



European
Commission

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

Summary Report

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RAMBOLL

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Europe Economics

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1. Introduction

Under the European Commission's Better Regulation Framework¹ and in the context of the Regulatory Fitness and Performance programme², the European Commission is performing a review of *Council Directive 92/83/EEC on the harmonisation of the structures of excise duty on alcohol and alcoholic beverages* (hereafter the Directive).

The Directive sets out the fundamental characteristics such as:

1. The methods for establishing and charging excise duty;
2. Drinks classification;
3. Reduced rates for SME's producing beer and spirits;
4. Exemptions, such as for alcohol denatured not for human consumption;
5. A number of derogations;
6. A number of miscellaneous other technical issues.

Regulation in this field has a direct impact on citizens and businesses: moderate drinking is part of the social fabric of life with strong economic focus in the EU in sectors such as gastronomy and catering industry. This is a vital sector of the EU economy with on-going growth potential.

The consortium led by Ramboll Management Consulting has been assigned to undertake an external evaluation of the Directive with the overall objective to provide the Commission with the economic information to adopt a policy and assess the likely impact of this future policy for revising the Directive. The evaluation assesses factors including the added value of EU intervention in this domain and how effective the existing framework has been so far.

The data collection for the evaluation incorporated several elements: (i) economic operators were consulted through an online survey specifically targeting companies active in the field of alcohol and alcoholic beverages, (ii) Member States were invited to share their opinion through a written questionnaire, (iii) an open public consultation, open to the general public was conducted under the EU rules on public consultation³ and (iv) critical issues were further assessed in detail in the form of in-depth studies.

A number of the existing provisions could arguably be improved and, therefore, the question arises whether a broader modernization of the legislation could be attempted. To prepare the ground for a possible future legislative initiative in this area the European Commission launched this open public consultation to give all interested stakeholders an opportunity to express their views on the issue. The open public consultation sought to capture the views of all interested parties on the different aspects of the Directive.

The present report provides a summary of the main results of the open public consultation.

The consultation was open to any interested person or organisation and conducted by means of an online-survey which could be accessed through a dedicated webpage on the relevant Commission websites ("DG TAXUD" and "Your voice in Europe"). Additionally, the Commission promoted the open public consultation through a press

¹ See http://ec.europa.eu/smart-regulation/index_en.htm

² See http://ec.europa.eu/smart-regulation/refit/index_en.htm

³ See http://ec.europa.eu/smart-regulation/stakeholder-consultation/index_en.htm

release, as well as through Facebook and Twitter. The consultation was launched on 28th August 2015 and officially ended on 28th November 2015 (~12 weeks).

In total, 328 individuals and organisations responded to the consultation. Half of the respondents were consumers but also a number of large and small companies, European and national organisations, NGOs as well as academics and tax advisors participated. Responses to the open public consultation were received from 26 EU Member States.

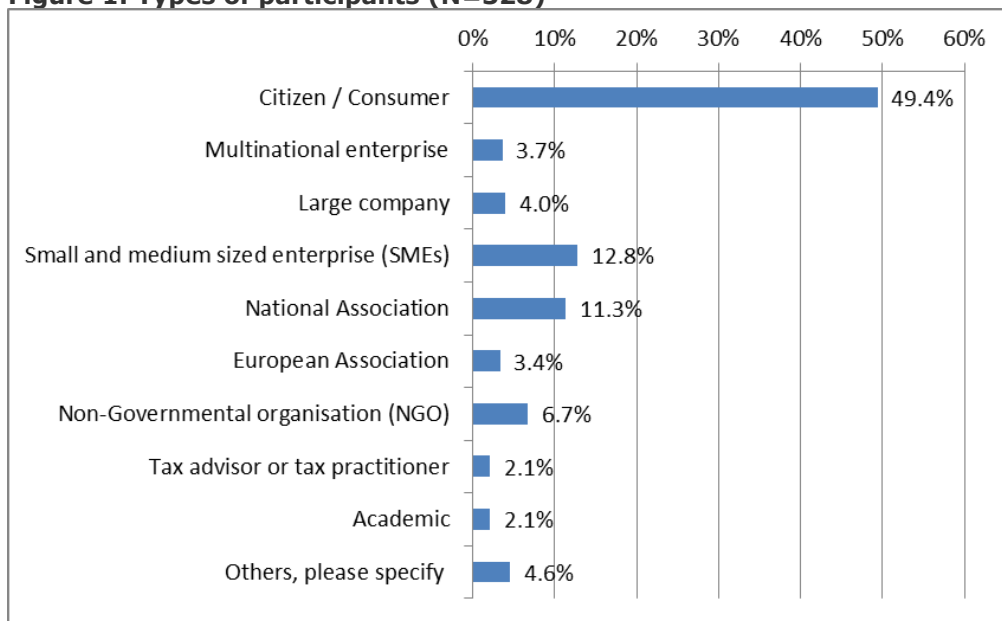
Participants were asked whether they agreed to have their answers to the consultation published alongside other answers. The answers of the 262 participants which agreed to the publication are also attached to the evaluation of Directive 92/83/EEC

The present report provides a statistical analysis of all responses, as well as a summary of qualitative opinions and input received.

2. Respondents

In particular individual citizens or consumers participated in the open public consultation. They represent half of the respondents. Almost 20% of the respondents were private companies, most of which were small and medium sized enterprises. Further participants came from national or European associations, as well as NGOs. Finally, a small share of respondents is comprised of academics and tax advisors.

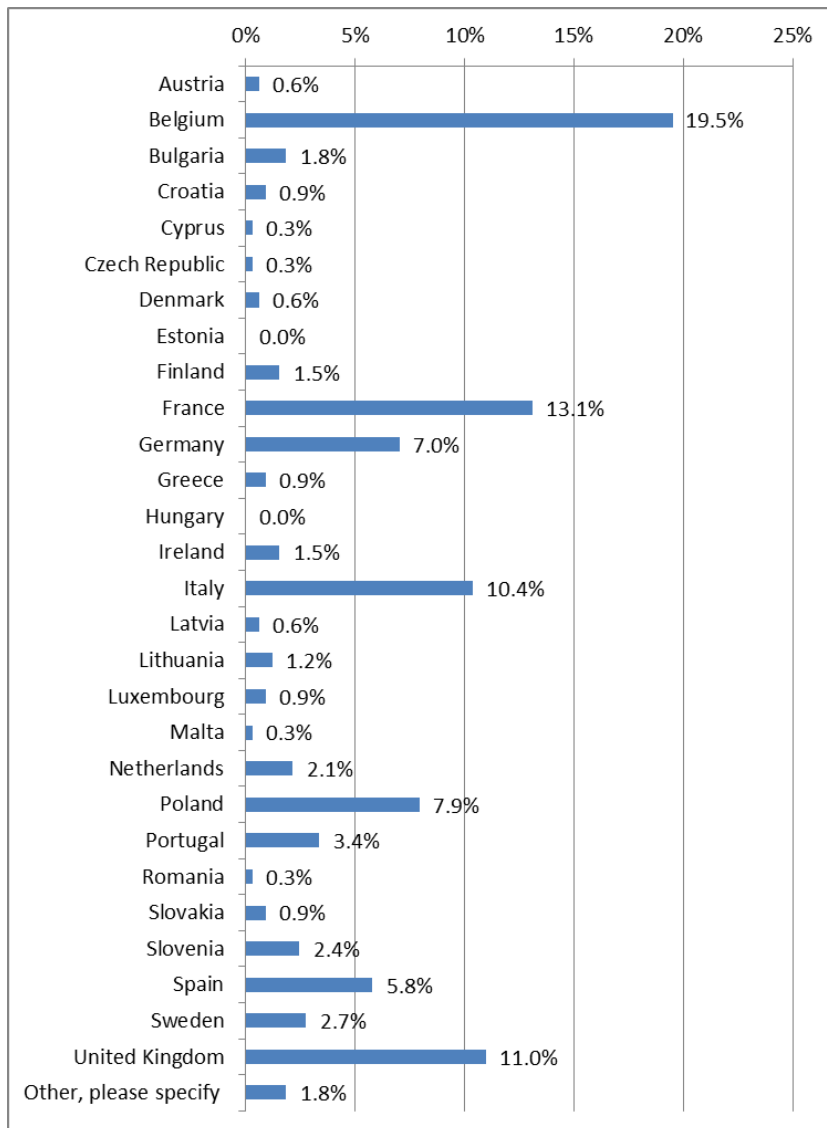
Figure 1: Types of participants (N=328)



Source: Open public consultation, August-November 2015.

Responses to the open public consultation were received from 26 EU Member States. Participation was particularly high from Belgium, France, Germany, Italy, Poland and the United Kingdom.

Figure 2: Geographic coverage (N=328)



Source: Open public consultation, August-November 2015.

3. Analysis of responses

3.1 Classification of alcohol and alcoholic beverages

The Directive structures alcohol and alcoholic beverages into five broad categories: beer, wine, fermented beverages other than beer and wine, intermediate products and ethyl alcohol. The definitions for the classification rely on the Combined Nomenclature (CN) used for customs.

Excise duty rates are determined based on these categories which raises concern that producers might be inclined to alter their alcoholic products so that on appearance they resemble one product but are effectively taxed as a product with a lower excise rate.

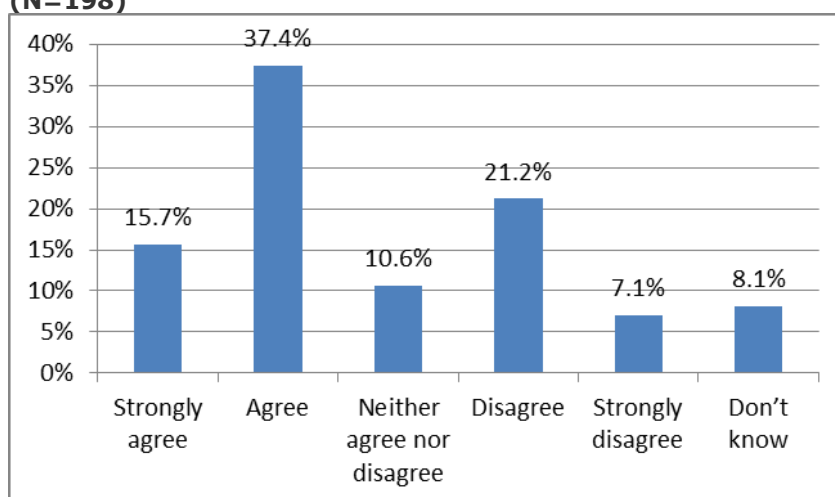
The section on the classification of alcohol and alcoholic beverages in the questionnaire aimed at understanding whether there was awareness of such issues with the classification.

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

More than half of the respondents to the open public consultation (strongly) agreed that given the current classification system, the consumer has enough information about what types of alcohol they are buying and consuming. Respondents argued that for consumers, the alcoholic strength is the most important information which is provided on the packaging. Where needed consumers can find further information online.

The 28% of the respondents who (strongly) disagreed with the statement indicated that consumers would need more information than only the alcoholic strength. They further argued that there were a number of products on the market with misleading names or descriptions. Other respondents remarked that there was a clear problem with consumer information but that this was not linked to the product categorisation provided by the Directive.

Figure 3: Question 1.1 – Given the current classification system, the consumer has enough information about what the types of alcohol they are buying and consuming? (N=198)



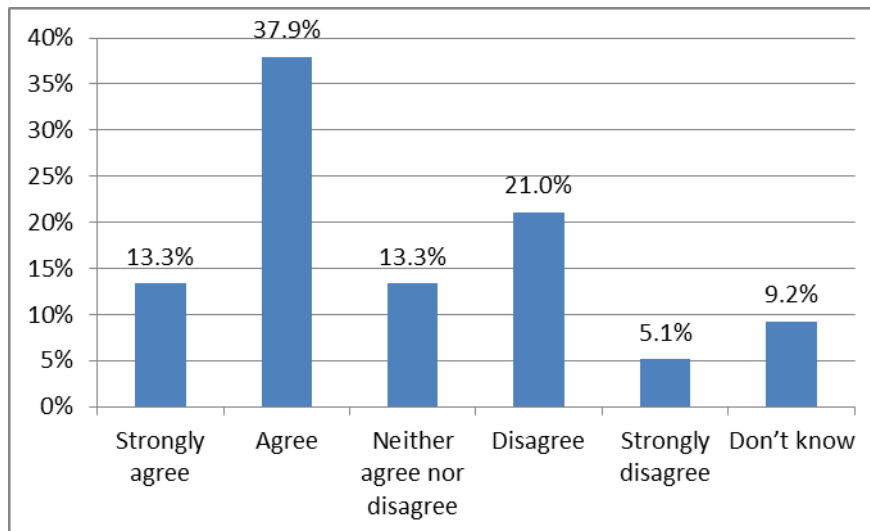
Source: Open public consultation, August-November 2015.

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

The responses to the question on whether there is enough information readily available in the Member States about classification of alcohol products produced domestically or for any other Member State, were very similar to the responses on the question about whether consumers had sufficient information based on the current classification system. Half of the respondents (strongly) agreed that enough information about classification of products was available. These respondents noted that it was possible to find information online but also remarked that some of it might be difficult to understand for a layperson.

The 25% of respondents who (strongly) disagreed that information was readily available also referred to the problem that classification of alcoholic products was difficult to understand for laypersons. In addition, associations and companies referred to problems with the classification of specific products.

Figure 4: Question 1.2 – There is enough information readily available in your country about classification of alcohol products produced domestically or for any other Member State? (N=195)

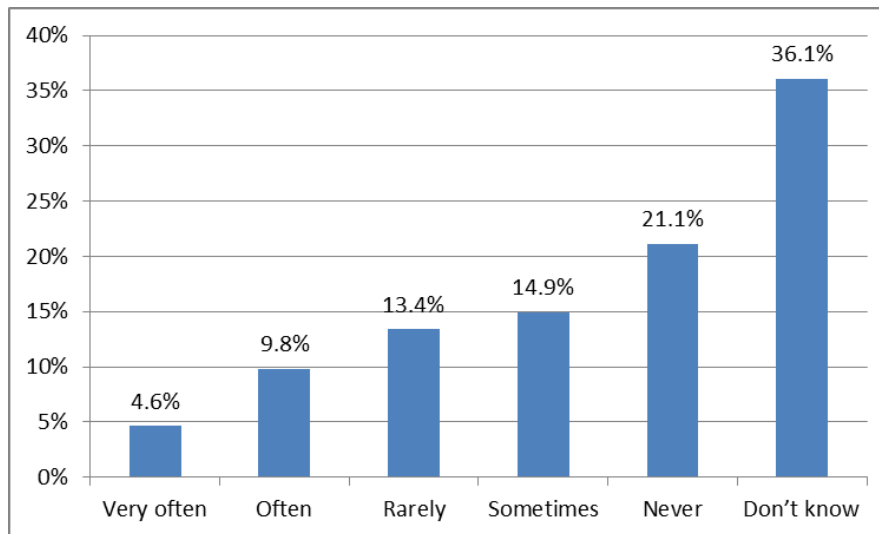


Source: Open public consultation, August-November 2015.

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

In total, 43% of the respondents reported that they had seen or purchased alcoholic products which were packaged to look like their equivalent higher strength spirits but were lower priced. Several respondents (15%) even indicated to (very) often come across such products. Respondents referred to products based on fermented alcohol combined with additives to resemble higher strength spirits of distilled origin. Ready-to-drink products and alcopops were equally mentioned. Only 21% had never seen nor purchased such products.

Figure 5: Question 1.3 - I have seen/purchased alcoholic products which were packaged to look like their equivalent higher strength spirits but lower priced than the equivalent products in the higher tax band? (N=194)



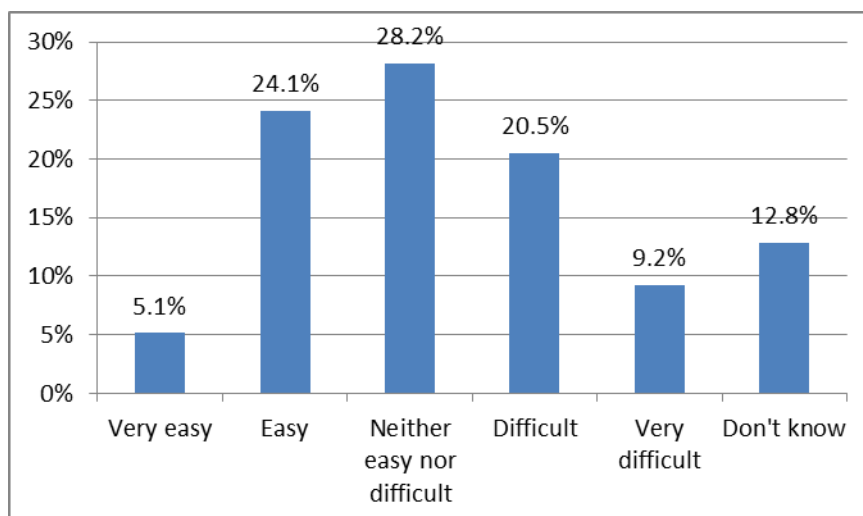
Source: Open public consultation, August-November 2015

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

The responses to the question on whether it was easy to classify alcohol and alcoholic beverages under the headings of the Directive were ambiguous. An almost equal share of respondents (30%) indicated that the classification was (very) easy and (very) difficult. Another 28% of respondents neither agreed nor disagreed that the classification was easy.

Respondents noted that classification was difficult in particular for new products. It was suggested to step back from classification in different categories based on the origin of the alcohol and levy excise duty based on alcoholic strength. Another issue mentioned is the variation between the Member States who classify the same product differently.

Figure 6: In your view, is it easy to classify alcohol and alcoholic beverages under the headings listed above (for example 2206 – intermediate product, 2208 - spirit? (N=195)

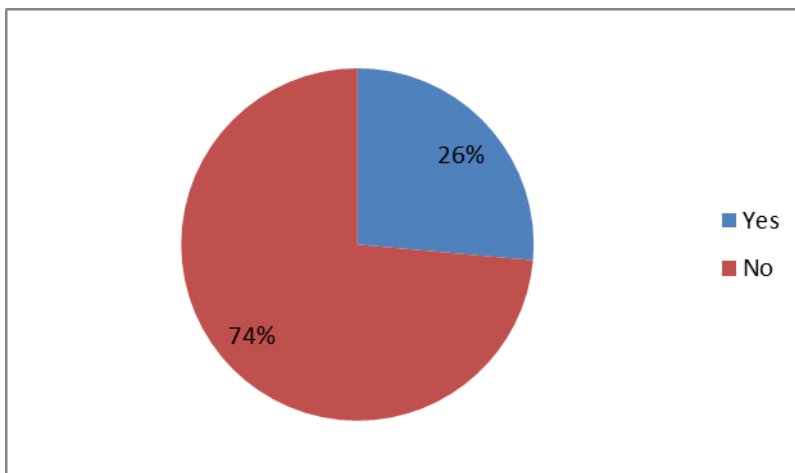


Source: Open public consultation, August-November 2015

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

A quarter of the respondents noted that they were able to provide examples of drinks where it was not immediately obvious which classification they fell into and how they compared in terms of price to similar products. Most respondents referred to products containing mixtures of different categories of alcohol but also mixtures of alcohol with non-alcoholic ingredients, in particular added sugar or other sweeteners. Many referred to ready-to-drink mixtures and alcopops. Another group of respondents reported that it was difficult to classify some specific national or traditional products.

Figure 7: Question 1.5 - Can you give us examples of drinks where it is not immediately obvious to you what classification they fall into and how they compare in terms of price to the similar products? (N=193)



Source: Open public consultation, August-November 2015

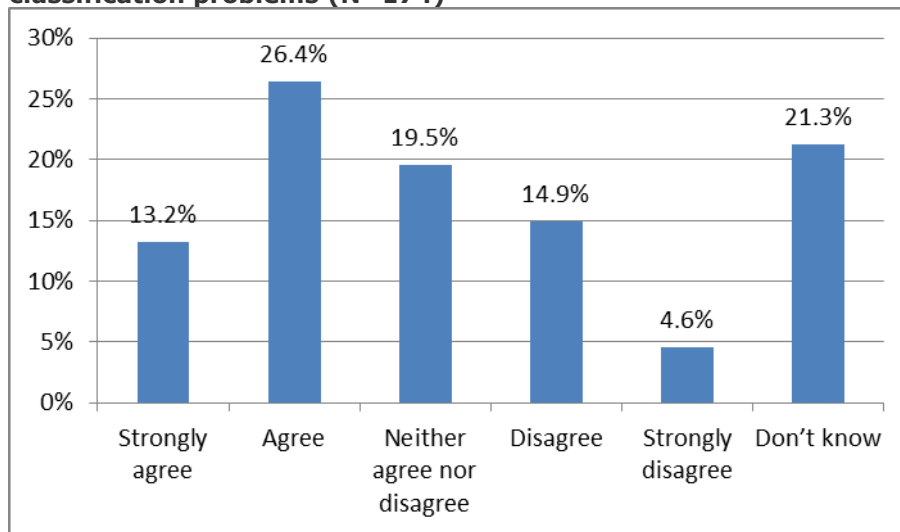
Question 1.6 – Please indicate to what extent you agree with the following statement: The criteria of the European Court of Justice (ECJ) in Siebrand reduce any present and future classification problems.

In the Siebrand case⁴, the ECJ ruled that the decisive criterion for the classification of goods for customs purposes is in general to be sought in their “objective characteristics” and that it was necessary to identify, from among the materials of which they are composed, the one which gives them their “essential character”.

Most respondents (40%) (strongly) agreed that the criteria laid down by the ECJ reduced classification problems, noting however that problems were not eliminated and that there was a need to consequently apply the criteria. One fifth of the respondents indicated that classification problems were not reduced by the judgement. These participants suggested that there remained too much room for interpretation of the terms used by the ECJ and the judgement was not precise enough to allow for a clear and consistent classification.

⁴ Judgment of the Court (Third Chamber) of 7 May 2009. Siebrand BV v Staatssecretaris van Financiën; Case C-150/08

Figure 8: Question 1.6 – Please indicate to what extent you agree with the following statement: The criteria of the ECJ in Siebrand reduce any present and future classification problems (N=174)

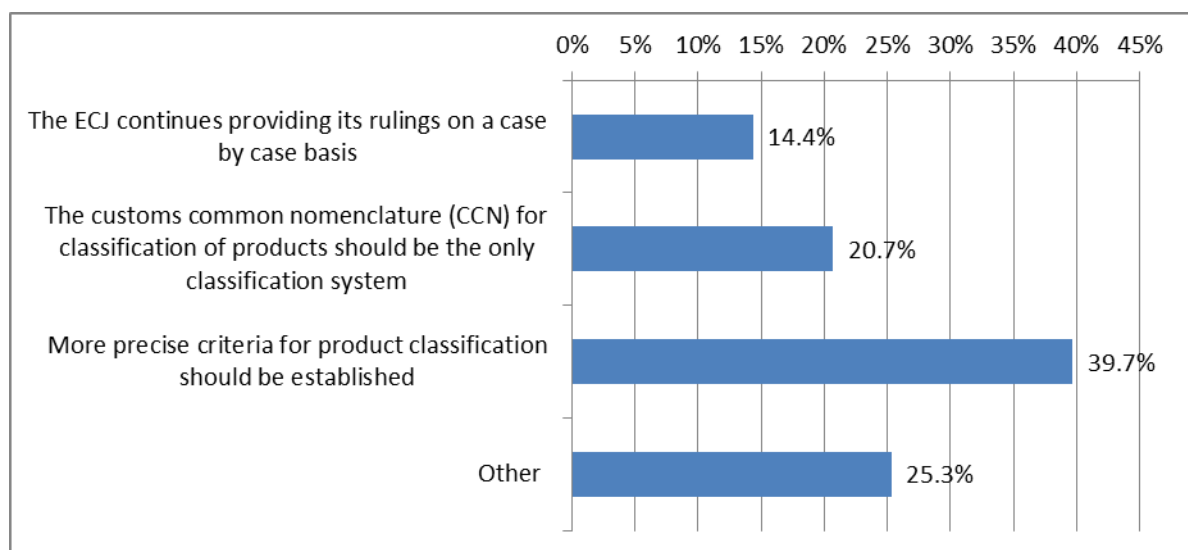


Source: Open public consultation, August-November 2015

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

To solve the current problems, most respondents (40%) suggested establishing more precise criteria for product classification. Others considered basing classification only on the CN system (21%) to be the solution to the problems. Least support (14%) was given to the option that the ECJ continues to provide guidance on a case by case basis through its rulings. In total, 44 respondents suggested other solutions. Most of these respondents argued that consistent taxation of all alcoholic beverages based on their alcoholic strength would be the best solution to eliminate classification issues and also respond better to health risks. Participating beer producers and associations of these indicated that more explanations would be sufficient, in particular containing descriptions of production techniques. One SME suggested abolishing all excise duty on alcohol to solve the issue.

Figure 9: Question 1.7 – In your opinion, if you agree that there is a problem, what would be the best solution to solve these issues? (N=174)



Source: Open public consultation, August-November 2015

3.2 Reduced rates for small producers of beer and ethyl alcohol

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

- For beer, Article 4 of Council Directive 92/83/EEC gives Member States the option to apply reduced rates to brewers producing no more than 200,000 hectolitres (20 million litres) per year.
- For ethyl alcohol (spirits), Article 22 gives Member States the option to apply reduced rates to distillers producing no more than 10 hectolitres (1,000 litres) of alcohol per year, or 20 hectolitres (2,000 litres) if already provided when the Directive was adopted.

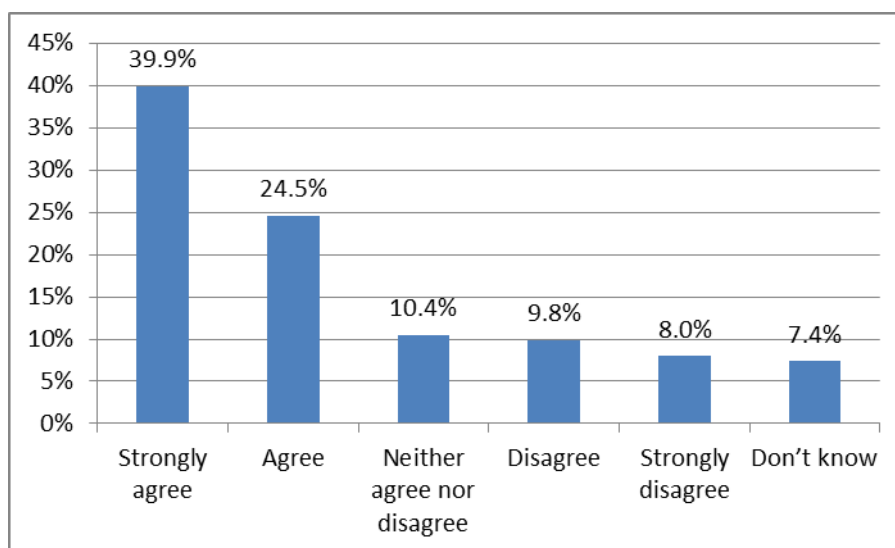
With regard to the other three categories of alcohol products (wine; fermented beverages other than wine and beer; and intermediate products) there are simply no reduced rate provisions specifically aimed at small producers.

With the questions on reduced rates for small producers, the open public consultation aimed at understanding what support there is for such reduced rates and which impact they have on competition.

Question 2.1 – Please indicate to what extent you agree with the following statement: There are overall benefits of establishing common EU rules for the application of reduced rates to small producers across the EU

Among the respondents to the open public consultation there was strong agreement that there are overall benefits of establishing common rules for the application of reduced rates to small producers across the EU. In total, 65% (strongly) agreed that common rules for reduced rates for small producers created benefits. They argued that common rules for all Member States were important for a functioning internal market. Many also noted that there was a need to specifically support small producers to allow for a level playing field. Only 18% of respondents disagreed with this statement. These were primarily citizens and NGOs which argued that the impact of alcohol on health should be the primary consideration and thus alcohol and alcoholic beverages should consistently be subject to high excise duties.

Figure 10: Question 2.1 – Please indicate to what extent you agree with the following statement: There are overall benefits of establishing common EU rules for the application of reduced rates to small producers across the EU (N=163)



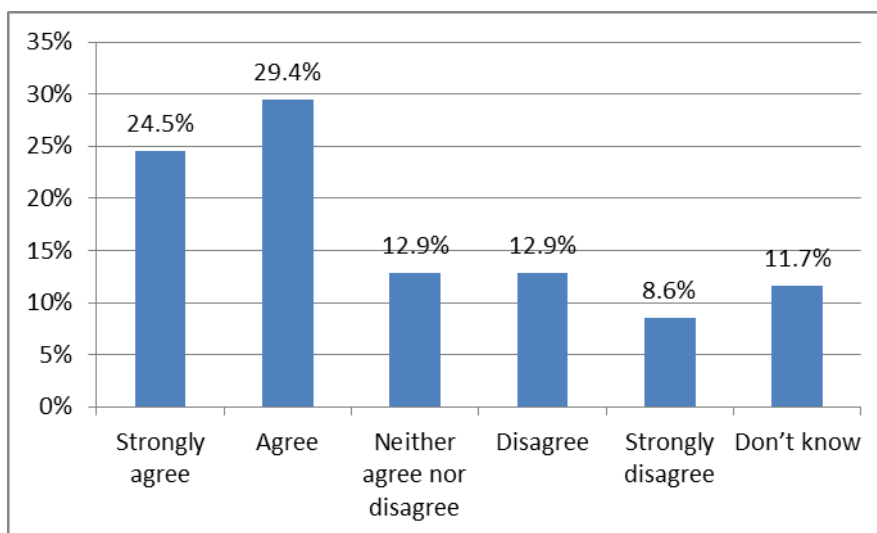
Source: Open public consultation, August-November 2015

Question 2.2 – Please indicate to what extent you agree with the following statement: The rules for small producers should apply to all categories of alcohol and alcoholic beverages

More than half of the respondents (strongly) agreed that the rules for small producers should apply to all categories of alcohol and alcoholic beverages. They argued that all small producers, independent of the product they produce should receive support and that it was important to avoid distortion of competition between the different products.

Opposition to the need to establish reduced rates for all small producers was indicated by 22% of the respondents to the open public consultation. They referred again to the need to protect consumer health and that therefore there should be no reduced rates at all. Others argued that the categories of alcohol and alcoholic beverages were so different that there was no need to apply the same rules to all.

Figure 11: Question 2.2 – Please indicate to what extent you agree with the following statement: The rules for small producers should apply to all categories of alcohol and alcoholic beverages (N=163)



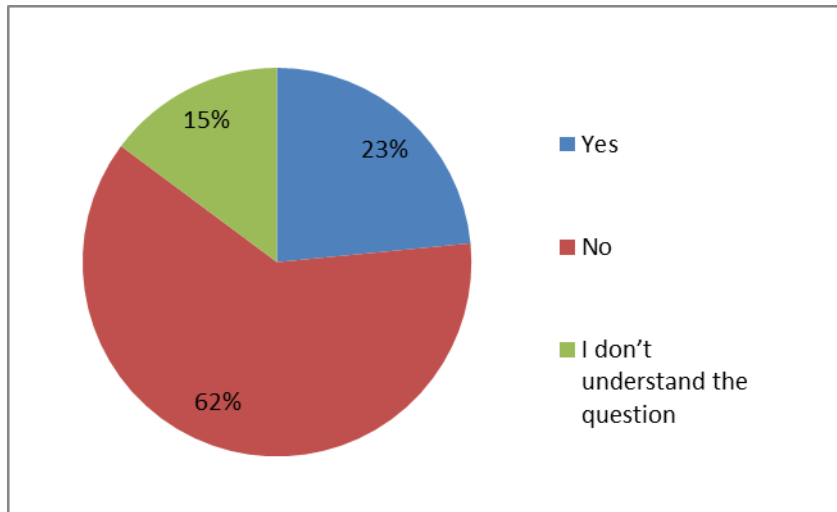
Source: Open public consultation, August-November 2015

Question 2.3 - Are there any concrete situations that you are aware of whereby the application of a reduced rate on certain alcohol and alcoholic beverages for small producers by one or more Member States is resulting in distortion of competition within the Single Market? Please explain and, if possible, give an indication of the economic impact of the distortive effects.

A majority of respondents (62%) reported that they were not aware of concrete situations where the application of a reduced rate on certain alcohol and alcoholic beverages for small producers by one or more Member States is resulting in distortion of competition within the Single Market. However, 23% knew about such situations. They primarily referred to differences in the application of excise duty and reduced rates between the Member States. For example, high excise duty rates in the Nordic countries were mentioned to generate important cross border shopping.

Finally, 15% of the respondents indicated that they were not able to understand the question.

Figure 12: Question 2.3 - Are there any concrete situations that you are aware of whereby the application of a reduced rate on certain alcohol and alcoholic beverages for small producers by one or more Member States is resulting in distortion of competition within the Single Market? (N=162)



Source: Open public consultation, August-November 2015

3.3 Exemptions

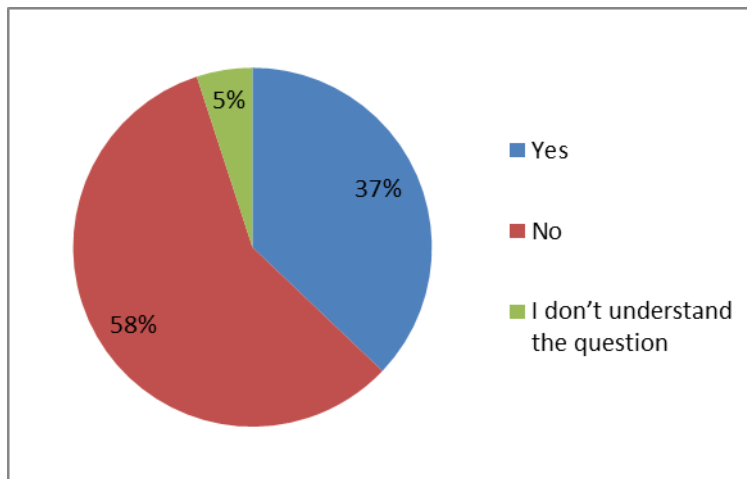
Denatured alcohol (or non-commercial / industrial or "surrogate" alcohol) that is used in the manufacture of some products not destined for human consumption, (for example screen wash, anti-freeze, hand sanitizer, mouthwash, nail varnish remover, perfumes and aftershaves) is exempt from excise taxes.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

The section on exemptions for denatured alcohol aimed at identifying whether respondents were aware of such fraud and to understand which considerations consumers make when buying and consuming alcohol.

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

An important share of respondents indicated to be aware of fraud with denatured alcohol that is reverted into drinking alcohol. Nevertheless, the majority (58%) reported to be unaware of such fraud.

Figure 13: Question 3.1 – Are you aware that the fraud described above is happening? (N=159)

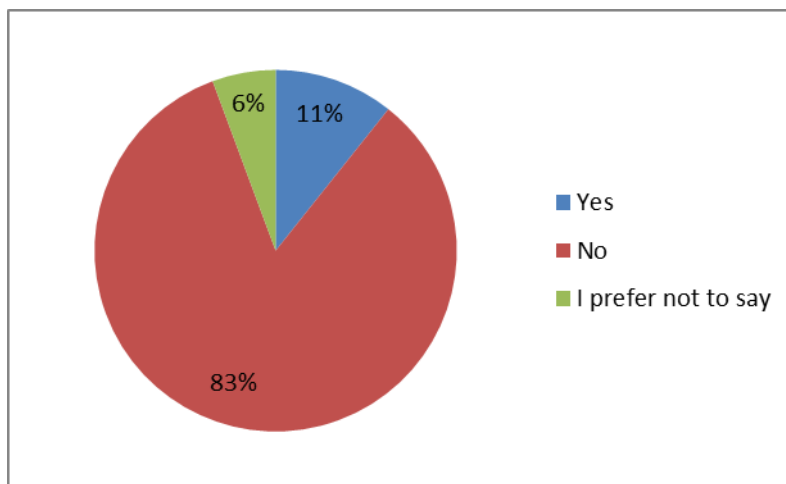


Source: Open public consultation, August-November 2015

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

While Figure 13 showed that there is awareness about fraud with denatured alcohol, only 11% of respondents noted that they or their friends or family had ever been offered or bought very cheap spirit. On the contrary, 83% noted that they never had been offered or bought such products.

Figure 14: Question 3.2 – Have you, your friends, or any member of your family ever been offered / bought very cheap (for example, less than supermarket prices) spirit? (N=159)



Source: Open public consultation, August-November 2015

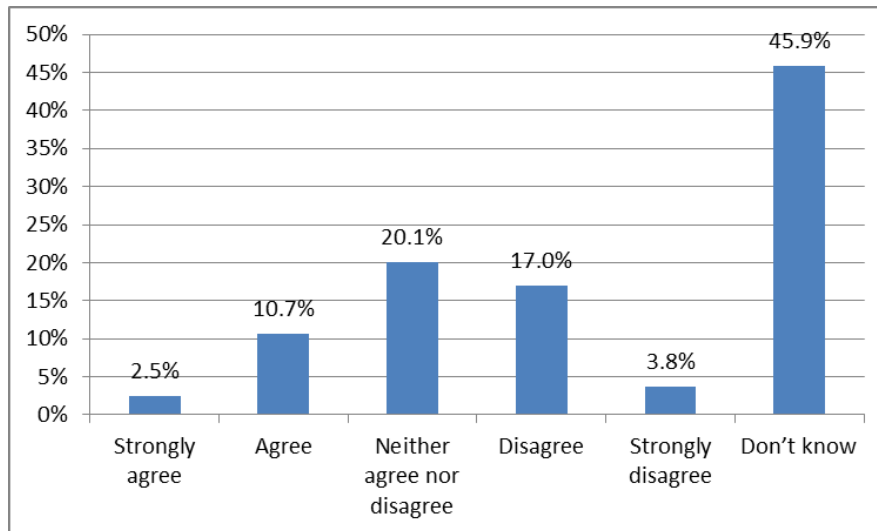
Please indicate to what extent you agree with the following statement: The problem of denatured alcohol being reverted into spirit and sold illegally is widespread?

Most respondents to the open public consultation reported that they did not know whether the problem of alcohol being reverted into spirit and sold illegally was widespread. While 13% of the respondents (strongly) agreed that this fraud with denatured alcohol was common, 21% suggested that this was not the case.

Respondents were asked to provide evidence of such cases where available. They referred to incidents of reverted denatured alcohol in Eastern Europe, the UK and

outside the EU. Most of them suggested that those incidents were individual cases on comparably small scale. Others noted that it would be much cheaper to illegally produce alcohol in order to avoid taxation than reverting denatured alcohol and thus the latter type of fraud was economically not interesting.

Figure 15: The problem of denatured alcohol being reverted into spirit and sold illegally is widespread (N=159)

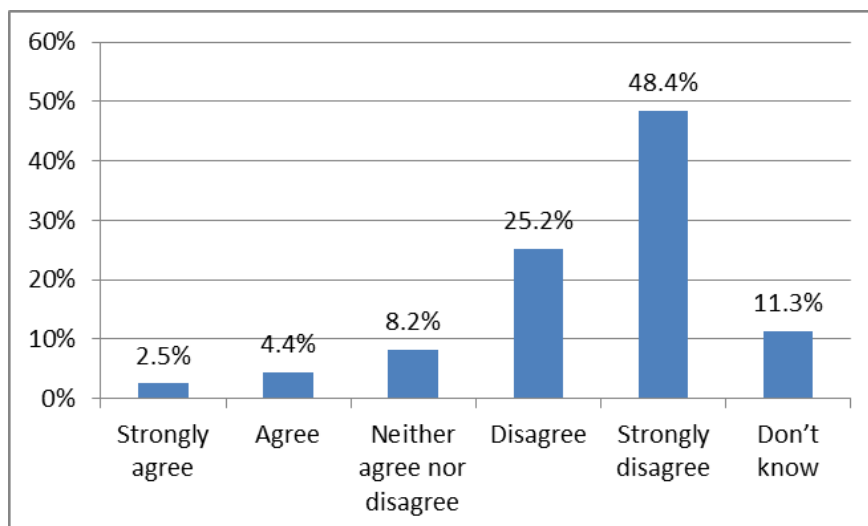


Source: Open public consultation, August-November 2015

Please indicate to what extent you agree with the following statement: The trade and consumption of illicit alcohol can be justified

Almost half of the respondents strongly disagreed with the statement that consumption and trade of illicit alcohol could be justified. Another 25% disagreed. They argued that illicit alcohol presented a risk for consumer’s health and potentially impacted fair competition on the market. Only 7% of the respondents to the open public consultation (strongly) agreed that there was a justification for trade and consumption of illicit alcohol.

Figure 16: The trade and consumption of illicit alcohol can be justified (N=159)

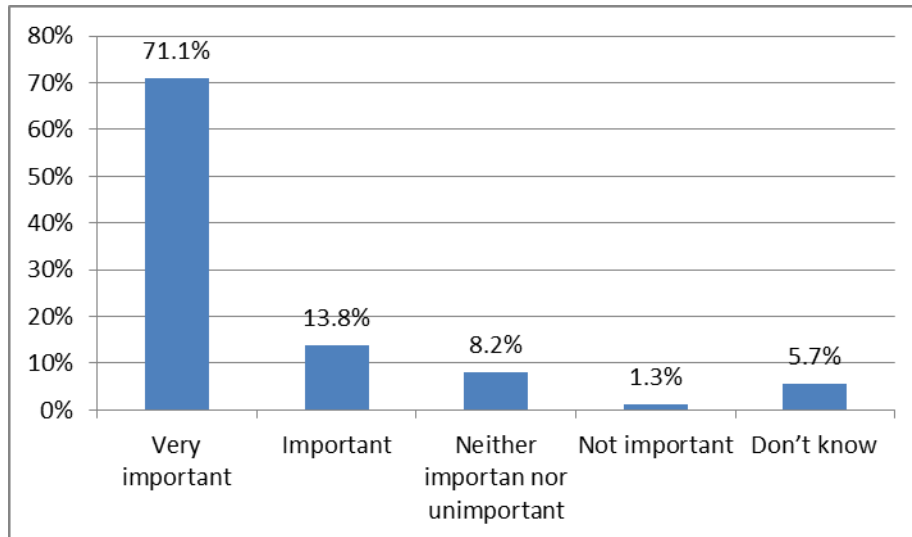


Source: Open public consultation, August-November 2015

How important it is for you to know that the alcohol you are drinking is both legitimate and safe to drink?

For 71% of the respondents it is very important to know that the alcohol they are drinking is both legitimate and safe to drink. They noted that the protection of their health was the main factor for choosing legitimate alcohol. Only two respondents indicated that the legitimacy and safeness of alcohol was not important to them.

Figure 17: How important it is for you to know that the alcohol you are drinking is both legitimate and safe to drink? (N=159)

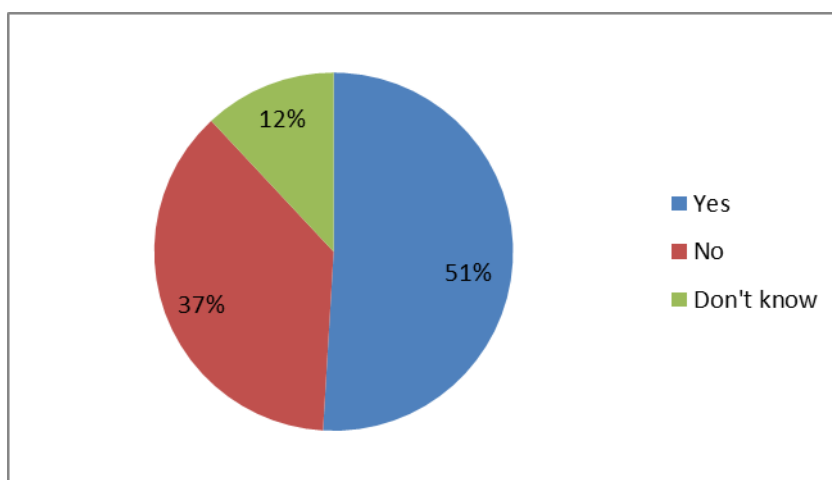


Source: Open public consultation, August-November 2015

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

Just over 50% of the respondents indicated that they were willing to pay more for the certainty to know that they were buying a legitimate product. 37% said they would be unwilling to pay more.

Figure 18: Question 3.3 - Are you willing to pay more for the certainty to know you are buying a legitimate product? (N=159)

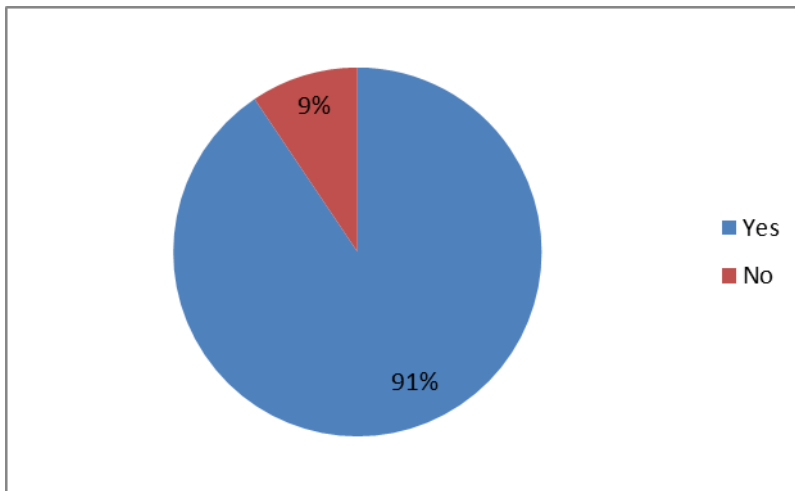


Source: Open public consultation, August-November 2015

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

Over 90% of the respondents to the open public consultation reported to be aware that there are potentially serious health risks of consuming some of the types of illicit alcohol. Only 9% stated that they were unaware of such risks.

Figure 19: Question 3.4 - Are you aware that there are potentially serious health risks of consuming some of the types of illicit alcohol (for example blindness, even death)?



Source: Open public consultation, August-November 2015

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

Participants to the consultation were invited to suggest solutions to the issue of denatured alcohol being reverted into drinkable products. Many suggested more control of production of denatured alcohol and sale of ethyl alcohol, imposing stronger denaturants and stronger sanctions in case of fraud. Others saw a need for more awareness raising among citizens to inform about risks of cheap, possibly illicit alcohol. Finally, some respondents argued that a reduction of excise duty rates for alcohol and alcoholic beverages could make the illicit production of alcohol economically less attractive.

3.4 Own consumption / private production

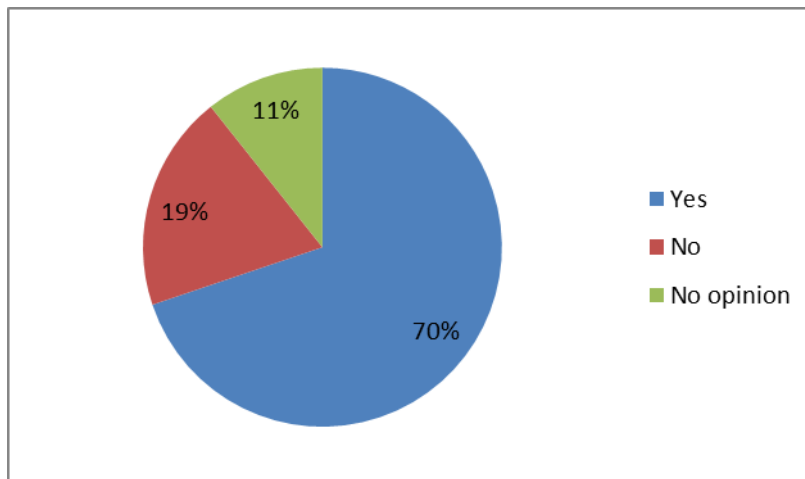
The Directive allows Member States to provide an exemption for private production and own consumption (by the producer, members of his family or his guests) of beer, wine and other fermented beverages.

The section on own consumption of privately produced beer, wine and other fermented beverages assess consumer’s awareness of these exemptions and considers the extension of the exemption to the other product categories of the Directive.

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

A majority of respondents to the open public consultation indicated that they were aware of exemptions for private production and own consumption in the categories of beer, wine and fermented beverages, whereas 19% of the respondents reported to be unaware of these exemptions.

Figure 20: Question 4.1 - Are you aware of this exemption in these categories? (N=159)

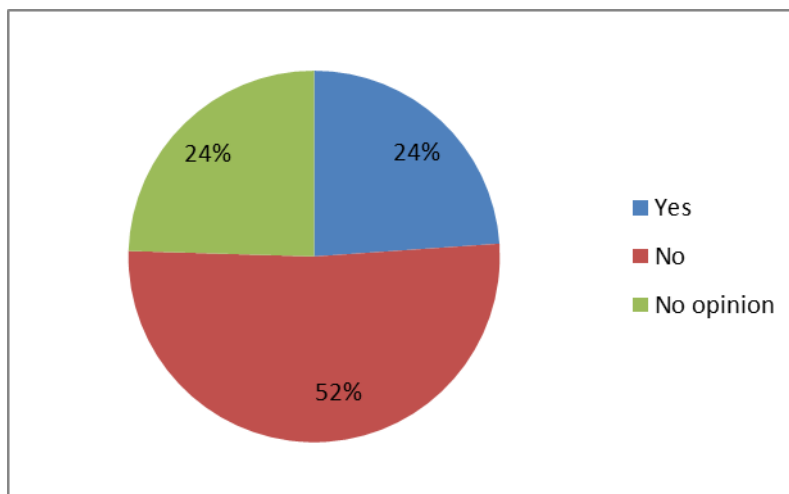


Source: Open public consultation, August-November 2015

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

A quarter of the respondents noted that they were in favour of extending the exemption for own production to all product categories. Half of the respondents opposed such a suggestion and another quarter had not opinion with regards to the exemptions.

Figure 21: Question 4.2 - Do you think the exemption should be extended to all the categories i.e. also include Intermediate Product and Ethyl Alcohol? (N=159)

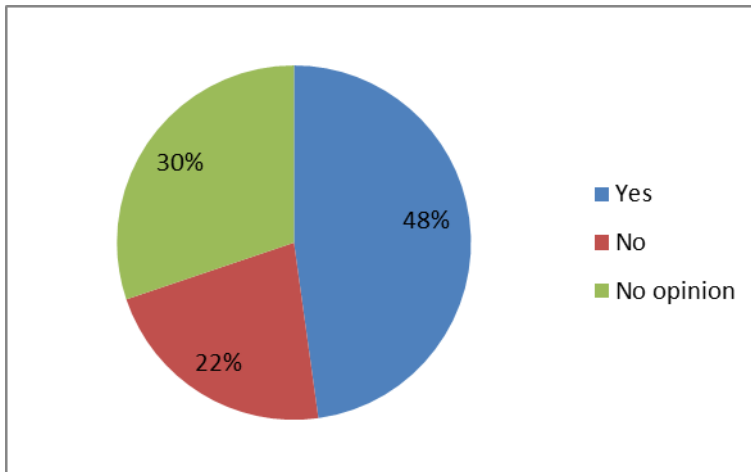


Source: Open public consultation, August-November 2015

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

Almost half of the respondents to the open public consultation thought that an extension of the provisions of exemptions would encourage fraudulent production and sale of ethyl alcohol and even impact cross-border activity. In contrast, 22% of the respondents indicated that they did not think that fraudulent activity could be encouraged by more exemptions for own production, while 30% had no opinion on the subject.

Figure 22: Question 4.3 - Would any extension of the provisions encourage fraudulent production and sale of ethyl alcohol? Could it also impact if there was cross-border activity with such alcohol? (N=159)



Source: Open public consultation, August-November 2015

3.5 Excise structure’s importance for policy making

While the Directive was found to primarily ensure the functioning of the internal market and safeguard the budgetary interests of the Member States, excise duties are also a policy tool for consumer health objectives.

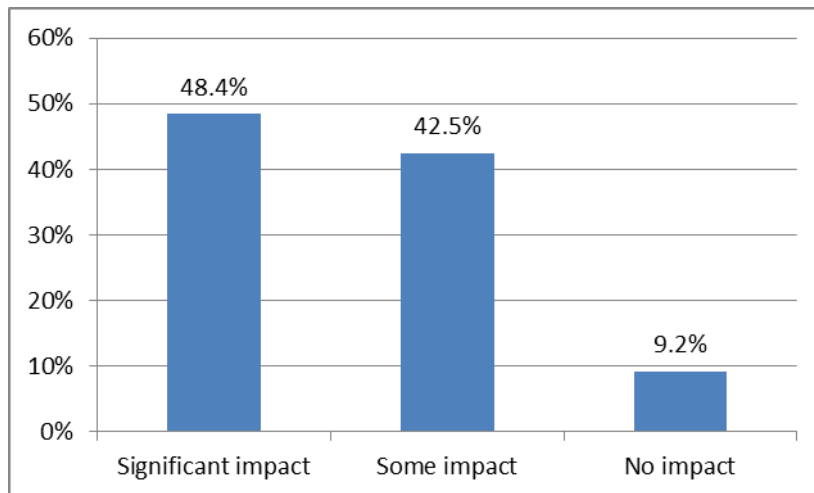
The questions in the section of the excise structure’s importance for policy making were intended to collect views on the impact of excise duty structures on other policy aspects and on whether other ways to calculate excise duty would be more appropriate to achieve health policy objectives.

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

Respondents agreed that the structures of excise duty on alcoholic beverages have an impact on other policy aspects such as health, social, cultural or agricultural policy or even revenue raising. Almost half of the respondents considered this impact to be significant, while 43% indicated that there was some impact. They primarily considered the impact of excise duty on health policy. Many suggested that higher excise duties could reduce alcohol consumption and thus limit the impact on consumer health. Others expressed concerns that increasing excise duty rates could incentivise fraud which in turn would increase the health risk for consumers.

Less than 10% of the respondents thought that there was no impact on other policy aspects. They argued that the final price of alcoholic beverages was more important than the level of excise duty. In order to limit health risks stemming from alcohol consumption these respondents suggested informing consumers better.

Figure 23: Question 5.1 – In your view, can the structures of excise duties on alcoholic beverages have an impact on any other policy aspects (e.g. health policy, social policy, cultural policy, agricultural policy, revenue raising, etc.)? (N=153)



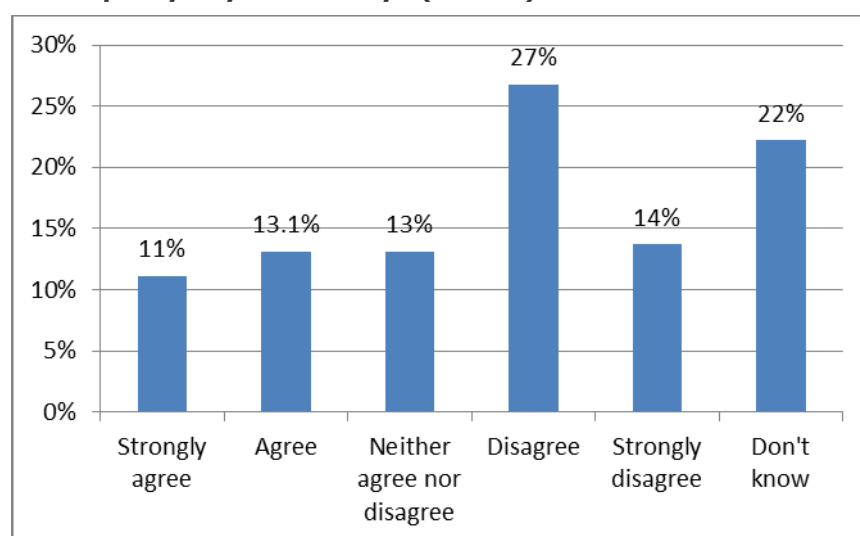
Source: Open public consultation, August-November 2015

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

Most respondents were not of the opinion that the calculation of excise duty based on the volume of the product rather than the actual alcoholic content is in line with the health policy of their country. 41% of the respondents (strongly) disagreed that the calculation of excise duty was reflecting health policy. A majority of them argued that for health policy it would be beneficial to tax alcohol and alcoholic beverages based on their alcoholic strength and not the volume.

In contrast, 24% (strongly) agreed that the taxation method was in line with national health policy. Mostly producers of beer and their associations suggested that it was important to tax products of lower alcoholic strength differently than ethyl alcohol.

Figure 24: Question 5.2 – Do you agree that the calculation of excise duty based on the volume of the product rather than the actual alcoholic content is in line with the health policy in your country? (N=153)



Source: Open public consultation, August-November 2015

3.6 Further comments

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

In total, 43 additional comments were received from the respondents to the open public consultation. Some respondents criticised the differences in the taxation of alcohol between the Member States and between the various product categories. Others referred to specific cases of hindered movements between Member States. Several respondents argued for the introduction of excise duty based on alcoholic strength. Finally, in particular consumers and NGOs raised concerns about health impacts of alcohol consumption.