to Article 99 of the Treaty on European Union (Maastricht Treaty) in force in 1992 when Directive 92/83/EEC was adopted.
2.2 **Conditions**

The outputs of the Directive can only lead to the objectives and impacts when they fulfil certain conditions. In order to evaluate the Directive, these conditions have to be understood as they can point to weaknesses or gaps in the legislation.

The favourable treatment of certain producers and products through exemptions and reduced rates has to be implemented in a careful way, not going beyond their aim, as explained in the Directive’s preamble: “in the case where Member States are permitted to apply reduced rates, such reduced rates should not cause distortion of competition within the internal market”. More generally, to ensure the proper functioning of the internal market, the provisions have to be implemented in a way as to not distort competition between producers and products.

At the same time, the targeted impacts can only be achieved if the Directive’s outcomes are reached at reasonable additional administrative and compliance costs for both Member States’ authorities and economic operators. Where provisions create additional burden and costs neither the proper functioning of the internal market nor reaching the budgetary objectives of Member States can be ensured.

2.3 **Outputs and outcomes**

In order to understand how the objectives and impacts were intended to be achieved when the Directive was adopted it is necessary to describe the outputs and outcomes of the specific provisions. This is an essential first step in evaluating the extent to which the legislation achieves its objectives. It is also a basis for understanding potential weaknesses in the legislation and practical problems as well as their consequences which may be identified during the course of the evaluation.

The concrete outputs of the Directive’s provisions create results for Member States, economic operators and the internal market in general. These are indicated as “outcomes” in the intervention logic. Outcomes describe the setting created through the Directive that will allow it to achieve overall objectives.

2.3.1 **Definitions and classifications**

Figure 7: Outputs and outcomes for definitions and classifications

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For the purpose of calculating excise duties, alcohol and alcoholic beverages are classified into beer, still and sparkling wine, other fermented beverages, intermediate products, and ethyl alcohol. Articles 2, 8, 12, 17 and 20 lay down which products belong to each category. These definitions ensure that there is a common legal understanding and that similar products fall within the same tax categories throughout the EU.

Articles 3, 9, 13, 18 and 21 lay down how excise duty is established. Excise duty levied on beer can be fixed based on two different methods. Member States which levy the duty by reference to the number of hectolitre/degrees Plato may divide beer into categories of degree and apply different rates to these categories (Article 3.2).

The Directive seeks to “ensure that scope and nature of each duty – and exemption from it- are clearly identified at Community level”\(^\text{6}\). By setting common definitions of alcohol and alcoholic beverages and providing clear indications on how excise duties are to be calculated, the Directive defines to which products excise duties apply. These provisions are closely linked to Directive 92/84/EEC which indicates the minimal excise duty rates that have to be applied to the different product categories. This creates certainty for economic operators as they are aware which products will be subject to excise duty in all Member States.

As a consequence of the classification rules, Member States as well as economic operators are aware of the treatment of different products. The categorisation is intended to cover all products to which excise duty should be applied and also ensures that there are differences between the products based on their alcoholic strength.

2.3.2 Classification is based on the Combined Nomenclature

The articles that lay down the product categories refer to the codes of the Combined Nomenclature (CN). Article 26 further specifies that these references are made to the CN codes in force when the Directive was adopted. Again this is intended to ensure a common legal understanding of the product categories. The CN “provides the only comprehensive classification of alcoholic beverages at the Community level”. The Directive modifies the CN approach “to the extent necessary to meet taxation needs”\(^\text{7}\). By referring to the CN codes which are primarily used for customs purposes the definition of products is not only consistent between the Member States but also with products imported from third countries. In combination with the common definitions of alcohol and alcoholic products a uniform classification is created. This ensures that similar products are treated the same way for tax purposes across the EU. Again this fosters legal certainty for economic operators. It renders trade across borders more predictable for them.

Finally, by establishing a clear nomenclature of products which fall under the scope excise duty, effective and efficient measures of monitoring and control can be applied.

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\(^{6}\) Commission of the European Communities, Proposal for a COUNCIL DIRECTIVE on the harmonization of the structures of excise duties on alcoholic beverages and on the alcohol contained in other products, COM(90) 432 final, 7 November 1990, p.3

\(^{7}\) Commission of the European Communities, Proposal for a COUNCIL DIRECTIVE on the harmonization of the structures of excise duties on alcoholic beverages and on the alcohol contained in other products, COM(90) 432 final, 7 November 1990, p.5
2.3.3 Application of exemptions to alcohol from private production

Figure 8: Outputs and outcomes for exemptions for private production

Articles 6, 10, 14 provide for exemptions of excise duty to beer, wine and other fermented beverages “produced by a private individual and consumed by the producer, members of his family or his quests, provided that no sale is involved”\(^6\). These exemptions have traditionally been in place in several Member States. By laying down the conditions for the exemptions for private production, the Directive ensures that the scope of the application of excise duties is clearly identified.

2.3.4 Application of reduced rates to small producers and fruit growers

Figure 9: Outputs and outcomes for small producers and fruit growers

With Articles 4 and 22, the Directive establishes that Member States can apply lower excise duty rates for beer and spirits produced in small breweries and distilleries. It defines small producers as having a maximum allowed production per year. Furthermore, the amount of the reduced rates is specified not to be set more than 50% below the standard national rate for excise duty.

These provisions are intended to reduce the economic burden for small producers allowing for fair competition on the internal market. Additionally, through these common rules the application of reduced rates is harmonised.

Since the EU enlargements in 2004 and 2007, the Directive was amended to include Articles 22(6) and 22(7). These allow Bulgaria and the Czech Republic as well as Hungary, Romania and Slovakia, respectively, to apply reduced rates to ethyl alcohol produced by fruit growers’ distilleries for own consumption. The reduced rate is set at not less than 50% of the national rate on ethyl alcohol and can only be applied to distilleries producing more than 10 hectolitres of alcohol from fruit supplied to them by fruit growers’ households. The application of the reduced rate shall be limited to 30\(^9\) / 8

\(^6\) Article 6, Directive 92/83/EEC

\(^9\) Bulgaria and Czech Republic
50 litres of fruit spirits per producing fruit growers' household per year, destined exclusively for their personal consumption.

These specific arrangements reduce the economic burden for this private production but ensure at the same time that reduced rates apply to all relevant countries in the same way.

The Commission is required to review the arrangements applicable in art 22(7) in 2015 and report to the Council on possible modifications.

2.3.5 Application of reduced rates to products of low alcoholic strength

Figure 10: Outputs and outcomes for reduced rates for products of low alcoholic strength

In addition to the reduced rates for small producers described above further favourable provisions apply to specific products.

Articles 5, 9.3 and 13.3 provide for the application of reduced rates to beer, wine and other fermented beverages respectively when they are below a certain limit of alcoholic strength.

By laying down these conditions for reduced rates, the Directive ensures that they are applied consistently across the EU. This provision creates a level playing field for economic operators across the Member States. Similar producers benefit from the same advantages. It also increases legal certainty for operators working cross-border.

2.3.6 Application of reduced rates and exemptions to regional and traditional products

Figure 11: Outputs and outcomes of reduced rates and exemptions for regional and traditional products

For certain products from some Member States reduced rates or exemptions can be applied. These are:

- Reduced rates for some rum products from France (Article 23.1)
- Reduced rates for ouzo from Greece (Article 23.2)
- The classification of wines to which alcohol has been added to a low percentage from certain Spanish regions as wines and not intermediate products (Article 24.2)

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Hungary, Romania and Slovakia
Exemptions for dark ales and aromatic bitters from the UK (Article 28).

These Member State specific provisions are intended to protect these regional and traditional products from predominance of other beverages.

2.3.7 Exemption from the scope of application to alcohol intended for industrial purposes

Figure 12: Outputs and outcomes for exemptions of denatured alcohol

The Directive excludes from the scope of excise duty any alcohol that is not intended to be an alcoholic beverage.

According to Article 27.1 alcohol that has been denatured and according to Article 27.2 alcohol that is tied to specific uses shall be exempted from excise duties.

Two different procedures are foreseen to grant an exemption to denatured alcohol:

- Article 27.1 (a) together with Articles 27.3 and 27.4 create a system of mutual recognition of denaturing procedures. Member States apply denaturing methods which have been notified to the Commission beforehand. Article 27.3 indicates the procedure following which denaturing methods can be noted.
- Article 27.1 (b) lays down that also alcohol "used for the manufacture of any product not for human consumption" shall be exempted from excise duties.

It should be noted that in the initial proposal for the Directive\(^{11}\) the scope of Article 27.1 (b) was limited to “other denatured alcohol for use in perfumes, toilettries and cosmetics or for external medical use”\(^{12}\) and did not apply to the broad scope of “any product not for human consumption”. Furthermore, the same system applying today to Article 27.1 (a) was initially intended to also cover exemptions under Article 27.1 (b). The provisions for mutual recognition of denaturing methods and for notifying those which could be linked to excise duty abuse foreseen in Articles 27.3 to 27.5 were intended to cover both provisions for the exemption of denatured alcohol.

Generally, the exemptions alleviate the economic and administrative burden for the industry. On the one hand they do not have to pay excise duty when using alcohol in their production which ensures that they remain competitive as there is no necessity for them to comply with requirements for potable alcohol. On the other hand, when

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\(^{11}\) Commission of the European Communities, Proposal for a COUNCIL DIRECTIVE on the harmonization of the structures of excise duties on alcoholic beverages and on the alcohol contained in other products, COM(90) 432 final, 7 November 1990

\(^{12}\) In the initial proposal all exemptions were combined in one Article 17. The exemption now found under Article 27.1(b) was then Article 17.1(c)
exempt from excise duty, economic operators do not need to comply with the potentially burdensome procedures for holding and moving excise duty goods. This reduces administrative burden. The provisions also support defining the scope of excise duty at EU level and ensure that alcohol not intended to be consumed is exempted from excise duties.

These exemptions do however create a risk for abuse. They potentially create incentives to circumvent paying excise duties by moving, holding or selling potable alcohol under the exemption.

To prevent such fraud, the Directive demands that in order to be given the exemption, alcohol intended for industrial use must be rendered unfit for drinking. Typically this is achieved by the use of denaturing agents which give a distinctive colour, smell and taste to the product. Additionally, chemical analytical agents are used to mark these products and to allow authorities to more easily detect denatured alcohol in products.

Article 27 (5) provides for measures to ensure that Member States have “the means of combating evasion, avoidance or abuse which may arise in the field of exemptions”. It lays down conditions under which Member States can reject to give exemption to a product which has been denatured using a specific method as foreseen under Article 27.1 (a) or (b). The provisions on denaturing methods are based on mutual recognition and a system for exchange of information regarding the various methods applied in the Member States. The Directive proposes the means to combat fraud of excise duty as it lays down a mechanism to notify when a denaturing procedure applied in one Member State is suspected to be related to fraudulent incidents. These provisions allow for Member States to protect their financial interests by ensuring that all excise duties can be collected.

In light of the uncertainty created by the wording of Article 27.1 (b), the Commission’s Indirect Tax Expert Group has issued an opinion on the interpretation of the term “used for the manufacture of any product not for human consumption”. It laid down that in order to be exempted from excise duty under this article, a product needs to be in its recognisable finished form, held out for sale in that recognisable finished form and must contain denatured alcohol which has been directly used in its manufacture.

The reason for the use of two different systems for granting exemptions is clarified in the explanatory memorandum of the Directive’s initial proposal. It notes that there should be a difference between alcohol for general use in industry, and alcohol used in perfumes, toiletries and cosmetics, as well as for external medical use. “Member States demand much more noxious denaturants for alcohol for general industrial purposes” than for those more specific products.

This initial approach was based on the principle that instead of allowing exempt alcohol to be denatured on the basis of the least intrusive method (a lowest common denominator), the risk of fraud could be minimised by applying the most robust methods of denaturing possible in each circumstance. This allows Member States to impose stronger denaturing methods whenever possible, depending on the specificities of the use of the concerned product containing denatured alcohol. Furthermore, considerations of consumer protection are taken into account when denaturing methods are chosen. They should ensure that consumers can clearly distinguish a product not intended to be drunk and which might include a risk for their health.

\[14\] Commission of the European Communities, Proposal for a COUNCIL DIRECTIVE on the harmonization of the structures of excise duties on alcoholic beverages and on the alcohol contained in other products, COM(90) 432 final, 7 November 1990, p.12
3. Evaluation Matrix and correspondence table

In this chapter we present the evaluation matrix, which has been at the foundation of the design of the study. The evaluation matrix builds heavily on the questions presented in the task specifications and the requests of the European Commission expressed during the inception period.

The design of the evaluation matrix gives the best indication of what kind of data has been collected in the course of the study and how it was analysed. However, as the structure of the final report follows the order in which provisions are laid down in the legislative act, this section contains a correspondence table which indicates the heading within the final report where answers to a particular evaluation question have been included.

Data collection tools were based on the evaluation matrix in the sense that they were designed to collect data required to answer the questions, as laid down in the evaluation matrix (i.e. both at the level of sub-questions as well as at the level of indicators and descriptors).

The evaluation matrix itself has been structured to be in line with the evaluation methodology requirements.

Table 1 contains an overview of the high level evaluation questions and the respective criteria to which they pertain to. In the sections below each question is presented in detail.

## Table 1: Overview of evaluation questions and evaluation criteria

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<tr>
<th>EQ No.</th>
<th>Evaluation Question</th>
<th>Evaluation Criteria / Perspective</th>
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<tbody>
<tr>
<td>1</td>
<td>To what extent do the provisions of Directive 92/83/EEC ensure proper functioning of the internal market?</td>
<td>Effectiveness</td>
</tr>
<tr>
<td>2</td>
<td>To what extent do the provisions of Directive 92/83/EEC safeguard the budgetary interests of the Member States?</td>
<td>Effectiveness</td>
</tr>
<tr>
<td>3</td>
<td>To what extent is there scope for compliance cost and administrative burden reduction?</td>
<td>Efficiency</td>
</tr>
<tr>
<td>4</td>
<td>What are the added benefits for stakeholders of achieving the Directive’s objectives at EU level?</td>
<td>EU-added value</td>
</tr>
<tr>
<td>5</td>
<td>To what extent do the provisions of Directive 92/83/EEC respond to the needs of Member States and economic operators?</td>
<td>Relevance</td>
</tr>
<tr>
<td>6</td>
<td>To what extent are the provisions of Directive 92/83/EEC coherent with EU and international legislation on excise duties on alcohol and alcoholic beverages?</td>
<td>Coherence</td>
</tr>
<tr>
<td>7</td>
<td>Which of the problems identified could be solved through additional EU or national action and thus deserve further consideration?</td>
<td>Recommendations</td>
</tr>
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</table>

Within these overarching topics a set of questions is assembled. These are presented in the following sections, including related sub-questions, indicators, judgement criteria and data sources.

3.1 Question 1: To what extent do the provisions of Directive 92/83/EEC ensure proper functioning of the internal market?

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16 Evaluation questions and sub-questions, indicators / descriptors, evaluation criteria and data sources
As discussed above, in the sections on the intervention logic, the proper functioning of the internal market can be understood to include three core components in the context of this evaluation. The legislation should:

i. provide a clear and consistent framework for excise duties to be paid on alcohol and alcoholic beverages;

ii. ensure a “level playing field” in terms of competition between economic operators

iii. limit the risk for circumvention of excise duty.

It is assumed that the achievement of these components will simplify access to an EU market for alcohol and alcoholic beverages.

The two first questions examine the Directive’s clarity and legal certainty for the categorisation of products (Q.1.1) and for the exemptions applicable to denatured alcohol (Q1.2). The third part assesses the conditions created for economic operators (Q1.3).

### 3.1.1 Question 1.1: To what extent does the Directive ensure legal certainty and clarity with regards to the classification of alcohol and alcoholic beverages for excise purposes?

This question is structured in two sub-questions aiming at establishing whether the provisions of the Directive create a situation in which it is clear to economic operators how to classify products and for national authorities how to levy excise duties on alcohol and alcoholic beverages.

First, we will identify those products that cause difficulties with their classification (Q 1.1a). Once these problematic products have been identified, their treatment across the Member States will be compared. There will probably be cases where a product is classified into one category in one Member State and into another somewhere else. Based on stakeholders’ assessments a judgement will be made on the degree to which applicable rules cause these difficulties with classification.

Some beverages might be difficult to classify due to the fact that there is no common definition. This is the case for alcopops. By Regulation 1169/2011 on the provision of food information to consumers the Commission is obliged to consider the need to propose a common definition of “alcopops”. Currently, Member States vary strongly in what they consider as an alcopop and how it should be treated for taxation purposes. The way these products could be defined and consequently classified under the Directive can be of importance for public health strategies of Member States.

In the case C-150/08, known as Siebrand, the European Court of Justice (ECJ) ruled on the classification of products containing mixtures of fermented and distilled alcohol by the Member States. This was a step towards clarifying the provisions. It remains to be tested whether the classification of concerned products today follows the criteria laid down in the judgement (Q1.1b).

These sub-questions will be addressed in form of a questionnaire addressed to national tax authorities and economic operators. Their assessment of the current situation based on practical experience will create the basis for the evaluation of clarity of the classification system.

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There have been over time several discussions on the classification of products. These have been taking place at the World Customs Organisation, but also in the courts. In this context, there is a perceived need to update the Directive to reflect these decisions and to align the provisions with the latest EU legislation on the combined customs nomenclature.

Table 2: Question 1.1: Legal clarity of classification

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Section in Final report</th>
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<tbody>
<tr>
<td>1.1a Which products are difficult to classify (e.g. because they could, arguably fall within several excise categories)?</td>
<td>Classification of alcoholic products that do not fall into one clear category, such as mixtures of fermented beverages and spirits, alcopops containing cleaned-up alcohol, cream liqueurs, mead, etc. by the Member States</td>
<td>The applicable rules result in difficult and/or unclear classifications of alcoholic beverages</td>
<td>Survey to national tax authorities</td>
<td>Case study on classification and Section 2 on Classification</td>
</tr>
<tr>
<td></td>
<td>Other reported instances of alcoholic products whose excise classification was difficult</td>
<td></td>
<td>Survey to economic operators</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Completeness of and or overlap between product categories</td>
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<td></td>
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</tr>
<tr>
<td>1.1b Do the ambiguities post Siebrand (C-150/08) still cause problems in this area?</td>
<td>Classification of products containing a mixture of fermented and distilled alcohol products by the Member States</td>
<td>Degree to which classification of concerned products follows the criteria laid down in the judgement</td>
<td>Survey to national tax authorities</td>
<td>Section 2 on Classification</td>
</tr>
<tr>
<td></td>
<td>The interpretation of &quot;essential character&quot; of particular products</td>
<td>Extent to which there are problems noted with the definition of the &quot;essential character&quot; of products</td>
<td>Survey to economic operators</td>
<td></td>
</tr>
</tbody>
</table>

3.1.2 Question 1.2: To what extent are exemptions provided under Article 27.1 (a) and (b) for denatured alcohol being applied consistently across Member States?

There are indications that the conditions for granting exemptions of denatured alcohol vary strongly between the Member States. This question sets out to identify the differences in the interpretation of the provisions. It is divided into two parts, the first one dealing with denatured alcohol exempted under Article 27.1(a) and the second one covering the treatment of products exempted on the basis of Article 27.1(b).

Within both questions the applicable conditions for granting exemptions including the accepted denaturing formulations and the intended use of the finished product will be compared across the Member States. There might be differences in the applicable

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18 Fermented alcohol which has been subjected to industrial processes that strip out the components that give the liquor its fermented character
Appendix 1 – Evaluation Matrix and Evaluation Design

conditions to receive an exemption based on the fact whether a product is denatured within the territory of a Member State, is imported from another EU Member State or from a third country. Specific methods for denaturation are not accepted to the same extent by all countries.

These different conditions for granting exemptions will be judged based on their similarity and the differences across Member States. Additionally, variations are not only to be found based on geographical differences but also depend on the source of a product, its intended use and its position on the production chain (i.e. whether it is a finished product or not).  

Additionally, and as part of this analysis, emphasis will be placed on the interpretation of the term “used for the manufacture” of products as referred to in Articles 27.1 (b) and 27.2 (d). Some Member States allow the exemption to apply when alcohol is used in the cleaning of production lines, as part of the manufacturing process, whether it has been denatured or not. This must be examined as part of the production chain.

The two sub-questions will be answered based on the survey to national tax authorities who will be able to provide information on the conditions under which exemptions are recognised. Desk research will be conducted within Annex 1 of Regulation 162/2013 which lists denaturing methods noted by Member States. Also data previously collected by the Commission under the relevant Fiscalis Project Groups and within the exchange on the online platform PICS will be examined. In the context of the evaluation of Directive 2008/118/EC, equally conducted by Ramboll, data is being collected on the treatment of movements of excise duty goods including alcohol. This will serve as a further data source. If applicable, the case studies will investigate in more depth the situations where there are large discrepancies between the approach in some Member States and a commonly applicable approach.

As part of the case studies, consideration should be given to the treatment and production of bio-fuel which is made from alcohol.

### Table 3: Question 1.2: Consistent application of exemptions

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Section in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.2a How are the exemptions under Article 27 1(a) of excisable alcohol products applied and implemented in the different Member States?</td>
<td>Applicable conditions (i.e. accepted denaturing formulations, intended use of the finished product for granting the exemption of products under Article 27.1(a), <strong>Completely Denatured Alcohol</strong>) for:</td>
<td>Degree of similarity or differences between the requirements by comparing:</td>
<td>Survey to national tax authorities</td>
<td>Case study on denatured alcohol</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Treatment in different Member States</td>
<td>Desk research</td>
<td>Case studies</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Treatment depending on the source of the product applying for exemption</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Intended use of the product</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Form of the product (in bulk or as finished product)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Procedures for supervision of production of denatured alcohol in the Member States</td>
<td></td>
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</tr>
<tr>
<td></td>
<td></td>
<td>Procedures of supervision of</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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19 Different interpretation of Art 27(1)b and the corresponding FPG and ITEG opinion results in the possibility that conditions of recognising exemptions may also vary according to the form in which the product can be found.
Appendix 1 – Evaluation Matrix and Evaluation Design

<table>
<thead>
<tr>
<th>1.2b How are the arrangements related to exemptions under Article 27.1(b) of excisable alcohol products implemented in the different Member States?</th>
<th>Applicable conditions (i.e. accepted denaturing formulations, intended use of the finished product for granting the exemption of products under Article 27.1(b), so-called Partially Denatured Alcohol) for:</th>
<th>Degree of similarity or differences between the requirements by comparing:</th>
<th>Survey to national tax authorities on denatured alcohol</th>
<th>Case study on denatured alcohol</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>• Products denatured in the Member State in question</td>
<td>• Treatment in different Member States</td>
<td>Desk research</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Products denatured in another Member State</td>
<td>• Treatment depending on the source of the product applying for exemption</td>
<td>Case studies</td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Products imported from third countries</td>
<td>• Intended use of the product</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedures for supervision of production of denatured alcohol in the Member States</td>
<td>• Form of the product (in bulk or as finished product)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Procedures of supervision of movements of denatured alcohol in the Member States (in particular treatment of movements in “bulk”)</td>
<td>• Treatment of alcohol used in the production chain, in particular for cleaning</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• Treatment of bio-fuel which is made from alcohol</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.1.3 Question 1.3: To what extent do the provisions of Directive 92/83/EEC create a level playing field for economic operators?

The questions described above (Q1.2) will be able to confirm, or inform whether the provisions of the Directive create different conditions for economic operators in the application of classification and the treatment of exemptions. There are clear indications that other specific provisions of the Directive (e.g. establishment of duty for beer, application of reduced rates) create varying conditions for economic operators.

The existence of different conditions does not, however, mean that the functioning of the internal market is necessarily affected. Further investigation of the effects of such differences is necessary. With Question 1.3 we seek to achieve this.

This question assesses both whether the objective of creating a fair competition between economic operators is reached and whether the condition for the outcomes of the Directive to not distort competition is met.

3.1.3.1 Question 1.3a: The market for exempt alcohol

Question 1.3a will assess the extent to which the differences in the rules applying to exemptions for denatured alcohol create advantages or disadvantages for economic operators in some Member States. These differences will have been identified in Question 1.2. Their impact in terms of administrative requirements and costs of denaturing alcohol and selling and moving it subsequently is to be assessed. The impacts will then be judged in relation to their potential to distort competition. Data sources for this assessment will be the survey to economic operators who are trading...
and producing denatured alcohol, and a more in-depth research in form of a case study.

Table 4: Question 1.3a: A level playing field for economic operators in the market of exempt alcohol

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3a How far do the major differences in the rules for applying the tax exemptions in Article 27 Council Directive 92/83/EEC affect fair competition on the market of exempt alcohol across the EU?</td>
<td>Differences in treatment identified under Q1.2</td>
<td>Differences between the rules applied and the associated economic cost of denaturing alcohol in the various Member States have the potential of distorting competition between economic operators</td>
<td>Survey to economic operators</td>
<td>Section 4 on provisions for denatured alcohol</td>
</tr>
<tr>
<td></td>
<td>Advantages/disadvantages for economic operators in terms of administrative requirements and economic costs</td>
<td>Cost estimation of denaturing alcohol in various Member States</td>
<td>Case studies</td>
<td>Results from Q1.2</td>
</tr>
</tbody>
</table>

3.1.3.2 Question 1.3b and c: Establishment of the duty for beer

Under Article 3, the Directive foresees two different methods to calculate the excise duty levied on beer. This can be either done by reference to the number of hectolitres per degrees Plato or to the number of hectolitres per degrees of actual alcoholic strength by volume. Each Member State has chosen to apply one or the other method.

Question 1.3b will look into the reasons behind the choices made by Member States. These could be of economic nature, for traditional reasons or health policy might have been taken into account.

With question 1.3c it is intended to identify whether the use of multiple methods creates any issues with regards to competition between beer brewers of different Member States. This will be done in a first step through a survey to national tax authorities and economic operators producing and trading beer. Should they report that the application of different methods results in unfair competition, a case study will be conducted.

The measuring system based on degrees Plato is unique to beer. It utilizes the quantification of fermentable material in the wort, which is integral to the brewing process as the wort strength is the basis of every beer recipe, determining the characteristics of the final product. As a consequence, measuring the Plato degrees is a fundamental analysis, carried out by all breweries irrespective whether they operate at micro or macro level. The choice between the two methods for calculating excise duty is a long established practice based on the tradition of Member States.

Table 5: Questions 1.3b and 1.3c: Establishment of the duty for beer

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3b</td>
<td>What are the reasons for</td>
<td>Explanations by Member State authorities on reasons behind the choice</td>
<td>Survey to national tax</td>
<td>Section 6.1 on establishment</td>
</tr>
</tbody>
</table>
choosing one method to establish the duty for beer over another?

**1.3c** How far does the use of multiple methods for establishing excise duty on beer affect the fair competition between alcohol across the EU?

Reported issues by stakeholders with respect to competitive disruptions or unfair tax competition as a result of the application of different methods.

The provisions of the Directive lead to significant monetary (in duty terms) differences between Member States who use the “Plato” method of calculating duty compared to that using actual alcohol strength.

Survey to national tax authorities

Section 6.1 on establishment of duty for beer

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3d To what extent does the application of a reduced rate for small producers for beer and ethyl alcohol affect small producers of (MS who tax) wine,</td>
<td>Reported issues by stakeholders with respect to competitive disruptions or unfair tax competition as a result of the absence of a reduced rate for small producers of wine, fermented beverages and intermediate products.</td>
<td>(if investigated) The extent to which the provisions of the Directive have the ability to impact the capacity of small producers to compete in the market and have a tax impact.</td>
<td>Survey to economic operators</td>
<td>Case study on Reduced Rates and Section 3 on reduced rates</td>
</tr>
</tbody>
</table>

### 3.1.3.3 Question 1.3d: Level playing field resulting from application of reduced rates

The Directive provides for reduced rates for small producers of beer and ethyl alcohol but not for producers of the other products it covers. This has a potential to distort competition between the producers of the different products. To establish whether this is the case, a survey will investigate the perception of economic operators. In addition, desk research into substitution effects between beverages can provide an insight on consumer choices based on differing prices between beverages. Where strong effects of pricing on consumers’ decisions are identified the application of reduced rates for only some producers can have an effect on competition. Similar to the approach for Q 1.3c, a case study will be conducted if the issue is found to be of strong impact on the internal market.

The reduced rates based on production levels and for lower strength products, in the product categories they apply, should be re-examined to see whether they continue to facilitate the existence of a diversified sector largely contributing to the local and regional economies. – This particular aspect will be covered in detail by questions related to the relevance of the provisions.

**Table 6: Question 1.3d: Level playing field resulting from application of reduced rates**
fermented beverages and intermediate products?

3.2 Question 2: To what extent do the provisions of Directive 92/83/EEC safeguard the budgetary interests of the Member States?

The second main intended impact of the Directive is to ensure that Member States’ authorities are able to effectively collect excise duty. This was discussed in the intervention logic.

With respect to the potential loss of excise duties for Member States, this study will consider separately the issue which relates to (i) fraud with alcohol and alcoholic beverages and (ii) the potential misclassification of alcoholic beverages. Question 2.1 will specifically look into fraud related to the abuse of the exemptions for denatured alcohol to circumvent excise duty. This is clearly separated from the Question 2.2 dealing with the classification of products in a different tax category than foreseen by the Directive. This is not related to fraud as it can be done unintentionally but possibly leads to presumed losses in tax income for Member States.

3.2.1 Question 2.1: What is the estimated excise duty gap related to fraud with alcohol and alcoholic beverages?

The excise duty gap in the area of alcoholic beverages is a relevant point of departure and such estimation has multiple uses for policy makers.

For the purpose of evaluating the effectiveness of Directive 92/83/EC, however, it is necessary to establish the amount of fraud which can be linked to the abuse of its provisions.

In order to fulfil this objective, it is necessary for the following four steps to be achieved:

Step 1: Identify different types of alcohol fraud.
Step 2: Identify the total amount of alcohol fraud.
Step 3: Establish the amount related to fraudulent use of denatured alcohol.
Step 4: Calculate the tax impact of fraudulent use of denatured alcohol.

3.2.1.1 Step 1: Identifying different types of alcohol fraud

The first step will be a descriptive task of the different types of alcohol fraud based on information collected from national tax authorities (including information gathered from Joint Customs Operations) and drawing on desk-based research, such as the International Alliance for Responsible Drinking’s taxonomy of unrecorded alcohol, and Euromonitor’s work on the illegal alcoholic beverages market in Latin America, both of which offer a taxonomy of unrecorded alcohol.20

Table 7: Question 2.1a: Categories and types of fraud seen.

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1aWhat are the</td>
<td>Description of the main types of activities which result in the sale of</td>
<td>Survey to national tax and Excise duty</td>
<td>Section 5 on</td>
</tr>
</tbody>
</table>

20 We would not seek to quantify the effect of consumption of surrogate alcohol (though it would be given qualitative consideration in the problem definition), as any taxation impact is likely to arise due to the effect of the taxation rate, rather than its structure.
3.2.1.2 Step 2: Identifying the amount of alcohol fraud

The second step will result in a descriptive presentation of the tax impact of the estimated fraud and unrecorded consumption of alcoholic beverages.

Table 8: Question 2.1b: Estimated value of alcohol consumed outside the excise regime

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1b What is the tax impact of fraud?</td>
<td>Baseline excise duty receipts</td>
<td>Desk research*</td>
<td>Section 5 on Excise duty gap</td>
</tr>
<tr>
<td></td>
<td>The total amount of unrecorded consumption</td>
<td>Survey to national tax and investigation authorities</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The total amount of fraud and likely distribution across different types of alcohol.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Number and size of seizures</td>
<td>Detailed interviews**</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Likely detection rates for alcohol fraud</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Excise duty rates for products subject to fraud</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

It will of course be very difficult to establish even approximately the amount of fraudulent use of alcohol. We therefore plan to make use of an array of sources to provide a range of the possible extent of fraud of this kind. We discuss these sources below.

*Considerations related to desk research

The World Health Organisation (WHO) produces a “Global Information System on Alcohol and Health (GISAH)” database. This includes data on unrecorded consumption of alcohol. Specifically, there are data on the unrecorded consumption of alcohol per capita (based on persons aged 15 or over) for 2005 and 2010 (or as a three year rolling average from 2003-05 and 2008-10). In order to generate the total volume of unrecorded alcohol in each Member State, we would multiply the per capita numbers by the total population (aged 15+) in each Member State, using Eurostat population statistics. However, there are two issues with these data that would need to be borne in mind:

- The unrecorded alcohol data could include unrecorded consumption other than fraudulent use of denatured alcohol, including home-brewed alcohol, alcohol imported from third countries and released into free circulation, or smuggled alcohol.
- The unrecorded alcohol data are not broken down by alcohol type; rather, the data are presented in liters of pure alcohol.
Another potential source of data is World Customs Organisation data on seizures. This is helpful as it provides concrete data on seized alcohol. However, this is likely to provide a limited picture of the amount of fraud using denatured alcohol, because:

- seizures only provide limited insight into the underlying scale of illicit activities, and cross-country comparison will be limited by varying efficacy and priorities in customs/police actions in different jurisdictions; and
- the WCO data will only cover fraudulent use of denatured alcohol that is crossing borders.

Evidence from individual Member States:

- HMRC (the UK taxation authority) produces annual data (currently available for 2008-09 to 2012-13) on the market share and tax gap associated with spirits, beer and wine. These data may guide estimates of the total amount of alcohol fraud in the UK, and may allow inference to be drawn on the level of fraud in Member States with similar consumption patterns.
- The OECD task force on charting illicit trade (sub-group on alcoholic beverages) will soon be publishing a report on the assessment of the size, impacts and drivers of illicit trade in alcohol which contains some data on the illicit consumption of spirits in Poland (stating that the majority of this comes from decontaminated industrial alcohol).
- The results of Joint Customs Operations held in the past in individual Member States can help identify trends in alcohol smuggling across the EU, between particular Member States or within the territory of an individual Member State.

**Considerations related to detailed interviews**

We would also investigate the questions for Member States and trade associations through interviews with the following organisations:

- FoodIntegrity (Spirits Work Package);
- Enfora;
- International Federation of Spirits Producers;
- International Centre for Alcohol Policies; and
- Spirits Europe.

### 3.2.1.3 Step 3: Establish the amount of unrecorded consumption related to fraudulent use of denatured alcohol

Misuse and abuse of the Directive’s provisions exempting certain products from the scope of the Directive (i.e. fraudulent abuse of denatured alcohol) will have been related only to a subset of the unrecorded consumption described in the step above; as a result, it is necessary to establish the amount of alcohol fraud resulting from the abuse of the Directive. Question 2.1 (c) aims to achieve this link.

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21 We have conducted exploratory interviews with Spirits Europe, International Alliance for Responsible Drinking (International Center for Alcohol Policies) and the JRC. These interviews suggested that data are not available, though it was suggested that the International Federation of Spirits Producers (who did not respond to our requests for participation) may have relevant data. We would seek to continue engagement with these parties during the course of the project, and establish contact with the International Federation of Spirits Producers.
Table 9: Question 2.1c: Value of fraud linked to the abuse of exemptions of denatured alcohol

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1c The amount and economic value of fraud linked to the abuse of exemptions of denatured alcohol?</td>
<td>Total amount of fraudulent use of CDA and PDA (or denatured alcohol as a whole if this is not available).</td>
<td>Survey to national tax and investigation authorities</td>
<td>Section 5 on Excise duty gap</td>
</tr>
<tr>
<td></td>
<td>Likely distribution of this fraudulent use of CDA and PDA (or denatured alcohol as a whole if this is not available) across different types of alcohol.</td>
<td>Survey to economic operators</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Extent to which this fraudulent use of CDA and PDA (or denatured alcohol as a whole if this is not available) accounts for unrecorded consumption.</td>
<td>Desk Research</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Likely detection rates for this fraudulent use of CDA and PDA (or denatured alcohol as a whole if this is not available).</td>
<td>Detailed interviews</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Economic volume of tax exemptions applied to products containing alcohol denatured according to Article 27.1(a) and 27.1(b) in each of the following sectors:</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• cosmetics, perfumes, and personal hygiene products;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• screen wash, anti-freeze, de-icer products;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• bio-fuels; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>• printing inks, paints and other solvents.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Total volumes of denatured alcohol produced in each Member State.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Volumes of denatured alcohol sold in each Member State.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Value of denatured alcohol sold in each Member State.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

There are no direct sources of the fraudulent use of denatured alcohol, as a whole or split up into CDA and PDA. Data on seizures described above may provide some indication of this, but the data are likely to provide an incomplete picture. We would therefore be reliant on information from surveys of Member States as well as trade associations and their members.

As a cross-check to the fraudulent use of denatured alcohol estimated using information from the surveys, we would estimate the amount of denatured alcohol in use across Europe, to provide a sense-check on the magnitude of fraud linked to the exemptions of denatured alcohol. Data sources on the use of denatured alcohol are described below:

One possible source of information on the use of denatured alcohol is the Eurostat Prodcom database. This database provides data on volumes and values of goods...
produced in the EU, including denatured alcohol. However, there are a number of issues with this dataset:

- There are no data on the usage of denatured alcohol by sector (and the data are not split into CDA and PDA). Rather, the database provides data on the amount of denatured alcohol produced by EU Member States.
- The total volume of denatured alcohol produced in EU Member States is missing for all countries.
- However, data on volumes sold and the value of denatured alcohol sold are available. This may provide a good representation of the use of denatured alcohol, but it would miss denatured alcohol produced for “own use”, i.e. not sold. Taking 2013 as an example:
  - Nine Member States (BE, BG, DE, EL, LV, AT, PT, SK and UK) were marked as confidential. As can be seen, this includes a number of large Member States (though we would need to examine the size of the industries likely to use denatured alcohol in these Member States to understand the impact this may have on establishing a baseline level of use of denatured alcohol).
  - There are seven countries (EE, IE, CY, LU, MT, NL and SI) marked as zero.

Prodcom trade statistics also include a category for “denatured ethyl alcohol and other spirits of any strength”. In theory, the total volumes of denatured alcohol could therefore be estimated by taking the volume of sales and adding the volume of imports and subtracting the volume of exports. However, this would only be viable if the sales volumes represented domestic sales, rather than total sales. In any case, there are substantial gaps in the data which make this approach difficult. We will aim to fill those gaps through data collected from stakeholders.

3.2.1.4 Step 4: The tax impact of fraudulent use of denatured alcohol

As a final step, once the total value of fraud will have been established, an estimation of the tax revenue lost as a result of this will be done.

Table 10: Question 2.1d: Tax impact of fraud related to abuse of the provisions related to denatured alcohol.

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1dThe amount and economic value of fraud linked to the abuse of exemptions of denatured alcohol?</td>
<td>Tax revenue lost based on fraud linked to the abuse of the exemptions of denatured alcohol?</td>
<td>Desk research</td>
<td>Section 5 on Excise duty gap</td>
</tr>
</tbody>
</table>

Information on baseline tax revenues is not strictly required in this step. However, in order to provide an indication of the magnitude of lost revenue, it is useful to present estimates of lost tax revenue against this baseline. The baseline level of tax receipts would be taken from TAXUD excise duty receipts.

If we are able to generate estimates of the amount of fraudulent use of denatured alcohol for different alcohol types using the data and methods described above (step 3), we could calculate the tax impact of this fraud using information on excise duty rates in each Member State.

However, if we are unable to establish a sufficiently robust estimate of fraudulent use of denatured alcohol for different alcohol types, we would use OECD data on tax per hectolitre of absolute alcohol and apply it to the WHO data on unrecorded alcohol
consumption (ideally broken down into the fraudulent use of denatured alcohol, but this would depend on what information trade associations and Member States are able to provide).

### 3.2.2 Question 2.2: To what extent do identified classification issues impact the financial interest of Member States?

This question, examining the potential excise duty lost due to misclassification of products, will strongly depend on the results of Question 1.1 (see Section 3.1.1). A selection of products which regularly create difficulties with their classification or are treated very differently between the Member States will be identified for further research.

In the form of case studies, the estimated volumes of sales of the relevant products will be established, to then compare tax receipts depending on the different classifications. Volumes and prices for these products will be based on Euromonitor. Price elasticity for the demand of the concerned products will be taken into consideration. This has been calculated in the past in European Commission studies.\(^{23}\)

<table>
<thead>
<tr>
<th>Sub-question</th>
<th>Indicator</th>
<th>Data source</th>
<th>Source in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.2a</td>
<td>What is the potential tax impact resulting from misclassification?</td>
<td>Survey to national tax and investigation authorities</td>
<td>Section 2 on Classification</td>
</tr>
<tr>
<td></td>
<td>Products that have been misclassified (Q1)</td>
<td></td>
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<tr>
<td></td>
<td>Estimated volumes of sales of the types of alcohol whose classification is difficult in different Member States</td>
<td>Desk research</td>
<td></td>
</tr>
<tr>
<td></td>
<td>The alternative classification that could apply and associated tax code</td>
<td></td>
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</tr>
<tr>
<td></td>
<td>Elasticity of demand for misclassified products and potential for competitive distortions</td>
<td>Detailed interviews</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Potential excise duty loss resulting from misclassification</td>
<td>Case studies</td>
<td></td>
</tr>
</tbody>
</table>

### 3.3 Question 3: To what extent is there scope for compliance cost and administrative burden reduction?

Directive 92/83/EEC does not impose, directly, compliance costs on economic operators. By including certain products within the scope of excise duty, it indirectly subjects those sectors to the provisions of Directive 2008/118/EC (the Horizontal Directive) which sets out the rules and conditions for the holding and moving of excise duty goods.

The limitation of additional administrative and compliance costs to reasonable levels was furthermore identified as one of the condition that needs to be met in the application of the Directive.

The on-going evaluation of Directive 2008/118/EC has an intense focus on the efficiency of the system for moving and holding excise duty goods. In order to avoid

\(^{23}\) European Commission (2010) “Study analysing possible changes in the minimum rates and structures of excise duties on alcoholic beverages”
duplication of efforts (on both the side of the evaluators, as well as on the side of stakeholders), this present evaluation will draw, where relevant (i.e. the administrative costs resulting from inconsistent treatment of denatured alcohol), on the results of the evaluation of Directive 2008/118/EC and will not repeat the analysis.

The evaluation of Directive 2008/118/EC assesses the following questions:

- What are the compliance costs for economic operator resulting from the application of the Directive?
- How do the compliance cost impact the economic operators depending on their size?

One of the aspects looked into are the additional costs resulting from the different interpretation of the provisions regarding the treatment of denatured alcohol. This is addressed in the form of a survey to economic operators who are invited to share practical problems with the provisions. In a further step, these issues are analysed in case studies.

Efficiency issues resulting from the application of the Directive which are not already covered by the evaluation of Directive 2008/118/EC have been primarily integrated within Question 1.24

In the interest of clarity, Question 3 will explicitly extract, from the analysis conducted as part of Question 1 those elements which relate to efficiency and will briefly present them as the answers to the following sub questions:

**Table 12: Question 3: Scope for reduction in compliance and administrative cost**

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in Final Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 To what extent are the provisions related to the classification of alcoholic beverages implemented in an efficient way?</td>
<td>Reported instances of alcoholic products whose excise classification was difficult. Administrative and compliance cost impact of reported difficulties</td>
<td>The implementation of provisions on classification leads to increased compliance and administrative costs for economic operators and Member States</td>
<td>Survey to national tax authorities</td>
<td>Section 2 on Classification</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Survey to economic operators</td>
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<td></td>
<td></td>
<td></td>
<td>Case studies</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Results from Q1.1</td>
<td></td>
</tr>
<tr>
<td>3.2 To what extent are the provisions related to the management of exemptions implemented in an efficient way?</td>
<td>Administrative and compliance cost of non-uniform provisions for denaturing methods Administrative and compliance cost impact of - Procedures for supervision of production of denatured alcohol in the Member States - Procedures of supervision of movements of denatured alcohol in the Member States</td>
<td>The implementation of provisions on exemptions for denatured alcohol leads to increased compliance and administrative costs for economic operators and Member States</td>
<td>Desk research</td>
<td>Section 4 on exemptions to denatured alcohol</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Case studies</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Results from Q1.3</td>
<td></td>
</tr>
</tbody>
</table>

24 The reason for doing so relates to the mechanisms through which the Directive ensures the proper functioning of the internal market.

25 In particular, results of the on-going evaluation of Directive 2008/118/EC
3.4 **Question 4: What are the added benefits for stakeholders from addressing the Directive’s objectives at EU level?**

The European added value is to be understood as the additional gains stemming from acting at the EU-level as compared to a national initiative, a multilateral or even another international initiative. Question 4 sets out to establish whether the outcomes of the Directive could have been achieved without an EU intervention. More specifically, it will investigate the additional value resulting from the EU intervention (e.g. even if the objective of the Directive could be achieved in the absence of EU action, we will seek to analyse whether Member States themselves could have done it in an equally effective way).

In the context of Directive 92/83/EEC the European added value is expected to stem mainly from an increase in terms of:

(i) **effectiveness** of the arrangements as compared to any potential action taken at national, multilateral or even international level and

(ii) **sustainability of impacts** if the intervention were to discontinue.

While, generally speaking efficiency gains through working at EU level (e.g. through common IT platforms, central coordination from the Commission, reduction of duplication and overlaps) normally also fall within the concept of EU added value, in the context of Directive 92/83/EEC, these are of less importance (see section 3.3 for considerations related to efficiency).

In order to identify EU added value, the evaluation will analyse:

- The extent with which to similar outcomes could be achieved through a national initiative, a multilateral or even another international initiative;
- The mechanisms used to achieve said results or;
- The inhibitors/ barriers which preclude the achievement of comparable results.

Three outputs and their outcomes will be looked into. These are the outputs dealt with in the effectiveness questions, namely:

- The establishment of common definitions of alcohol and alcoholic beverages. The outcomes should be a clearly identified scope of excise duties, a comprehensive and clear classification of products and a uniform classification of identical products across the EU.
- The establishment of reduced rates for small producers which are intended to lead to a reduced economic burden for them.
- The establishment of exemptions and conditions of these exemptions for denatured alcohol. These should allow for a clearly identified scope of excise duties, reduce costs for industries using alcohol in their production and reduce the risk of fraud.

The assessment of the questions in this section depends to a large extent on the analysis conducted in the Questions 1 and 2 on effectiveness. We will analyse to what extent the Directive is effective in reaching the listed outcomes. Once this judgement has been made, further considerations will allow establishing whether this was done thanks to addressing these outcomes at EU level.

The survey to national tax authorities and economic operators will be used to complement the above mentioned analysis, stakeholders will be asked whether regulation through the EU is the most effective, efficient and sustainable level to reach the outcomes. Stakeholders will also be invited to suggest alternative national or bilateral options.
3.4.1 **Question 4.1: What is the added value of setting common definitions of alcohol and alcoholic beverages at EU level?**

The judgement of the EU added value for classification will be complemented by the conclusions resulting from Question 1.1 and 2.2 on the contribution of the classification to the proper functioning of the internal market.

**Table 13: Question 4.1: EU added value of common definitions**

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in Final Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 What is the added value of setting common definitions of alcohol and alcoholic beverages at EU level?</td>
<td>Assessment of effectiveness of common definitions</td>
<td>The intended outcomes have been achieved</td>
<td>Survey to national tax authorities</td>
<td>Section 2 on Classification</td>
</tr>
<tr>
<td></td>
<td>Considerations by Member States and economic operators regarding the benefit of common (EU level) definitions of alcohol and alcoholic beverages</td>
<td>The benefits in terms of effectiveness, sustainability and efficiency could not have been achieved through national or bilateral action</td>
<td>Analysis of Q1.1 and Q2.2</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alternative national and/or bilateral policy instruments through which comparable results could be achieved or reasons why comparable results could not be achieved</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

3.4.2 **Question 4.2: What is the added value of the establishing of common rules for the granting of reduced rates for small producers?**

This question is set out to identify the benefit for establishing reduced rates for small producers as well as the common scope for their application at EU level.

It will examine whether the intended burden reduction for small breweries and distilleries could be better achieved at national or bilateral level. Stakeholders will again be invited to present their opinion on the need for EU action. Conclusions resulting from Q1.3c if the Directive creates a level playing field for economic operators will be taken into consideration.

**Table 14, Question 4.2: EU Added value of common provisions for the granting of reduced rates**

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in Final Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.2 What is the added value of the establishing of common rules for the granting of reduced rates for small producers?</td>
<td>Assessment of effectiveness of reduced rates</td>
<td>The intended outcomes have been achieved</td>
<td>Survey to national tax authorities</td>
<td>Section 3 on reduced rates</td>
</tr>
<tr>
<td></td>
<td>Stakeholder views on the benefit to establish reduced rates for small producers at EU level</td>
<td>The benefits in terms of effectiveness, sustainability and efficiency</td>
<td>Survey to economic operators</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Stakeholder views on the benefit to establish a common scope of application of reduced rates for</td>
<td></td>
<td>Analysis of Q1.3c</td>
<td></td>
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<td></td>
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</tbody>
</table>
### Question 4.3: What is the added value of establishing a common system for the recognition and management of exemptions of denatured alcohol from the scope of excise duty at EU level?

This question will look into whether a system for managing exemptions of denatured alcohol from the scope of excise duty is best achieved through action at EU level or whether any alternative national and/or bilateral means by which the same result can be achieved exists. The benefits and/or reasons why alternatives are not viable will be examined and assessed.

This question will build heavily on the analysis conducted under Q1.2 and 2.1, but will also be complemented by views from stakeholders.

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Source in the Final Report</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.3 What is the added value of establishing a common system for the recognition and management of exemptions of denatured alcohol from the scope of excise duty at EU level?</td>
<td>Assessment of effectiveness of provisions regarding exemptions</td>
<td>The intended outcomes have been achieved</td>
<td>Survey to national tax authorities</td>
<td>Section 4 on exemptions for denatured alcohol</td>
</tr>
<tr>
<td></td>
<td>Considerations of stakeholders regarding the benefit of EU rules for the recognition and management of exemptions from the scope of excise duty on alcohol</td>
<td>The benefits in terms of effectiveness, sustainability and efficiency could not have been achieved</td>
<td>Survey to economic operators</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Alternative national and/or bilateral policy instruments through which the same result can be achieved or reasons why comparable results could not be achieved</td>
<td></td>
<td>Analysis of Q1.2 and 2.1</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Case studies</td>
<td></td>
</tr>
</tbody>
</table>
3.5 **Question 5: To what extent do the evaluated provisions of Directive 92/83/EEC respond to the needs of Member States and economic operators?**

This question will seek to understand whether the provisions of the Directive, as they have been formulated are still fulfilling the needs of Member States and the economic operators. As a result, this question will look at:

(i) whether the needs that the Directive sought to address still exist,
(ii) to what extent and how have the needs evolved
(iii) whether the arrangements satisfy the current needs.

This section will strongly build on the responses from other sections which analyse the impact on the proper functioning of the internal market (Q1) and the impact on budgetary objectives (Q2). However, it will add to those conclusions a dynamic understanding of the evolution of the needs in each topic.

To this purpose, under this question, Member States’ tax authorities and economic operators will be invited to share their considerations with regards to the timeliness of the provisions of the Directive. Any new needs identified during the course of the evaluation, in relation to the functioning of the internal market and the protection of budgetary objectives will be included to answer this question.

In line with the priorities set for this study, the evaluation will particularly target its analysis on responding to whether the following provisions still respond to the needs of stakeholders:

- The common definitions of alcohol and alcoholic beverages
- The rules and conditions applicable to reduced rates
  - for small producers
  - for alcoholic beverages below a certain alcoholic strength
  - for ethyl alcohol produced by fruit growers intended for private consumption
- The rules related to the exemptions from the scope of application of excise duties on alcohol and alcoholic beverages
  - Exemptions of private production intended for own consumption in Articles 5.2, 10 and 14
  - Exemptions for particular alcoholic beverages
  - Exemptions for alcohol not intended for human consumption (Article 27.1)
- The legal mechanism provided in Articles 27 (3–5).

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Section in the Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 To what extent are the definitions and the classification of alcoholic products still responding to the needs of stakeholders?</td>
<td>Considerations by stakeholders and results of analysis related to the appropriateness of the classification</td>
<td>The arrangements respond to current needs</td>
<td>Survey to national tax authorities</td>
<td>Section 2 on classification</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Reasons for which the arrangements do not satisfy the current needs of stakeholders</td>
<td></td>
<td>Survey to economic operators</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Case studies</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Analysis of Q1 and Q2</td>
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</tbody>
</table>

Table 16: Question 5.1: Continued relevance of the provisions
<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Section in the Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.2 To what extent do the current rules applicable to the <strong>calculation of excise duty</strong> respond to the need of the Member States with regards to protection of consumer health?</td>
<td>Considerations by Member States authorities whether the current rules allow for using excise duties on alcohol as a policy tool</td>
<td>The arrangements respond to the current needs</td>
<td>Survey to Member States</td>
<td>Section 7 on health impacts of the Directive</td>
</tr>
<tr>
<td>5.3 To what extent are the rules applicable to <strong>reduced rates</strong> for small producers still responding to the needs of stakeholders?</td>
<td>Considerations by stakeholders and results of analysis related to the appropriateness of the limits imposed in Articles 4(1) and 22(1)</td>
<td>The arrangements respond to current needs</td>
<td>Survey to national tax authorities to</td>
<td>Section 3 on reduced rates</td>
</tr>
<tr>
<td></td>
<td>Considerations by stakeholders regarding the lack of reduced rates for small producers of still and sparkling wines, other fermented beverages and intermediate products</td>
<td></td>
<td>Survey to economic operators</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Reasons for which the arrangements do not satisfy the current needs of stakeholders</td>
<td></td>
<td>Analysis of Q1.3c</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Case studies</td>
<td></td>
</tr>
<tr>
<td>5.4 To what extent are the rules applicable to <strong>reduced rates</strong> for alcoholic beverages <strong>below a certain alcoholic strength</strong> still responding to the needs of stakeholders?</td>
<td>Considerations by stakeholders regarding appropriateness of the existence of and the limits imposed in Articles 5(1); 9(3) 13(3); 18(3) and 22(5)</td>
<td>The arrangements respond to current needs</td>
<td>Survey to national tax authorities to</td>
<td>Section 3 on reduced rates</td>
</tr>
<tr>
<td></td>
<td>Reasons for which the arrangements do not satisfy the current needs of stakeholders</td>
<td></td>
<td>Survey to economic operators</td>
<td></td>
</tr>
<tr>
<td>5.5 To what extent are the provisions concerning <strong>exemptions and reduced rates for products of regional or traditional nature</strong> still appropriate?</td>
<td>Opinion of France on reduced excise duty rates for rum under Article 23.1</td>
<td>The arrangements respond to current needs</td>
<td>Survey to national tax authorities to</td>
<td>Section 3 on reduced rates</td>
</tr>
<tr>
<td></td>
<td>Opinion of Greece on reduced excise duty rates for Ouzo under Article 23.2</td>
<td></td>
<td>Survey to economic operators</td>
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<tr>
<td></td>
<td>Opinion of UK on duty exemptions under Article 28</td>
<td></td>
<td></td>
<td>Case studies</td>
</tr>
<tr>
<td>Question</td>
<td>Indicator</td>
<td>Judgement criteria</td>
<td>Data source</td>
<td>Section in the Final report</td>
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</tr>
<tr>
<td>5.6 To what extent are the provisions concerning exemptions for private production intended for own consumption still appropriate?</td>
<td>Considerations by stakeholders on the need to expand exemptions for beer, wine and other fermented beverages to intermediate products and ethyl alcohol</td>
<td>The arrangements respond to current needs</td>
<td>Survey to national tax authorities Case study (if applicable)</td>
<td>Section 3.5 on exemptions for private consumptions</td>
</tr>
<tr>
<td>5.7 To what extent are the provisions concerning reduced rates for ethyl alcohol produced from fruit growers for their own consumption still appropriate?</td>
<td>Considerations by stakeholders from Bulgaria and Czech Republic on Article 22(6) Considerations by stakeholders from Hungary, Romania and Slovakia on Article 22(7)</td>
<td>The arrangements respond to the current needs</td>
<td>Survey to national tax authorities Survey to economic operators</td>
<td>Section 3.4 on reduced rates</td>
</tr>
<tr>
<td>5.8 Are the provisions of the mutual recognition of the denaturing practices related to the application of exemptions under Article 27 (1) still appropriate?</td>
<td>Considerations by stakeholders and results of analysis related to the appropriateness of the rules Conclusions resulting from Q1 on the functioning of the internal market and Q2 on the protection of financial interests of Member States</td>
<td>The arrangements respond to current needs</td>
<td>Survey to national tax authorities Survey to economic operators Case studies</td>
<td>Section 4 on exemptions for denatured alcohol</td>
</tr>
<tr>
<td>5.9 To what extent is the legal mechanism provided in Articles 27 (3 – 5) relevant for resolving conflicts concerning denaturing methods?</td>
<td>Instances where the use of the mechanism has led to agreements that were acceptable to all parties and/or solutions that would prevent fraud in the future Reported application of the conflict resolution mechanism Reported reason for the lack of use of the mechanism</td>
<td>The legal mechanism responds to current needs</td>
<td>Survey to national tax authorities Case studies</td>
<td>Section 4 on exemptions for denatured alcohol</td>
</tr>
</tbody>
</table>
3.6 **Question 6: To what extent are the provisions of Directive 92/83/EEC coherent with EU and international legislation on excise duties on alcohol and alcoholic beverages?**

Since the Directive has been adopted more than twenty years ago, the market for and scope of alcohol and alcoholic beverages in the EU has changed.

Under this question the legal framework governing excise duty on alcohol and alcoholic beverages laid down by the Directive will be assessed for overlaps, synergies or possible conflict with other EU and international legislation.

### 3.6.1 To what extent are the provisions of Directive 92/83/EEC coherent with EU and international legislation on excise duty on alcohol and alcoholic beverages?

With regards to external coherence three different aspects will be taken into account:

On one hand, the *coherence of the product classification proposed in the Directive with the classification used for customs purposes* will be examined. The product classification in the Directive is based on the CN code system which is primarily used for customs purposes. Therefore it is of high relevance to assess whether the use of the codes is coherent.

A potential source of incoherence might stem from the reference to the CN codes of 1993 which is made in Article 26 of the Directive. As explained in the intervention logic, the system of CN codes, primarily used for external trade, was used in the Directive as it provided a comprehensive classification of alcohol and alcoholic beverages. The evaluation should identify whether there are instances of incoherent or inconsistent application of excise duty that can be traced back to the use of outdated CN codes or other reasons.

Additionally, during the inception period it was noted that tolerance levels accepted in the area of classification for customs and labelling purposes may not have an equivalent in excise legislation.

Another issue linked to the coherence with the classification of products for customs purposes relates to denatured alcohol. There are several CN codes employed for this purpose (2207 20 00 / 3820 / 3402) but Member States seem to be unclear which should be used when and whether there is a link to the differentiation made by the Directive between denatured alcohol receiving an exemption according to Article 27.1(a) or 27.1(b).

The systems of classification will be compared based on desk research. Furthermore, Member States’ authorities and economic operators will be invited to share their views on these issues. The coherence will be judged based on similarities or possible conflict between the different provisions.

Another issue of coherence relates to the *management of pre-cursors of wine* (must and juices which become wine): under provisions outside the excise duty regime, these products have to move together with accompanying documents, however as the Directive does not identify them as excisable, these are not available on the EMCS.

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26 Some of those referred to in the definition of products, such as in Article 8.2 are no longer to be found in the current list of CN codes.

27 Tolerance levels of alcoholic strength (0.8% for products from the EU and 1% for products from third countries) may have an impact on how wine is classified (intermediate product or wine).
Finally, the external coherence will be assessed concerning international trade agreements, such as agreements with other trading blocs or the World Trade Organisation (WTO). These might in some cases create legal constraints with regards to the review of the Directive. The compatibility of the Directive’s provision with the relevant international agreements will be assessed through desk research.

Table 17: Question 6.1: External coherence

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Judgement criteria</th>
<th>Data source</th>
<th>Section in Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1.a To what extent is the product classification of the Directive coherent with classification used in the EU for customs purposes?</td>
<td>Reported instances of incoherent or inconsistent application of excise duty legislation in the combined nomenclature. Classification of denatured alcohol within the CN code system</td>
<td>Reference to CN codes in force in 1993 leads to inconsistent excise treatment between products from the EU and third counties</td>
<td>Desk research</td>
<td>Survey to Member States</td>
</tr>
<tr>
<td>6.1.b To what extent is the excise treatment of pre-cursors of wine coherent with their treatment for agricultural purposes</td>
<td>Rules and procedures related to the treatment of pre-cursors of wine. Stakeholders assessment of the degree of coherence between the treatments.</td>
<td>The treatment of pre-cursors of wine for excise and agricultural purposes are not incompatible</td>
<td>Desk research</td>
<td>Survey to Member States</td>
</tr>
<tr>
<td>6.1.c To what extent are the provisions of the Directive coherent with external trade agreements of the EU?</td>
<td>Compatibility classification rules with international agreements Compatibility of reduced rates and exemptions with international trade agreements</td>
<td>Degree to which provisions in the Directive are compatible with international agreements</td>
<td>Desk research</td>
<td>Expert input</td>
</tr>
</tbody>
</table>

3.7 **Question 7: Which of the problems identified could be solved through additional EU or national action and thus deserve further consideration?**

This final question will be reserved for the structured presentation and prioritisation of recommendations aimed at improving the situation in terms of:

- the proper functioning of the internal market;
- protecting the financial interests of Member States;
- reduction of compliance costs,

Recommendations will derive from conclusions of the evaluation, in order to address identified gaps and weaknesses;

The recommendations will be not only be aimed at the European Commission, but will also look into what potential action can be taken at Member State level in response to the identified gaps and weaknesses.

In order to eliminate any potential overlap, duplication and/or lack of clarity with respect to the recommendations, the structure of this chapter will follow each problem area, (as substantiated by the analysis).
Appendix 1 – Evaluation Matrix and Evaluation Design

Following a comprehensive assessment of all recommendations presented by problem issue, we will prioritise them, arranging problem issues according to the ones which have the highest potential for improvement along the lines of the 3 selected objectives.

Without prejudice to the actual outcome of the data collection and analysis substantiating the problem definition on the basis of reported experiences and quantitative data collected, the following structure of this question is proposed:

**Table 18: Recommendations**

<table>
<thead>
<tr>
<th>Question</th>
<th>Indicator</th>
<th>Data sources</th>
<th>Section in the Final report</th>
</tr>
</thead>
<tbody>
<tr>
<td>7. What measures should be taken to resolve identified issues and in particular, those relating to:</td>
<td>Issues identified under Q1-Q6</td>
<td>Findings of Q1-Q6</td>
<td>Recommendations</td>
</tr>
<tr>
<td>- Classification</td>
<td>Possible measures to respond to these issues</td>
<td></td>
<td></td>
</tr>
<tr>
<td>- Reduced rates and exemptions</td>
<td>Extent to which proposed measures would improve the situation in relation to:</td>
<td>Survey to national tax authorities</td>
<td></td>
</tr>
<tr>
<td>- Exemptions of denatured alcohol</td>
<td>- Providing a clear and consistent framework for the calculation and collection of excise duties</td>
<td>Case studies</td>
<td></td>
</tr>
<tr>
<td>- Other</td>
<td>- Ensuring fair competition between economic operators</td>
<td>Desk Research</td>
<td></td>
</tr>
<tr>
<td></td>
<td>- Reducing the risk of circumvention of excise duty</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A high level analysis of the effects of proposed recommendations, together with associated benefits and drawbacks will accompany this question. This analysis will include, as necessary, considerations related to:

- Possible effects (intended and unintended) of broadening the scope of the intermediate products category
- Additional / reduction in tax revenue would be created by lowering or increasing the limit of alcoholic strength for beer, wine and other fermented beverages
- The effect of removing the reduced rates for small producers on tax revenue?
- The effect on tax revenues and on competition of applying a tax exemption to products not currently covered by the Directive and produced by small producers
- Advantages and disadvantages to changes to the existing regime for the treatment of exempt alcohol
- The effect on administrations of enforcing a regime for private production / own consumption.

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28 E.g. To broaden the intermediate product category; to move closer to the US Regulatory framework, numbering convention for each type of product manufactured using denatured alcohol; introduction of a “suspicion of fraud” mechanism to a future mutual recognition system; to remove the provisions related to reduced rates or to expand their scope to cover those products not