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REPORT

From:	Presidency
To:	Delegations

Subject:	Fiscalis Project Group on Exchange of information and best practices on taxes on non-alcoholic beverages - Final report
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Delegations will find attached the final report of the Fiscalis Project Group on Exchange of information and best practices on taxes on non-alcoholic beverages.

**Fiscalis Project Group on Exchange of information and
best practices on taxes on non-alcoholic beverages**

FPG/044

Final report, June 2025

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1 Introduction

In May 2023, the Commission's Directorate-General for taxation and Customs Union (DG TAXUD) organised a seminar on health-based taxation within the framework of the Fiscalis programme.

The background of the seminar was the fact that Member States are increasingly introducing taxes on high in fat, sugar, or salt (HFSS) products, with diverging approaches (e.g., covering different categories of products, with diverging tax structures and rates). It was also stated that there was no forum at the EU level for exchange of information and best practices at a technical/operational level on the setup and implementation of such tax schemes, and potential effects on the internal market.

In parallel, DG TAXUD had commissioned a study to encompass a detailed analysis of selected health taxes at national level, looking at their design and impacts, and to identify best practices.

To continue the discussion on health-based taxation, focusing on taxation on non-alcoholic beverages, a Fiscalis project group was established. A call for interest for excise duty experts to participate in the project group on *Exchange of information and best practices on taxes on non-alcoholic beverages* was published on 30 January 2024.

Eighteen Member States, most of which had two representatives, took part in the work of the project group¹. All Member States that applied a tax on non-alcoholic beverages in 2024 participated in the project. In one of these Member States, the tax on beverages is regional, not national. In addition, some Member States that do not tax beverages participated in the project. However, in a couple of these, the introduction of such a tax is planned. Among the participants was also one Member State where a beverage tax had previously been levied but has since been abolished.

The project group had five in-person meetings, the first of which was held in April 2024 and the last one in April 2025. The group was divided into three subgroups: Tax base, Tax Structure, and Procedures. The three subgroups had remote discussions between the second and third in-person meetings.

The project group consulted the following external parties for complementary information:

¹ Belgium, Croatia, Czechia, Denmark, France, Finland (project manager), Hungary, Ireland, Italy, Latvia, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden.

- Ecorys and WIFO regarding their study *Health taxes from an EU perspective* (hereinafter referred to as *Ecorys and WIFO study*) commissioned by the Commission
- Research Professor, Dr. Tuomas Kosonen from VATT Institute for Economic Research on his study *When Do Sin Taxes Meet Their Policy Goals?*
- DG COMP on State Aid and Health Taxes
- Annette Stafleu from The Netherlands Nutrition Center (Voedingscentrum) on the principles of Dutch nutritional guidelines
- James Holland and Hugh McHale-Maughan from the UK HMRC for a presentation on the Soft Drinks Industry Levy (SDIL)

In this report, *participating Member States* refers to the 18 Member States that participated in the project whereas *EU Member States* or *Member States* refers to all 27 Member States of the Union.

2 Scope and delimitations of the project

The aim of the project, as its name suggests, was to exchange information and best practices on the taxation of non-alcoholic beverages. The objective was to list and discuss:

- possible objectives of the tax
- possible tax models that support the objective(s) and how to reconcile differing objectives
- what kind of restrictions State aid rules or other aspects (in EU legislation) pose on the design of the tax model?
- alternative tax bases and tax structures
- alternative tax procedures and what implications they have from the point of view of free movement of goods, tax surveillance or administrative burden for both firms and tax administrations
- possible actions at EU level in order to reconcile difficulties in adopting effective tax models

The objective of the project group was to explore different aspects that should be taken into account when planning a tax on non-alcoholic beverages. However, the work does not aim to come to a conclusion or recommendation on what a tax on non-alcoholic beverages should look like in all Member States.

An important part of the work was to also explore advantages and drawbacks of possible EU-level action, but not necessarily come to a conclusion on the best way forward.

Instead, the project group aimed to share information and best practices on how to design taxes that aim to address health aspects concerning consumption of non-alcoholic beverages that have been raised in different EU Member States' health policies. Many Member States tax non-alcoholic beverages and some Member States are currently exploring these taxes.

The call for interest for the project on the taxation of non-alcoholic beverages was directed at excise tax experts. Consequently, the impact of consumption changes to health was left out of the project's scope. In addition, two other themes were excluded from the project: value-added taxation (VAT), and the use of tax revenues accrued from beverages.

However, certain VAT-related policies on beverage taxation implemented in some participating Member States were brought up during the project. The project group decided to include mentions of these policies in its report without further analysis.

The question of the use of tax revenues accrued from beverage taxes was excluded from the work. For example, earmarking of revenue, that is, allocating the revenue for specific use, was not discussed. Earmarking is a national matter, and Member States have different principles regarding whether taxes are general-purpose and part of the state budget or allocated to specific expenditures.

3 Beverage taxation in participating Member States in a nutshell

At the beginning of 2025, 12 participating Member States apply a tax on non-alcoholic beverages: Belgium, Croatia, France, Finland, Hungary, Ireland, Latvia, the Netherlands, Poland, Portugal, Romania, and Slovakia. Additionally, in Spain, there is a regional tax on non-alcoholic beverages, specifically in Catalonia.

Most participating Member States target beverages with added sugars, sweeteners, or certain stimulants, aiming to address health concerns related to harmful consumption. Some countries include flavoured beers and energy drinks, reflecting a broader definition of sweetened beverages.

Common exemptions in several participating Member States include natural fruit and vegetable juices without added sugars, milk and milk alternatives, and beverages intended for special dietary needs. These exemptions typically reflect health considerations and aim to support specific consumer groups.

The definitions used for taxable beverages often rely on both CN codes² and specific legislative language that outlines what constitutes a sugary beverage. Most countries incorporate CN codes to classify products, but they also provide additional definitions to clarify what qualifies as a sweetened beverage.

All participating Member States that impose a tax on beverages apply a specific tax, calculated based on their volume. In some participating Member States, a uniform tax rate applies to all beverages. However, in most participating Member States, tax rates vary depending on the beverage's sugar content. Additionally, some impose separate tax rates on beverages that contain stimulants.

In Italy, the tax on sugary drinks was introduced in 2020. However, the tax has not yet been implemented, as the enactment of the law has been postponed annually. According to the latest decision, the law is expected to come into force at the beginning of July 2025, unless further postponement.

In Sweden studies by governmental agencies, such as the Swedish Food Agency, have mentioned the possibility of taxing non-alcoholic beverages to encourage healthy nutrition. However, no proposals for such a tax have been made. Other measures suggested include voluntary agreements within the food industry and marketing restrictions. So far, there is no political interest in introducing a tax on non-alcoholic beverages in Sweden.

In Czechia there is no tax on beverages either. Political and expert discussions are at the very beginning.

Denmark abolished its previous tax on non-alcoholic beverages to reduce cross-border and illegal trade. As Denmark is one of the so-called hubs for cross-border trade in the EU, and non-alcoholic beverages generally are easy to transport and store, have a long shelf life and are relatively homogeneous products, it was argued that cross-border trade and illegal trade would increase, if the beverages were taxed higher in Denmark than in neighbouring countries. Additionally, EU citizens are able to avoid paying can and bottle deposit on, for example, non-alcoholic beverages in German 'border shops' if the products are brought

² Council Regulation (EEC) No 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff

back to Denmark after purchase and are intended for private use, thereby incentivising cross-border shopping. However, when the new deposit-requirement in the EU Packaging and Packaging Waste Regulation (PPWR) takes effect in 2029, this will no longer be possible.

In Spain there is a regional tax on packaged sugary drinks. At the national level, instead, VAT on some non-alcoholic beverages has recently been raised from reduced rate to the general rate. Both operators and the Tax Administration have considered this solution to be better than implementing a new tax on certain products. Simpler rules and easier management are estimated to lead to more minor disputes in their application.

Slovenia, based on an initiative by the Ministry of Health and following the example of other Member States, decided to draft legislative proposals to introduce a tax on non-alcoholic beverages. Proposals were prepared in 2012 and 2014. Since a consensus on introducing the tax could not be reached, they were withdrawn. More recently, as a further step in this direction, the VAT on some non-alcoholic beverages with added sugar or sweeteners was increased from the reduced to the general rate.

For detailed information on the taxation of non-alcoholic beverages in each participating Member State, please refer to Annex I. A summary table of the participating Member States' tax bases is also attached, see Annex 2.

4 General aspects of taxing beverages

4.1 Effectiveness of the tax

Excise duties may be an effective tool for influencing consumption patterns. Increasing the price on products that have harmful effects can reduce their consumption. By using taxation to change consumption behaviour, policymakers can affect the diet of the general public, which could influence public health positively. However, such taxes need to be designed carefully so that they target the right behaviour and are successful in decreasing associated harms.

Behavioural taxes are often justified through the concept of externalities. Externalities reflect the harm imposed on society of some activity, such as increased public healthcare costs due to consumption of certain foods or beverages that increases obesity. However, quantifying the size of externalities is often extremely challenging, particularly in the context of food consumption and health. For example, what would be the societal cost of consuming 100 grammes of sugar in non-alcoholic beverages? Therefore, while these concepts provide a useful intuitive framework, the primary rationale for such taxes typically centres straightforwardly on promoting changes in consumption of products having harmful effects.

Identifying these products may, however, require careful consideration. This includes clearly defining the specific factors determining the health effects of non-alcoholic beverages to ensure the tax accurately targets products considered harmful.

A crucial dimension of the tax is the behavioural response. If demand is price inelastic, price increases may not lead to sizeable changes in consumption. Even if taxable consumption does decrease, there may appear other changes in consumption which hamper the positive health effects. For example, consumers may switch from harmful non-alcoholic beverages to equally harmful alternatives (e.g., switching from sugary drinks to high-fat snacks) or replace domestic consumption with cross-border shopping.

The effect of the tax also depends on the tax rate. A very low tax rate may not be sufficient to influence the price differential between an unhealthy and a healthy product in a way that significantly influences consumption. A very high tax rate, on the other hand, may incentivise cross-border shopping or tax fraud and may exacerbate problems concerning borderline products, that is, between products that are similar but only some of them fall into the tax base.

Therefore, understanding consumer behaviour with respect to price changes is important. Besides consumers reacting to price changes on existing products, shifts in consumption may also be driven by industry responses. The tax may incentivise the industry to reformulate their products to avoid tax increases on their products, which creates more possibilities for consumers to choose non- or less taxed products.

Ideally the work of the project group could draw on empirical evidence regarding how existing taxes have influenced consumption. Descriptive statistics on consumption trends and industry responses can provide valuable insights. However, determining the causal effects of such taxes often requires detailed data and robust empirical methods. The challenge is compounded by issues related to data availability. For example, household surveys typically report consumption at a very aggregate product group level, whereas assessing the impacts of taxes may require granular data on the consumption of different kinds of products within the non-alcoholic beverages category.

The Ecorys and WIFO study commissioned by the European Commission reviewed existing taxes in EU Member States and explored, for example, whether an EU harmonised tax framework with minimum rates would add value. The study examined the effects of these taxes on prices, consumption, and cross-border shopping. The study found that product reformulation to reduce sugar content took place in some countries after implementing taxes on non-alcoholic beverages, but the causal effect is difficult to identify. Progressive tax systems proved more effective in driving such changes. The study also found that the demand of HFSS products is relatively elastic. Since taxes are largely passed through to prices, this suggests that they are expected to reduce the consumption of taxed products. As mentioned in the study report, caution should be taken when interpreting these results, as it is difficult to isolate the causal effect of taxes on, for example, consumption and product reformulation. The study also simulated potential health effects by linking tax increases on non-alcoholic beverages to decreases in consumption of such products, and consequently decreases in calories, to the decreased likelihood of developing certain diseases.

Regarding cross-border shopping, the researchers say that it is difficult to evaluate the effect of taxes. They observe limited evidence of cross-border shopping at EU level but say that at the level of individual EU Member States cross-border shopping can be noticed in certain hotspots.

Evidence on the Finnish taxes on sweets, chocolates, ice-cream, and non-alcoholic beverages shows that the design of the tax is crucial for it to influence consumer behaviour³. The study found that even though sweets, chocolate and ice cream were taxed, and cookies were not taxed, there were hardly any substitution to cookies, even though sweets, ice cream and cookies all contain sugar, and might be *assumed* to be substitutional.

On the other hand, a differentiated tax for non-alcoholic beverages based on their sugar content shifted consumption from sugar-containing beverages to sugar-free beverages. The researchers conclude that demand may be price inelastic on a product group level, but very elastic within that group between different products, provided that they are close substitutes. Therefore, for a tax to influence consumption in a desired way, it must create a tax difference between products that are close substitutes for consumers but

³ Kosonen et al. Studying a Sin Tax Scheme with Multiple Reforms Lessons for Consumption Taxation. VATT Working Papers 164. (<https://labore.fi/wp-content/uploads/2024/04/Tyopapereita-342.pdf>)

have different health effects. It would be relevant for policymakers to have sufficient data regarding product substitution, when designing tax policies on non-alcoholic beverages, to ensure that the policy is effective in changing consumption.

A study examined the effects of the reform of the French soda tax in 2018, when the tax rates were adjusted to be more progressive with respect to the sugar content while the rate for beverages sweetened by artificial sweeteners was reduced⁴. To isolate the effect of the reform, the study accounted for the ongoing trend of decreasing sugar content in products even before the reform. The findings indicated that the reform had a statistically significant but modest effect on this trend. Both the average quantity of sugar sweetened beverages purchased by households and overall household sugar intake declined slightly. However, the results do not provide strong evidence of a substantial impact of the reform.

The effects of the Irish tax on sugar-sweetened drinks were evaluated in a study based on market data, which showed a notable reduction (20-30%) in sugar being consumed via carbonated soft drinks in Ireland in the immediate aftermath of the introduction of the tax, compared to the general trend from earlier years⁵. It remains unclear how much of this change is a result of reformulation or consumers opting for low-sugar or sugar-free options. However, the study also found minimal price differentiation between full-sugar carbonated drinks and their diet alternatives in Ireland.

Evidence from the United Kingdom shows that after the announcement of its soft drink tax in 2016, there was significant reformulation of products available⁶. The tax was targeted to soft drinks that are easily reformulated and after implementation, 11 % of soft drinks pay the tax compared to 35 % that would have paid before the announcement in 2015. As a result, aggregate sugar consumption has decreased. Due to a decrease in the number of beverages exceeding the sugar threshold for taxation, tax revenue has also been significantly lower than expected.

There is also data from other countries showing that the consumption of soda drinks decreased after the introduction of additional fiscal burden on these products. In Poland, according to data from the Market Monitoring Center, the tax on sweetened beverages introduced in January 2021 increased the prices of these products (about 0,25 EUR/l), and this in turn translated into a decrease in their sales by 20 %. In Latvia, the consumption of beverages with a lower sugar content (up to 8 grammes per 100 millilitres) has increased, but the consumption of beverages with a high sugar content has decreased. These assessments may not, however, indicate the causal effect of the tax on consumption as these changes may also be driven by other factors.

In practice, even if monitoring effects of the tax on consumption is possible, it is much more difficult to estimate effects on public health. These have been assessed through simulation studies such as in the Ecorys and WIFO study. While these studies offer valuable insight into possible impacts, their findings should be interpreted with caution, as they are based on numerous assumptions that necessarily increase uncertainties. It might prove extremely difficult to isolate the effects of a tax based on actual data since health is affected by many different factors and health outcomes appear with time. Therefore, if a link between public health and the consumption of certain types of beverages is established, monitoring consumption only can be considered sufficient.

⁴ Consortium Soda-Tax. (2024). Rapport de recherche sur l'élaboration, la mise en œuvre et les effets de la taxe soda appliquée en France depuis juillet 2018. DOI:10.5281/zenodo.11079650. (<https://www.ehesp.fr/recherche/domaines-et-champs-de-recherche/politiques-sociales-et-de-sante/soda-tax-2019-2023/>)

⁵ Houghton F, Moran Stritch J, Nwanze L. An examination of Ireland's sugar sweetened beverage tax (sugar tax) in practice. *J Public Health (Oxf)*. 2023 Aug 28;45(3):e551-e556.

⁶ Scarborough et al. (2020). Impact of the announcement and implementation of the UK Soft Drinks Industry Levy on sugar content, price, product size and number of available soft drinks in the UK, 2015-19: A controlled interrupted time series analysis.

As there is the possibility to adapt the tax with time, it may also be considered how much evidence is needed beforehand. Instead, it may be deemed sufficient to establish a sound logic for the tax and rely on monitoring the effects and being prepared to adapt the tax based on accumulated experience. However, significant or frequent changes might be burdensome on both businesses and tax administrations.

While taxation can be an effective tool for influencing consumption, in practice it may not be simple or even possible to implement such a tax successfully. It may be, for example, difficult to clearly define the tax base in a way that reflects harmful consumption. Or it may be very costly to determine and control which products fall into the tax base. The problem is to design a tax model that effectively brings about the desired behavioural effect with acceptable administrative costs for businesses and government administrations. If a tax mainly has a fiscal objective in raising revenue, the administrative costs are an even more important question as there are probably other possibilities to raise revenue with low administrative costs. Taxes with only a fiscal target may also be assessed more strictly when considering possible State aid violations compared to, for example, health taxes.

Therefore, the taxation of non-alcoholic beverages is examined thoroughly in the following chapters in a way that bears constantly in mind the practical aspects of implementing such taxes. The work is based on the knowledge of participants, who have experience in tackling these issues as they represent national tax or customs administrations or ministries responsible for drafting tax legislation.

Some aspects of the tax are left out of the following analysis. For example, consumption taxes may disproportionately impact lower-income groups because these groups may spend a larger share of their income on taxed goods. Also, the revenue of the tax can be allocated in different ways. However, both issues are best addressed within the context of each Member State's fiscal and budgetary policy. For example, possible regressive effects can be mitigated with other measures (e.g. subsidies or other tax measures) and the use of tax revenue is best addressed within the budgetary framework of each Member State.

As another consequence of this reservation, it should also be noted that this report will not address the challenges that must be considered when evaluating the effects of reduced consumption of non-alcoholic beverages on public health – even with good data. The group is aware that diet is one of many factors that affect public health and assume that consumption might vary significantly between population groups.

4.2 EU legislation

Article 113 of the Treaty on the Functioning of the European Union, hereinafter referred to as *TFEU*, contains a mandate to harmonise legislation on excise duties. However, the Article limits the Union's competence so that harmonisation of legislation is possible only to the extent necessary to ensure the establishment and functioning of the internal market and to avoid distortions of competition.

In addition to harmonised excise duties, such as energy taxes, alcohol and alcoholic beverage taxes and tobacco taxes, EU Member States may levy national excise duties. According to Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), hereinafter referred to as *Excise Directive*, the levying of national excise duties may not lead to the introduction of border formalities. However, national taxes must comply with the principle of non-discrimination and State aid provisions of the TFEU.

4.2.1 Prohibition of tax discrimination

Under Article 110 TFEU, EU Member States may not impose on the products of other Member States any internal taxation, directly or indirectly, higher than that imposed directly or indirectly on similar domestic

products. This means that the tax levied on domestic products and products from other Member States must be the same, and the basis for determining the tax must be uniform. The principle of non-discrimination must therefore be taken into account when determining the tax base, tax levels and exemptions. In other respects, too, tax criteria must be defined objectively to avoid discriminatory taxation of products from other Member States. For example, domestic products must not be placed in a more favorable tax position than other Member States' products. Nor must the taxation of other Member States' products be administratively more complex than that of domestically produced products.

4.2.2 State aid provisions

State aid rules are part of EU competition law, aimed at ensuring equal competitive conditions throughout the EU. The key norms of State aid regulation are included in Articles 107-109 TFEU. The purpose of the State aid rules is to set limits on the economic means by which Member States can support and encourage the activities of companies.

The provisions of the TFEU restrict the use of State aid as an economic policy instrument. Any aid granted by a Member State or through State resources in any form whatsoever which distorts or threatens to distort competition by favouring an undertaking or production sector is incompatible with the internal market, insofar as it affects trade between Member States.

National taxes must also be compatible with State aid rules. With regard to tax subsidies, particular attention should be paid to distortions of competition and selectivity. The tax system must be such that no one can be considered to gain an undue competitive advantage, for example because of a tax exemption or exclusion from the scope of the tax.

The notion of State aid is defined in Article 107(1) TFEU. A measure is considered State aid if it meets five cumulative conditions⁷:

1. The measure is imputable to the State and financed through State resources.
2. The measure confers an advantage on its recipients.
3. The advantage must be selective in nature.
4. The measure distorts or threatens to distort competition.
5. The measure affects trade between Member States.

Member States are required to notify the Commission of any State aid measures. However, if a Member State is confident that a measure does not constitute State aid, it may decide not to notify the Commission. *De minimis* aid is exempt from notification, provided it complies with the conditions set out in Regulation 2023/2831, which allows aid up to EUR 300,000 over a period of three years. Nevertheless, if the Commission receives a complaint regarding the measure, it will be obligated to review it.

The assessment of fiscal measures involves several key points. While a tax itself is not considered State aid, exclusions, exemptions, and reductions from a tax can be classified as State aid. The fact that a tax exemption is considered State aid does not impact the legality of the tax itself. The primary focus of the assessment is on the selectivity of the measure. A tax measure is deemed selective if it favours certain undertakings over others that are in a comparable factual and legal situation, considering the objectives pursued by the tax system.

The EU Courts have developed a three-step test to assess the selectivity of fiscal measures:

Step 1: Determine the "reference framework," which refers to the normal taxation system.

⁷ For more information, consult the [Commission Notice on the notion of State aid as referred to in Article 107\(1\) of the Treaty on the Functioning of the European Union](#)

Step 2: Determine whether certain undertakings are treated differently in light of the objectives of the reference framework.

Step 3: Assess whether the differential treatment can be justified by the nature or general scheme of the system, such as administrative manageability, progressivity, or the avoidance of double taxation.

Even if there is no derogation from the reference framework, a measure can still be considered selective if the reference framework itself is manifestly discriminatory⁸.

The selectivity of exemptions to health taxes involves several considerations. Health taxes are regarded as special levies, meaning the tax itself serves as the reference framework. Member States have the discretion to design these taxes but must ensure compliance with State aid rules. The objectives of the tax, typically aimed at changing the behaviour of consumers and producers towards unhealthy products, are defined by the Member States. All exclusions and exemptions will be assessed in light of the general objectives of the health tax. The scope of the tax must be coherent with these objectives.

A concrete example of a health tax approved by the Commission is the Irish tax on sugar-sweetened drinks (SSDT), as detailed in the Commission decision of 24 April 2018 on case [SA.45862](#).⁹ SSDT applies to drinks containing added sugar (5 grammes or more per 100 milliliters) and falling under specific Combined Nomenclature (CN) codes.

Exclusions from the scope of the tax and exemptions are assessed in light of the objectives to reduce sugar consumption and incentivise manufacturers to add less sugar, as well as the broader objective of promoting a healthy diet. Examples of exclusions and exemptions that are not considered selective include:

- Products containing only naturally occurring sugar
- Solid food containing added sugar
- Dairy-based drinks, and plant-based milk (provided they contain a similar amount of calcium as milk)
- Products exempted from labeling requirements (small scale production¹⁰)

Tax differentiation is not considered State aid under EU State aid rules if it is in line with the nature and structure of the tax system and is applied consistently. An example of such a measure is the differentiation of the tax on the basis of the harmful characteristics of the product. A product that causes less harm than others can be taxed more leniently without being considered State aid. However, the basis for the tax must be objective in relation to the tax objective and must be applied consistently to all competing products.

The Commission is responsible for monitoring compliance with the EU State aid rules. The objective of State aid control is to ensure equal operating conditions for companies operating in different Member States and to minimise competition between Member States through State aid. The authority granting the aid is responsible for assessing whether the measure contains aid under the EU State aid rules. In the case of State aid, the authority must, before implementing the aid, determine the acceptability of the aid and, if necessary, follow the notification procedure suitable for the measure. Aid subject to prior notification may not be

⁸ Referred to as the Gibraltar test

⁹ See also [State Aid SA.104131 \(2024/N\) – Reform of the Finnish Soft Drinks Tax](#), Commission Decision of 23.5.2025

¹⁰ According to the Commission Decision, the Irish authorities justify the exemption based on administrative manageability, using a volume threshold consistent with EU Regulation 1169/2011. This regulation exempts small quantities of food directly supplied to consumers from mandatory nutrition declarations to avoid unnecessary burdens on food business operators. The exemption aligns with the health objectives of the tax and has a limited health impact. Additionally, the Commission notes Ireland's commitment to comply with *de minimis* Regulation requirements, closely monitor the exemption, and ensure its correct application. Therefore, the exclusion of certain products from the tax does not qualify as State aid under Article 107(1) TFEU.

implemented until the Commission has approved the matter. Exemptions from the prior notification procedure apply to *de minimis* aid and aid covered by Block Exemptions.

If the Commission considers that the tax system constitutes prohibited State aid within the meaning of Article 107 TFEU, it requires the Member State to abolish or amend the aid. The Member State may also be obliged to recover the unlawful State aid from the beneficiary for a period of 10 years with interest. Aid introduced before EU membership is considered, under certain conditions, existing aid that is not subject to the principles of recovery. If a Member State fails to comply with a Commission decision within the set time limit, the Commission may refer the matter to the Court of Justice of the European Union. The question of whether or not State aid is prohibited is ultimately decided by the Court of Justice of the European Union.

If a Member State considers that the measure does not involve State aid within the meaning of Article 107(1) TFEU, but it is nevertheless necessary to obtain legal certainty, the matter may be brought before the Commission by means of a declaration of legal certainty. The notification of legal certainty does not constitute an obstacle to the implementation of the planned measure, which can be implemented even before the Commission's approval.

5 Possible objectives of the tax

The primary objective of a tax on beverages, based on the applicable tax regimes in Member States, may be fiscal or health-based. The objective of the tax is essential when designing the tax. The objective determines how the tax base is defined, either to collect tax revenue or to promote the selected health objective. A characteristic of a behavioural tax is that if the tax functions according to its objective, tax affects market prices, leading to a decrease in both quantitative consumption and tax revenue to a certain level. The effect of the tax on consumer behavior with respect to price changes and price elasticity, is discussed in detail in section 4.1, Effectiveness of the Tax.

The tax base should be defined logically and objectively in relation to the tax objective. Otherwise, the tax may be considered problematic in terms of the State aid provisions. Therefore, defining the tax objective is also important from the point of view of compliance with State aid rules.

Identifying the products falling into the tax base requires careful consideration. In the case of non-alcoholic beverages, it is essential to firstly justify why only these products are included in the scope of the tax rather than a broader range of food products. Once the focus is narrowed down to non-alcoholic beverages, the specific objectives of the tax should be clearly defined, including the factors determining the health effects of non-alcoholic beverages. (This issue is examined in section 6.1.)

Countries may also impose taxes on non-alcoholic beverages without explicit health objectives. In such cases, the assessment of these taxes involves determining the most effective ways to raise tax revenue within the existing tax structure of the country. This project group does not delve into these questions and primarily focuses on taxes with health-related objectives.

Non-alcoholic beverages, particularly sugary drinks such as sodas and energy drinks, are linked to numerous negative health effects. High intakes of sugars can contribute to weight gain, obesity, diabetes, cardiovascular diseases etc. Regular consumption of these beverages is also associated with poor dental health, increasing the risk of cavities and tooth decay. Even artificially sweetened drinks, often marketed as healthier alternatives, have been linked to negative health effects, though there is less evidence and consensus regarding the negative health effects of artificial sweeteners. The widespread availability of these beverages makes them a significant public health concern. Reducing the consumption of these drinks can have a positive effect on public health.

Therefore, the group's work is based on the vast array of evidence that on a societal level there is a link between unhealthy beverages and health problems. However, analysing the different dietary and health problems – and whether a tax is the best means to solve these issues – was beyond the project's scope. The group also recognises that the nature and severity of dietary and health problems vary across Member States, meaning that the most effective policy approaches may differ as well.

Given these variations, Member States may have different objectives for a health-related tax.

While the project group acknowledges that these taxes usually address health aspects concerning consumption of non-alcoholic beverages, the group also acknowledges that any tax also has a fiscal role in raising revenue. However, the behavioural and fiscal objectives may be in conflict depending on how changes made to the tax reduce taxable consumption. Some Member States may have taxes in place that are justified mainly by fiscal purposes.

One of the challenges in designing a tax policy on non-alcoholic beverages lies in identifying clear policy objectives, whether to reduce sugar intake, encourage product reformulation, improve nutritional standards, achieve specific health objectives (combat obesity, diabetes) etc. Next to pursuing these health goals, the taxation may also serve a fiscal objective by raising revenue.

By defining clear policy objectives, policymakers can better determine the scope of beverages and their components that should be taxed to achieve the desired outcome.

Although it has become clear during the work of the project group that when designing effective health taxes, it is important to aspire to defining the health target of the tax in as objective a manner as possible, the project group acknowledges that in practice any taxation issue entails political dimensions. Moreover, assessing which health and diet issue to address and by which means is not free from some degree of deliberation, since it is far from simple to empirically evaluate the causal effect of different kinds of health taxes on health outcomes.

In many participating Member States detailed information on diets and food consumption habits is not available for researchers, and even with all possible information readily available, it is difficult to capture the exact effect of taxes since health outcomes develop in the course of decades and a multitude of other factors are also at play.

6 Tax base

The objective of the tax affects how the tax base is formed, i.e., which beverages are selected to be taxed. If the tax has only a fiscal objective, the tax base will generally include all substitutable beverages, resulting in a broad tax base. When limiting the tax base of a fiscal tax, questions related to State aid easily arise, as the tax base must be formed logically and consistently with the tax objective. If the objective is to generate revenue for the state, any possible tax exemptions must be justified.

6.1 What health aspects to take into account

The health objective set for the tax determines which health aspects need to be considered when planning the tax. If the sole aim of the tax is to reduce sugar intake, the sugar content of the drink is examined. If the tax has a broader goal of health guidance than sugar intake, other aspects of beverages will also be considered.

On the other hand, non-alcoholic beverages such as water, tea, milk, and natural fruit juices are considered to have less negative health effects and can even contribute positively to hydration and overall health, offering vitamins and other beneficial nutrients.

Additionally, the design must consider compliance with State aid regulations, ensuring that any tax disincentives or tax incentives do not result in unfair advantages or distort market competition, see section 4.2.2.

6.1.1 *Sugar - added/natural*

Sugar is generally considered as a harmful element in non-alcoholic beverages. The total sugar content in a beverage can consist of naturally occurring sugars and added sugars. Beverages with naturally present sugars, such as those in fruit, are in some participating Member States perceived as less harmful because of their content. However, from a health perspective, natural and added sugar both have the same harmful effects.

Some participating Member States tax the total sugar content, aiming to reduce overall sugar consumption. Others limit the tax to drinks with added sugars, focusing on beverages where sugar reduction is more feasible. While it is possible to reduce sugar in beverages containing only naturally occurring sugars, manufacturers have greater flexibility with products containing added sugar. They can directly lower sugar content by using sweeteners or by reducing the overall sweetness. This approach may focus the tax on beverages that are more likely to be reformulated, making it easier for them to avoid a (higher) tax, while exempting those less likely to be reformulated from the beverage tax. Therefore, this may alleviate concerns about the total tax burden faced by the beverage industry.

However, a drawback is that it does not create an incentive to reduce sugar intake across all beverages. Additionally, there may be a harmful substitution effect if consumers switch to beverages containing only natural sugar without reducing sugar intake as a whole. This may not be a concern in situations where beverages without added sugar, such as juices, are not close substitutes for beverages with added sugar, such as sodas.

It is important to recognise, that there is no scientific way to distinguish natural from added sugars, when they appear in the same product. It is therefore necessary to rely on the product's label, that should depict what the product contains – especially if the product contains added sugar. In Ireland and Romania, for example, the tax is levied according to the total sugar content of the beverage if it exceeds the threshold for tax liability (5 grammes or more per 100 ml) and if the beverage contains any added sugar according to the list of ingredients. A similar situation exists in Poland, where a sugar fee is charged on the total sugar content of a beverage if it contains sugar (added or natural), with 100% juices excluded from the fee. As for France, only added sugar is taxed. There must be documentation enabling the identification of the quantities of sugars added to each product. Otherwise, the tax shall be determined based on the total sugar content of the beverage.

In most participating Member States, beverages are subject to tax if they contain added sugar, but the tax is determined based on the total sugar content of the drink. Additionally, some include only beverages that exceed a certain sugar threshold in the tax base.

6.1.2 *Artificial sweeteners*

Clear policy objectives are crucial for determining the treatment of sweeteners. If the primary goal is to reduce overall sugar intake, policymakers should weigh the positive impact of artificial sweeteners on consumption patterns against their potential drawbacks.

If the goal of the tax is limited to reducing sugar intake, beverages sweetened with artificial sweeteners may more commonly be excluded from the tax. However, if the aim is to consider the broader health impacts of beverages, discussions about the various aspects of the potential health effects of artificial sweeteners may more easily arise.

Artificial sweeteners are widely used as sugar substitutes and come in various forms, such as aspartame, sucralose, saccharin etc. While these sweeteners are often considered as healthier alternatives to added sugars, some studies raise concerns about their potential negative health effects. Certain artificial sweeteners have also been linked to a range of health issues. Given these concerns, a debate regarding the impact of artificial sweeteners on health may be necessary to better understand their long-term effects on consumers.

Proponents of artificial sweeteners point out that artificial sweeteners can serve as effective alternatives to added sugars, providing sweetness without the associated calories. This can be particularly beneficial for reducing overall sugar consumption. Sweeteners may also help to decrease the risk of conditions linked to high sugar consumption, such as obesity and diabetes.

Next to the possible direct negative health effects, critics warn of potential unintended and indirect consequences of artificial sweeteners. For example, some suggest from a health point of view that replacing sugar with sweeteners may create a false sense of healthiness. It is also worth noting, that WHO does not generally recommend that so called “non-sugar sweeteners” are used as a means of achieving long term weight control.¹¹ This paradox highlights the complexity of dietary choices and the need for careful consideration of all implications of artificial sweeteners used in beverages.

These different perspectives are also reflected in the various taxation policies in the different participating Member States. While some exclude beverages sweetened with sweeteners from their tax base, others tax beverages sweetened with sweeteners and those containing sugar at the same rate. This variation reflects the debate on how best to regulate beverages containing sweeteners and sugars.

Given the complexities regarding artificial sweeteners a balanced approach may be necessary, recognizing the benefits of sweeteners while also addressing their potential negative effects. Therefore, it may be advisable to tax these sweeteners at a lower rate than traditional sugars. This approach could encourage consumers to choose lower-calorie options while also recognising the potential risks of excessive consumption of sweeteners. By implementing a tax structure that considers the potential negative effects of artificial sweeteners, Member States could still promote their use while also not discouraging other beneficial alternatives to sweeteners or added sugars.

6.1.3 Energy drinks and stimulants

Energy drinks, typically high in sugar, and stimulants (such as caffeine, taurine, methylxanthine), have been linked to health problems such as increased heart rate and high blood pressure. Excessive consumption may lead to dependence on stimulants and disruption of sleep patterns. To address these risks, taxation of stimulants in energy drinks could reduce consumption and have a positive public health effect. Consumption taxes on energy drinks and stimulants have been implemented in some participating Member States due to growing concerns over their negative health effects.

¹¹ <https://www.who.int/news/item/15-05-2023-who-advises-not-to-use-non-sugar-sweeteners-for-weight-control-in-newly-released-guideline>

In general, energy drinks are often already taxed due to their high sugar content, as part of broader efforts to reduce sugar consumption. However, in case of sugar-free energy drinks, the focus could shift to the stimulants they contain. To achieve policy objectives, taxing sugar-free energy drinks based on their stimulant content could be considered. Such an approach would help to regulate excessive stimulant consumption and reduce the associated negative health risks, even in products marketed as healthier due to their absence of sugar.

In contrast, coffee and tea, which also contain caffeine, are often considered less problematic, as traditional plant-derived beverages are also associated with certain positive health benefits. Policymakers may therefore need to differentiate between energy drinks and naturally occurring stimulants in drinks like coffee or tea when designing taxation policies, ensuring that the focus remains on products that are considered unhealthy. However, this type of differentiation could be subject to debate, as both categories of beverages contain stimulants that, when consumed in excess, may carry health risks.

If policymakers choose a preferential treatment of coffee and tea it is also worth considering potential substitution scenarios, where traditional energy drinks might be substituted with coffee-based ready-to-drink products, and adaptation scenarios, where energy drinks are based on coffee to avoid a specific tax.

6.1.4 High fruit/vegetable content

The taxation of fruit and vegetable drinks containing only natural sugar is a complex issue. These beverages are generally associated with positive health benefits due to their nutritional content that includes vitamins, such as vitamin C. As a result, governments often encourage the consumption of fruit and vegetable products, including drinks, as part of a balanced diet.

However, a key challenge with fruit juices is their high sugar content. Fruits contain naturally occurring sugars and therefore consuming fruit in juice form can lead to excessive sugar intake. In fact, fruit juices often have sugar levels comparable or even higher than those found in sodas. For example, orange juice contains about 10 grammes of sugar per 100 millilitres, equivalent to roughly 4 sugar cubes per glass. Moreover, the juicing process removes the fibers present in the whole fruit. For instance, an apple contains 2.3 grammes of fibers per 100 grammes, while the fiber content in apple juice is negligible (0.1 grammes per 100 ml). This raises concerns about fruit juices' contribution to conditions such as obesity, diabetes, and tooth decay. In contrast, vegetable juices tend to be lower in sugar and calories, making them a healthier option overall. The sugar content poses a challenge when designing a tax policy that aims to address negative health impacts.

One possible policy approach is to exempt 100% fruit and vegetable drinks from taxation, while imposing tax on juices with added sugars. This strategy would encourage the consumption of natural, unsweetened juices while discouraging the consumption of those with added sugar. Taxing juices containing added sugars could give an incentive to manufacturers to produce healthier alternatives, such as unsweetened or low-sugar versions of fruit and vegetable drinks.

This approach may also create a harmful substitution effect mentioned in section 6.1.1 if consumers substitute taxed beverages with fruit or vegetable juices without reducing overall sugar intake.

A major challenge in implementing such a policy is accurately determining the amount of added sugar in these beverages, especially given the varying levels of naturally occurring sugars in fruits. This complexity even increases when products contain mixtures of fruit juices, concentrates, and other ingredients.

6.1.5 Milk and plant-based milk substitutes

Milk is widely regarded as a healthy and nutritious food due to its nutritional content. As a result, milk is commonly recommended as part of a balanced diet. Its role in a balanced diet is recognized in the policy of several participating Member States, which have exempted or excluded milk and/or milk drinks from taxes on non-alcoholic beverages. These exemptions reflect the view that milk is a regularly consumed food that contributes positively to public health. See also section 6.2.4.

The non-taxation of milk and milk-based drinks has been justified by their higher satiation effect and nutritional value, which are largely due to their protein content, in comparison to taxed beverages. The classification of “milk drinks” requires defining clear criteria like calcium or milk protein level. For example, in Belgium, a drink must contain at least 1.5 grammes of milk protein per 100 millilitres to be classified as a milk drink. This serves as a criterion to distinguish milk drinks from other beverages that may lack similar nutritional profiles. Another additional criterion to define milk drinks could be the amount of added sugar. The presence of added sugars in milk drinks can reduce their positive health effects compared to their calorie content. Therefore, policymakers could consider taking sugar levels into account if they are considering public health objectives by promoting the consumption of unsweetened or low sugar milk drinks.

Plant-based milk substitutes, such as almond, soy, oat, and rice milks, have gained popularity as alternatives to milk. These drinks are often marketed as healthy, environmentally friendly options. Nutritionally, plant-based milk drinks can be formulated to offer similar health benefits as milk. If this is the case, it would be reasonable to apply similar exemptions to these products, especially when their nutritional profiles match or even surpass the health benefits of traditional milk. This could also help to avoid State aid issues as substitutable products should be treated similarly.

By treating plant-based milk substitutes – with the same nutritional value as milk – in the same way as milk, policymakers can promote healthy choices while ensuring that consumers are not taxed for choosing alternatives to milk. It can be observed that in some participating Member States certain plant-based milk substitutes are also exempt from consumption taxes because of their presumed role in a balanced diet and their contribution to public health.

However, policymakers must carefully consider the nutritional composition of these products when deciding if some or all plant-based milk substitutes should be treated in the same way as milk. The presence or the amount of added sugar in plant-based milk products could be a key element when evaluating their treatment. While some varieties of plant-based milk are unsweetened and offer comparable nutritional profiles to milk, others contain added sugars to improve flavour. The unsweetened versions of plant-based milk, which align more closely with the health benefits of milk, could be considered to be treated in the same way as milk. Alternatively, as is done in Finland, another approach could be to allow plant-based milk substitutes to contain sugar levels equivalent to those naturally present in cow’s milk when determining their qualification. Both could potentially help to avoid State aid issues as substitutable products are treated similarly. In Ireland, where initially certain drinks such as milk substitutes like soya milk were specifically excluded from the tax, as were drinks that contain milk fats, the legislation was later amended in order to address the State aid rules, so that tax currently also applies to these products if they do not meet similar calcium content as milk¹².

Note that critics may challenge the exclusion for both milk and plant-based milk substitutes, claiming that their nutritional value and health benefits is doubtful or at least do not justify preferential treatment.

6.1.6 Alcohol-free beer

¹² See SA.45862, recitals 76 and 79.

Some participating Member States include alcohol-free beer (or low-alcohol beer) in their tax on non-alcoholic beverages. For example, in Latvia, France, Finland, Belgium and the Netherlands¹³, non-alcoholic beer is taxed similarly to other non-alcoholic beverages. In contrast, some other countries exclude alcohol-free beer from their non-alcoholic beverage tax base.

These differing approaches reflect differing priorities. Some participating Member States argue that non-alcoholic beer should be taxed like other non-alcoholic beverages. There may also be an aim to prevent tax incentives that might encourage substituting other non-alcoholic beverages with non-alcoholic beer, which may nevertheless contain alcohol up to 0,5 %. Others prioritize maintaining incentives for consumers to choose non-alcoholic beer over regular beer.

6.2 Exceptions

6.2.1 Concentrates

Concentrates and other products intended for preparation of non-alcoholic beverages are important to include.

It is important for policymakers to clearly define what constitute a concentrate (e.g., syrups, powders, tabs) and specify which products fall under this category. The taxed product should be a concentrate specifically designed to be mixed with water or other ingredients to create a non-alcoholic beverage. It was discussed that the possible definition of “beverage preparation for non-alcoholic beverages” would be favourable, as it would include any new products that emerges on market.

The tax rate for concentrates and powders generally takes dilution into account. Therefore, they are taxed at a higher rate to reflect the larger volume of beverage produced after dilution. The conversion system varies by country.. Two possible approaches to taxing concentrates were discussed.

Option 1: Apply the tax rate to the diluted beverage, using a prescribed dilution ratio (e.g., 1 liter of concentrate = 4 liters of beverage).

Option 2: Apply a special tax rate for concentrates. This can be formulated as a fixed flat rate or by determining the fixed dilution factor (e.g., tax rate for beverages x 4).

As mentioned, concentrates can appear in various forms, implying that different measurement units may be used to express these concentrates. Possibly, to avoid any difficulties in defining the tax rate for different measurement units, it would be favourable to use an option where the tax rate is applied based on the diluted beverage, as the only metric used would be volume.

It is important for both approaches that the dilution ratio or dilution factor is clearly determined and defined. That can be established by universal formula, or it can be determined by the manufacturer' instructions found on the product label. The universal formula approach has the advantage that it does not require a control of the information provided by manufacturers, which can be more difficult and may require more resources, ultimately leading to a larger administrative burden. A drawback of this approach is that using a fixed universal dilution ratio for taxation does not accurately reflect the actual prepared beverage and, therefore, may not incentivize manufacturers to reformulate their concentrate recipes.

¹³ As long as these non-alcoholic beers have an alcohol percentage of less than 0,5%. If the alcohol percentage is more than 0,5%, these drinks are considered to be excise goods and are taxed with excise duty (for alcoholic drinks/beer).

The label approach has the advantage, that it does not incentivise certain manufacturing processes or formulas over others; it would make it easier for a manufacturer to formulate a product based on the interests of consumers or retail outlets. Ireland and Finland, for example, apply the label approach. The latter also applies a specific provision on the maximum sugar content after dilution, which ensures uniform taxation in situations where the dilution ratio is indicated as lower than the actual ratio, solely to minimise the tax to be paid.

The project group also explored the taxation of beverages dispensed from soda fountains. According to the experience of the participating Member States, it may be administratively easier to tax the producer of the concentrate rather than the operator of the fountain, as this would affect fewer businesses.

Concentrates intended for preparing non-alcoholic beverages used for special purposes, such as medical or dietary needs, could be exempted. In these cases, it would be important to define them clearly as such and ensure that their use is for prescribed purposes. See also section 6.2.4.

6.2.2 Small scale production

It was discussed if a special approach should be applied to small scale production. If such an approach were used, it would be important to determine what the minimal threshold would be and how to define it (by volume or by value of produced products). Not taxing small scale production under defined threshold would ease the burden of administration, but on the other hand, it would not focus on health protection.

Two different means were mentioned as examples to take small-scale production into account. Finland excludes small-scale production from the scope of its tax by applying the *de minimis* Regulation (both tax and procedures are excluded). The volume threshold is 70,000 litres. The exemption is justified by administrative reasons, in order to avoid situations where the costs and administrative burden for both the tax authorities and the taxpayer are unreasonably high in relation to the amount of tax levied. Ireland exempts products exempted from EU food labelling requirements. The volume threshold is 13,000 litres (or 26,000 units). In addition, the Irish exemption complies with the requirements laid down by the *de minimis* Regulation¹⁴. The exemption is justified by reasons of administrative manageability.

If a policymakers' main goal is to promote or protect public health, it could be advisable to treat small and big producers the same – so they are all taxed equally. When considering such an approach, policymakers could also weigh an assessment of the potential health benefits against the expected administrative costs, which might be relatively larger for smaller businesses.

Various fiscal tools could be implemented to cover non-alcoholic beverages. In case of applying excise duty, it would be possible to consider limiting the obligations related to the application of excise procedures for all taxpayers (e.g. the requirement to produce the beverage in a tax warehouse), regardless of the scale of production.

The assumptions regarding the design of a tax system for non-alcoholic beverages should consider, above all, the health purpose of the tax and the lower risk of tax fraud and other irregularities in comparison to currently harmonised excise goods.

If fiscal tools other than excise duty were introduced (e.g. a consumption tax or a levy), the organisation of the tax system and tax collection could be simplified even further. As a result, the obligations for small producers would constitute a very low administrative burden.

¹⁴ See SA.45862, recital 92.

Regarding *de minimis* aid, there have been some observations in one participating Member State and concerning certain economic sectors, where companies try avoid exceeding the threshold set for small-scale production by changing ownership and registering a new business. As a result, production restarts, and the production limit is never exceeded. These practices can also be exploited in the beverage market, preventing the achievement of health objectives. The group noted that such a phenomenon has not been observed so far, but the risk of it exists.

None of the participating Member States applies reduced tax rates for small-scale production, similar to those permitted by the alcohol tax directive 92/83/EEC. It was noted that if the administrative burden is a problem for these small-scale operators, lower rates are no solution.

6.2.3 Non-prepacked products

Provisions on food information and the labelling of prepackaged and non-prepacked foods are laid down in Regulation (EU) No 1169/2011 of the European Parliament and of the Council. Non-prepacked products include beverages which are offered for sale to the final consumer or to mass caterers without prepackaging, or beverages which are prepared on the sales premises at the consumer's request. For example, juice or coffee made to order at cafes or restaurants. For non-alcoholic beverages made from concentrates, see section 6.2.1.

Policymakers could consider taxing non-prepacked products in the same way as other non-alcoholic beverages, as the packaging or lack thereof does not change the nutritional value of the beverage. I.e. an unhealthy beverage is not made healthy by not being packaged.

However, to limit the administrative burden for businesses, policymakers could consider exemptions for non-prepacked products or small-scale production of non-prepacked products. Doing this could limit the number of businesses effected by the tax, see also section 6.2.2 regarding small scale production. Some participating Member States have excluded fresh juices or hot drinks to limit the administrative burden. Similarly, if policymakers have made exemptions for packed non-alcoholic beverages – e.g. with 100% fruit or vegetables content – those exemptions should also cover non-prepacked beverages.

For some beverages, like coffee or tea, it is relevant to consider taxing the “raw material” (i.e. beans or leaves) instead of the beverage to limit how many businesses are affected by the tax. Denmark, Belgium and Latvia are among those that tax coffee beans.

The Regulation (EU) No 1169/2011 gives Member States some national flexibility as regards food information on non-prepacked foods. It therefore depends on national legislation whether, for example, the sugar content of non-prepacked beverages must be communicated to consumers. Legislation concerning the labelling of non-prepacked beverages may influence how these beverages are taxed.¹⁵

6.2.4 Non-alcoholic beverages for special use

Beverages used for medical or special dietary needs could be exempted. In these cases, it would be important to define them as such and control that the use of those products is for prescribed purposes.

Policymakers should consider exemptions for the following beverages:

¹⁵ See State Aid SA.45862 (2018/N) – Irish tax on Sugar Sweetened Drinks, Section 3.4.2.8, and State Aid SA.104131 (2024/N) – Reform of the Finnish Soft Drinks Tax, Section 3.4.5.2.

- Medical devices within the meaning of Article 2(1) of Regulation (EU) 2017/745 of the European Parliament and of the Council of 5 April 2017 on medical devices, amending Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009 and repealing Council Directives 90/385/EEC and 93/42/EEC (OJ EU L 117, 05.05.2017, p.1, as amended).
- Food supplements.¹⁶
- Food for special medical purposes, infant formulae, follow-on formulae as referred to in Regulation (EU) No 609/2013 of the European Parliament and of the Council of 12 June 2013 on food intended for infants and young children and on food for special medical purposes and foodstuffs intended to replace the complete diet, for weight control and repealing Council Directive 92/52/EEC, Commission Directives 96/8/EC, 1999/21/EC, 2006/125/EC and 2006/141/EC, Directive 2009/39/EC of the European Parliament and of the Council and Commission Regulations (EC) No 41/2009 and (EC) No 953/2009 (OJ L 181, 29.06.2013, p. 35, as amended).
- Products in which milk or milk products are first on the list of ingredients or CN codes, that cover similar products, e.g. positions under HS heading 04.01 and 04.03.

Milk and dairy products that contain added sugar, e.g. chocolate milk, are treated differently by participating Member States. Some countries, such as Belgium, do not tax chocolate milk because of the nutritional value of the milk. Others do tax chocolate milk as the product is not considered substitutional with milk.

However, plant-based beverages, that are marketed as milk substitutes, but do not have comparable nutritional value as milk, should be subject to taxation. Plant based beverages, such as soya-based beverages, cannot be considered juices either, because according to the CN codes soya beans are not classified under fresh fruit and vegetables (Chapters 7 and 8), but are included in oilseeds and listed in Chapter 12¹⁷. See also section 6.1.5.

Some countries exempt plant-based milk substitutes if their sugar content does not exceed the sugar content of milk, and/or if they are fortified with vitamins or minerals to match the nutritional value of milk.

6.3 How to define the tax base in practice

The approach in which the tax base for non-alcoholic beverages is determined based on the CN codes has been chosen by most of the participating Member States where non-alcoholic beverages are subject to excise tax and those that only plan to apply excise tax to non-alcoholic beverages. When defining the tax base with CN codes, some additional conditions or criteria are often set that explain the taxable object in more detail, for example “CN code and added sugar”, “CN code and added natural or artificial sweeteners”, “CN code and added stimulants”. Thus, mostly the CN code together with an additional condition determines the tax base.

The added sugar, sweeteners and stimulants serve two ways – both as an additional criterion for determining the tax base and as a threshold value for the tax rate itself.

¹⁶ Food supplement - a foodstuff the purpose of which is to supplement the normal diet, being a concentrated source of vitamins or minerals or other substances having a nutritional or other physiological effect, alone or in combination, marketed in a dosage form, in the form of: capsules, tablets, dragees and in other similar forms, sachets of powder, ampoules of liquid, dropper bottles and in other similar forms of liquids and powders intended to be consumed in small measured unit quantities, excluding products having the characteristics of a medicinal product within the meaning of the pharmaceutical legislation.

¹⁷ Chapter 12 ‘Oil seeds and oleaginous fruits; miscellaneous grains, seeds and fruit; industrial or medicinal plants; straw and fodder’

However, there is also an approach where participating Member States define the tax base without specifying it with CN codes, but with a definition of the taxable object and exceptions. In such a case, it is very important to set the definition very precisely as required by tax regulation, without creating the possibility of different interpretations. This helps ensure that products like flavoured waters, sodas, and syrups are clearly categorised, allowing for effective tax implementation and compliance. And, at the same time, implements the requirements of sufficient accuracy in tax legislation.

Using CN codes to identify taxable products allows a common interpretation of the taxable products within EU, and offers unique identification, simplifies tax monitoring and control (including anti-fraud measures), and minimises errors. This is subject to the condition that the products are classified correctly, because checking whether the products really correspond to the selected CN code can consume resources for the tax authorities. In addition, CN codes approach provides for a systematic identification process within an already existing EU framework that is used by the soft drinks industry internationally.

On the other hand, by using linguistic definitions to define the tax base, without specifying the CN codes, the goal of tax application can be more directly achieved and, with exceptions, promote the use of healthier beverages in the diet, even if they contain natural sugar. Only administration could be more complicated if the wording of the exemptions is broad and the number of exemptions is large. The question arises whether the linguistic exemptions are interpreted consistently.

It is worth noting, that two of the three harmonised excise duties use a combination of CN codes and linguistic definitions¹⁸, whereas only linguistic definitions are used to define the products covered by the third harmonised excise duty¹⁹. It is worth mentioning, that changes to the directives and their linguistic definitions require unanimity, as the legislation follows the special legislative procedure. Changes to the CN codes, however, only require a qualified majority.

6.4 Conclusion

- When defining the tax base, substitution effects should be considered. If certain sugar-containing beverages, such as those containing only natural sugar, are excluded from the tax base and they are close substitutes for taxed beverages, consumption may shift from taxable to non-taxable, but sugar containing options potentially reducing the overall effectiveness of the tax in lowering sugar intake.
- Similarly, if the objective is to reduce sugar intake, taxing beverages with artificial sweeteners similarly to sugar containing beverages fails to encourage a shift towards sugar-free options, which are possibly sweetened with artificial sweeteners.
- The scope of the tax base is linked to the extent of administrative burden for firms and tax administrations. A broad tax base may result in a large number of taxpayers. Excluding certain beverage groups, such as natural juices, could also eliminate a significant number of smaller taxpayers. The same applies to exempting beverages with sugar content below a specified minimum threshold.

7 Tax structure

7.1 Tax type: Ad valorem or specific tax?

¹⁸ See Council directive 2003/96/EC restructuring the Community framework for the taxation of energy products and electricity and Council directive 92/83/EEC on the harmonization of the structures of excise duties on alcohol and alcoholic beverages.

¹⁹ See Council directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

7.1.1 Concepts

An ad valorem tax is based on the value or price of the good. The amount of the tax is calculated as a percentage of the price of the taxed item. As the price of the good increases or decreases, so does the tax amount. Therefore, ad valorem taxes automatically adjust with inflation.

A specific tax (or unit tax) is a fixed amount levied on a good, irrespective of its price or value. The tax is based on the quantity of the good (e.g., per liter or per unit of goods). The tax rate does not fluctuate with changes in the price or value of the product. Specific taxes do not automatically adjust with inflation, which can erode their real value unless they are adjusted.

In a **mixed tax structure**, both ad valorem and a specific tax are applied to the same product with the possibility to apply a minimum tax to ensure a “tax floor”.

7.1.2 Comparison of the tax types

The main differences between ad valorem and specific taxes arise from the **differentiated impact on prices**. With an ad valorem tax, the tax burden for low-priced products may be very low in absolute terms, and vice versa for high-priced products. Specific taxes, on the other hand, tax a fixed amount per unit and therefore make the price of cheaper products relatively less attractive. This also means that the proportional effect on the price of high-value goods may be small.

Regarding public health goals of taxes on non-alcoholic beverages, the key consideration in evaluating which tax model is better is **their potential impact on consumption patterns**.

If it is important to target also the high-priced goods, an ad valorem tax targets these products more. It helps ensure that luxury or premium brands are taxed higher in absolute terms, targeting higher-value goods. This can also help prevent tax evasion, as it captures value-based pricing in the tax calculation²⁰. However, in absolute terms an ad valorem tax for low priced goods may be very low. This may weaken the effect of the tax particularly among price-sensitive groups, potentially limiting its ability to drive significant behavioural changes. An ad valorem tax may also weaken the tax’s deterrent effect on the consumption of unhealthy products when consumers substitute higher-priced goods with lower-priced and less taxed alternatives. On the supply side, ad valorem taxes may incentivize producers to lower prices or to flood the market with low-cost, unhealthy products to reduce the absolute tax burden.

A specific tax ensures a uniform burden across all products, irrespective of their price, making it particularly effective for addressing public health objectives. By focusing on the quantity of the product consumed, rather than its value, this approach better reflects the product’s potential harm, as the health impact is tied to consumption volume or sugar content rather than price. This uniformity removes variability associated with price differences, ensuring that both high- and low-priced products face the same tax per unit.

Therefore, the overall ability to discourage unhealthy consumption depends on price sensitivity and substitution effects. Additionally, the substitution of higher-priced goods with lower-priced alternatives may make an ad valorem tax less effective.

²⁰ Ad valorem taxation can help prevent tax evasion by tying the tax calculation directly to the product’s declared value, making underreporting more difficult. By capturing value-based pricing, it becomes harder for producers or distributors to manipulate the taxable base without risking inconsistencies with market data or regulatory scrutiny. This feature also allows governments to adapt the tax burden dynamically to inflation or market changes, maintaining the real value of tax revenues over time and ensuring a more equitable contribution from high-value product segments.

From an operational viewpoint, an ad valorem tax may be difficult to implement since it implies to set a point of taxation that is the closest possible to the final sale to consumer. In an excise-like tax model, though, that point would necessarily be set rather upstream in the economic chain, so the tax base would not be the actual price that is paid by the final consumer, but some kind of a reference price that would not take discounts into account. If the tax base were the retail price, but the taxpayer were an upstream operator, the tax would, in essence, remove the retailer's prerogative in setting prices since the retail price would be fixed when product is released for consumption. In all cases, ad valorem taxes entails a **higher administrative burden**.

In addition, there may be **equity considerations** since the two tax structures may have differing impacts on households with different income levels. In general, taxes on goods such as non-alcoholic beverages are often regressive, that is, they affect more low- than high income households with respect to household income. Ad valorem taxes may, however, have less regressive effects if higher-value and higher taxed goods are primarily consumed by wealthier individuals. However, the difference between the two tax structures on equity may not be very large and the tax may anyhow turn out to be regressive.

It may also be useful to note that the regressivity of the tax is often assessed by looking at the tax burden relative to household income at a given time. However, a dynamic perspective considers behavioural responses and potential health benefits, which could mitigate some of the initial regressivity concerns. If lower-income consumers reduce their consumption more significantly in response to price increases, they may experience greater long-term health benefits, partially offsetting the direct financial burden of the tax. However, estimating these dynamic effects remains complex and uncertain. While ad valorem taxes may seem more likely to have an effect at all levels of income, since higher-priced goods are taxed more, they can be less effective for low-income consumers. This is because cheaper, lower-quality products, which are often consumed by low-income individuals, receive a smaller tax burden. Thus, consumption patterns may not change significantly for this group, making the tax less effective in promoting healthier choices.

Concerning **revenue stability**, it could be argued that specific taxes provide a reliable base of revenue, regardless of price fluctuations. On the other hand, prices of food products seldom fluctuate very much on an aggregate level. As ad valorem taxes automatically keep up with inflation, the revenue of ad valorem taxes probably proves more stable in real terms, although the real level of specific taxes could also be maintained through indexation or regular tax increases. These differences between the two tax structures most likely do not result in very large differences in how the revenue evolves. It is therefore unlikely that these differing aspects on revenue stability constitute a very important factor in deciding the tax structure. As tax revenues on non-alcoholic beverages typically account for a quite small share of total tax income and the objective of the tax is often to improve health and reduce consumption, the revenue generating aspects are most likely secondary issues.

At the moment all participating Member States that tax non-alcoholic beverages apply a specific tax.

Mixed structure of taxation

A mixed taxation structure combines the benefits of both ad valorem and specific taxes. At the same time, it can also eliminate some of the problems related to a purely ad valorem or specific tax. A mixed tax structure could ensure that the tax on higher-priced goods will not be very low as a percentage of the price and at the same time all products, regardless of price, face a base tax level.

However, a dual system can be more complicated to administer and enforce. It also includes the possible pricing rigidities associated with pure ad valorem tax, as discussed previously. The possibility to control

both the absolute and proportional tax rate for the whole price range may be particularly important in markets with only a few dominant firms who have a lot of market power such as in some tobacco product markets. Non-alcoholic beverages present greater variability in product types, prices, taxpayers and market competition, making it more challenging to replicate the advantages of a mixed structure in this context. Policymakers must carefully consider whether the added complexity and administrative costs of combining ad valorem and specific taxes outweigh the benefits compared to a purely specific tax.

Compatibility of VAT directive

It is possible to levy an ad valorem tax on specific goods or products that is not VAT, provided that it does not display one of the essential characteristics of VAT which are the following²¹ :

- it applies generally to transactions relating to goods or services;
- it is proportional to the price charged by the taxable person in return for the goods and services which he has supplied;
- it is charged at each stage of the production and distribution process, including that of retail sale, irrespective of the number of transactions which have previously taken place;
- the amounts paid during the preceding stages of the process are deducted from the tax payable by a taxable person, with the result that the tax applies, at any given stage, only to the value added at that stage and the final burden of the tax rests ultimately on the consumer.

Governments can design tax policies that include various ad valorem taxes alongside VAT to target specific goods or behaviours without being constrained by the VAT framework, given that such levies display the second but not all of the four characteristics quoted above.

VAT is subject to its own set of directives and regulations; other ad valorem taxes operate under separate legal frameworks and do not need to comply with VAT directives.

7.2 Rate structure: flat rate or sugar-specific?

Tax structures on non-alcoholic beverages can vary depending on the goals of the tax and how it is designed. The rates and tax base cannot also be assessed totally independently, as the tax difference between beverages of different sugar content can be achieved through different tax rates or through excluding for example beverages with low sugar content from the tax base. A constraint in setting the rates may also be the risk of acquisitions by travelers or some form of tax fraud brought about by large tax differences between neighbouring countries. As reflected in the Ecorys and WIFO study it may be, however, that passenger imports are associated with tax differentials mainly when there are also other incentives for cross-border shopping such as the price differences on other food or beverage prices.

7.2.1 Flat Rate

A flat rate per beverage unit (e.g., per liter) is applied uniformly across all beverages without differentiating between beverages based on their sugar content. Today, countries like Belgium and The Netherlands have imposed a flat rate on non-alcoholic beverages.

²¹ CJEU, 3 October 2006, Banca popolare di Cremona, C-475/03, § 27-28

This rate structure is considered relatively simple and easier to administer and enforce than a sugar-specific rate structure, as it does not require ongoing testing and monitoring of sugar levels.

From a fiscal perspective, taxation based on a flat rate can offer a more predictable source of income as the tax is based on the amount of beverage sold. From a health perspective, a significant flat rate on beverages, which raises their price, can be expected to influence consumer purchasing behaviour. However, this rate structure cannot target the sugar content specifically since all beverages with varying levels of sugar are taxed uniformly. This means that the consumer will not be incentivized to choose beverages with lower sugar content, and manufacturers have little motivation to reformulate their products, thus diminishing public health objectives.

7.2.2 Sugar-Specific Rate

A sugar-specific tax rate targets the sugar content of the beverage and is usually tiered and progressive, applying a higher levy to beverages with a higher sugar content. Countries like France have implemented a progressive tiered-based tax depending on the sugar content of the beverage.

This rate structure can influence consumers and manufacturers to reduce sugar consumption, making it easier to meet the tax's health objectives. Consumers will be motivated to opt for beverages with lower sugar content, and manufacturers will be incentivized to reformulate their products to avoid a higher tax tier.

However, a sugar-specific rate structure can be seen as more complex as it requires testing of the beverages to verify its sugar content, leading to higher costs and enforcement challenges, especially if the rate structure is tiered. The complexity and administrative burden for the manufacturers may also lead to a competitive disadvantage between larger and smaller manufacturers as smaller manufacturers may have difficulties to adapt to the tax. Thus, an exemption for small producers may be considered in order to avoid a disproportionate administrative burden. Allowing for a threshold may also be a possibility to lessen administrative burden.

There are several approaches to structuring tax rate progression based on sugar content. Some countries implement narrower bands between tax rates, while others set up few rates, with an important gap between them, like the UK soda tax "large bands". Both have their advantages. Smaller bands penalise more precisely the increase in sugar content whereas larger bands may encourage larger reductions in sugar content to qualify for a lower tax tier. With this pattern of rates, the main objective of the tax may turn out to incentivize producers to reformulate their products, rather than incentivizing consumers to drink less sugary beverages – which is another way to reduce total sugar intake. However, broad bands may also incentivize manufacturers to reduce sugar content of the beverage just enough to place them under a lower tax tier without improving substantially the overall healthfulness of the beverage. To address this limitation, when using broader bands, it may be beneficial to analyze the distribution of beverage consumption across different sugar content levels. This could help design tax bands that meaningfully target the majority of beverages.

In many participating Member States the choice of thresholds has been influenced by those in other countries. In some countries, the thresholds may originate from some other legislation. For example, in Finland sugar-free beverages are defined as beverages with less than 0,5 grammes of sugar and this is based on the Regulation (EC) No 1924/2006 on nutrition and health claims made on foods.

Achieving an optimal tax structure at the time of implementation may not, however, be feasible, as policymakers often have limited information about the tax base and the behaviour of consumers and industry.

Policymakers may rely on the possibility to adjust the rates over time as more data becomes available on the tax base and its effect on consumer behaviour. This also allows for gradual changes in consumption giving consumers and producers time to adapt to lower sugar content in beverages.

For example, in France, the rate structure was reformed as of 1.3.2025 after an evaluation of its efficacy. Previously the tax rate continuously increased with every additional gramme of sugar per 100 millilitres of beverage, but the revised structure features broader bands associated with larger tax rate increases. The evaluation found that the previous system did not effectively incentivize consumers to switch to low-sugar beverages. The reform in France aims to replicate the results found in the United Kingdom, where the tax model has been successful in incentivizing producers to reformulate their products. France applies now similar sugar thresholds (5 and 8 grammes per 100 ml) as in the United Kingdom, but it also taxes sugar-containing beverages with less than 5 grammes of sugar per 100 ml of beverage. The difference to the UK model is that in France the sugar content is calculated as only the amount of added sugar.

In terms of revenue, a sugar-specific rate structure can lead to less predictable revenue as the tax base will likely shrink as the sugar content of beverages is reduced overall.

7.2.3 Combination of different tax rates

Some participating Member States apply a combination of a flat rate and a sugar-specific rate. This may be the case in countries where the tax has both a health and fiscal objective. For example, in Finland, the tax base includes also bottled water and other sugar-free beverages, which are subject to a lower tax rate. Since these beverages are not considered harmful, the primary main purpose for taxing them is to raise revenue. In contrast, beverages containing sugar are taxed at a higher rate, with the purpose to discourage consumption.

Different health objectives for the tax may also affect how the rates are set for different types of beverages. While most participating Member States that impose a health-related tax on non-alcoholic beverages focus solely on sugar, in some countries the tax aims to also target other substances deemed harmful such as stimulants found in energy drinks. Additionally, in certain participating Member States the health risks associated with artificial sweeteners are taken into account in setting the tax rates.

Addressing multiple substances inevitably complicates setting tax rates. It is very difficult or even impossible to structure the tax rates in a way that they would reflect the real content of all these substances or their ratio in a beverage. In addition, it is difficult to reach the overall health objective or substitution when addressing harms associated with multiple substances. It is difficult to structure the tax rates for sugar, sweeteners and/or stimulants properly so that they would reflect the relative harmfulness of different substances. As discussed in section 4.1, it is extremely challenging to quantify the value of the harm (eg. health care costs) associated with consuming a certain amount of sugar or some other substance in beverages.

In practice, some compromises or simplifications are likely necessary. While some participating Member States incorporate multiple elements in their tax structure, the only tax rate typically based on the quantity of a substance in the beverage is the sugar-specific rate. Energy drinks, on the other hand, are mostly taxed with flat rates, although these rates may be set at a high level.

For example, Croatia applies sugar-specific tax rates to sugar-containing beverages but imposes separate, higher flat tax rates for beverages containing methylxanthine or taurine. Latvia has a two-tier tax system based on sugar content, with energy drinks falling into the higher tax tier regardless of their sugar content.

It may also be possible to target multiple substances without basing the tax on their exact content. For example, Poland's tax structure consists of three components: a flat rate applied when sugar content exceeds

a certain threshold, a sugar-specific tax rate for some beverages, and a flat rate for beverages containing stimulants. The total tax is a sum of these tax rates. This means in practice that the total tax burden for a beverage containing stimulants and a high amount of sugar is high. Because the tax is introduced to serve health purposes, it is viewed justified to impose an additional fiscal burden on those beverages that pose additional health risks.

Addressing artificial sweeteners in a health-related tax depends on how harmful they are considered. Some countries do not consider beverages containing artificial sweeteners harmful and thereby tax them with lower rates or they are completely ruled out of the tax base. If they are deemed harmful, it is difficult, if even impossible, to levy a sweetener-specific tax because it is difficult to measure the quantity of different sweeteners in a given beverage and to determine the appropriate conversion rates with respect to some common denominator such as associated health harms, or the respective sweetening power of different sweeteners. As a consequence, sweetened drinks are in practice often taxed with a flat rate.

In Italy the products are taxed through the application of a single tax rate if their total content of sweeteners is not lower than a specific threshold. The total content of sweeteners refers to the overall amount of all sweetening agents – both natural (e.g. sucrose, glucose, fructose) and artificial (e.g. aspartame), whether added or already present in the pre-sweetened beverage – determined by using a reference table²² that compares the sweetening power of each substance to that of sucrose.

7.3 Conclusion

- All participating Member States that tax non-alcoholic beverages impose specific taxes.
- Compared to ad valorem taxes, specific taxes have a lower administrative burden and do not interfere with pricing mechanisms.
- A specific tax increases prices equally in absolute terms and thus may be more effective in influencing consumption in the case of non-alcoholic beverages, where products across price ranges are often close substitutes.
- Tax rates based on sugar content can influence consumers and manufacturers to reduce sugar consumption, making it easier to meet the tax's health objectives.
- Tax differences can be achieved through different rates or by excluding low-sugar beverages from the tax base.
- Taking into account multiple harmful substances, such as stimulants, may require simplifying how the tax rates are calculated.
- Complex tax structures require additional guidance, monitoring, and enforcement, increasing administrative burdens. Simplifying tax rates for multiple harmful substances is advised to avoid fraud and administrative burdens.

8 Procedures

Although Member States are free to choose the taxation and control procedures they apply in their national taxation of non-alcoholic beverages and are not bound by the procedural provisions of the excise duty Directive, many participating Member States apply harmonised procedures *mutatis mutandis* in their national taxation. However, some apply completely different procedures from excise duties.

²² Italian Inter-directorial Decree by Ministry of Economy and Finance and Ministry of Health of 15 October 2020, which identifies the conventional sweetening power and the consequent quantities equivalent to 1 gram of sucrose for each substance capable of giving sweet taste to drinks.

Similarly to harmonised excise taxation, national beverage tax is typically not levied on products moved to other Member States or exported. In some participating Member States, non-alcoholic beverages purchased through distance selling are not taxable, while in others, distance sales of non-alcoholic beverages are prohibited. Some countries, like France, require distance sellers based abroad to appoint a tax representative who will declare and liquidate the beverage tax.

8.1 Excise duty-like procedures

Some participating Member States follow the procedures of harmonised excise taxation for beverages, although in some respects simplified. The duty suspension arrangement is generally applied. A tax warehouse must be in place for the production and duty-suspension storage of beverages, and the types of operators are typically the same as in the harmonised excise taxation. The manufacturers and consignees are typically liable to tax.

Several participating Member States apply same procedural provisions to the notification, payment, and collection of national excise duties as to harmonised taxation. In Finland, a uniform process is considered to clarify the entirety of excise duties from the perspective of both the tax authorities and companies. In Portugal, it is considered that the associated procedures are not so burdensome as to justify the creation of different, simplified procedures. When speaking about administrative burden, two things must be considered: the cost to the tax authority and the burden on trade. Ireland, too, applies harmonised notification, payment, and collection procedures to their beverage tax. In addition, from Ireland's perspective, for ease of administration the preference was to ensure that the taxing point should fall at the earliest possible point in the distribution chain. This ensures that the tax is collected from a limited number of traders who are manufacturers/distributors of sugar-sweetened beverages, thereby reducing the tax administration and compliance costs. Therefore, the first supplier of the product in Ireland pays the tax.

As for monitoring and controlling non-alcoholic beverage taxation, one alternative is to make use of EMCS (Excise Movement and Control System) like Portugal does. Portugal applies simplified EMCS procedures; full EMCS procedures are not used due to the possibility of corrupting the common domain with e-ADs or e-SADs containing non-alcoholic beverages sent in error to another Member State.

One reason to use EMCS is the control it provides through the use of excise statuses and their mandatory registration. It enables a greater degree of consignor and consignee control, especially in cross-border trading. Using excise-like authorisations for the traders is one way to diminish risks. From the Portuguese experience, the system has been presenting a stable behaviour in terms of both fraud risk and revenue stability, with no complaints from trade.

The burden of using an excise duty-like procedure might vary depending on the scope of the tax and the business concerned. For example, businesses handling excise products such as beer, which might be the case for some beverage producers or traders, may already be accustomed to handling excise duty procedures, thereby offsetting any additional administrative burdens. According to the experience of Portugal, the use of EMCS can initially be burdensome, but gets easier with time and experience, as well as the development of user-friendly tools.

The implementation of an excise like model also brings risks. One of them is the design of procedures that may impact trade in unforeseen ways. This risk might be reduced by increasing the understanding and knowledge of trade among the authorities. There can also be incentives for trade to accept a control system similar to excise duties, such as a guarantee dispensation for producers.

Non-alcoholic beverages could be expected to be produced to some extent occasionally. An issue to consider then is the possibility to exempt occasional production (based on seasonal or other factors) from the excise duty like procedures. Some participating Member States have exempted small-scale production based on the *de minimis* Regulation as noted in section 6.2.2. However, in those cases where the tax is based on health aspects, one argument that could be raised against such a solution is that the size of the producer does not change the health profile of the goods.

The additional burden of using an excise duty like procedure might vary depending on the scope of the tax and the business concerned. If the businesses concerned also handle excise products, such as for example beer (which might for example be the case for some soda producers/traders), they may already be used to handling the excise duty procedures.

Control plays an important role in case of high national tax rates, providing a strong argument for using an excise duty-like procedure.

The excise duty procedure can be considered burdensome compared to, for example, VAT. Therefore, the possibility of lightening the procedure regarding national taxes like beverage tax arises from time to time in some of the participating Member States.

8.2 Other than excise duty-like procedures

While several participating Member States have chosen to introduce excise duty-like procedures for non-alcoholic beverage taxation, others have opted for different simplified procedures. Control, level of excise risk, administrative burden for trade, and national administrative tradition were mentioned as characteristics that have affected the participating Member States' choice of procedures.

One mentioned simplified solution of tax procedures implies that producers do not need to provide a special license or a guarantee and that there are no separate or ongoing follow-up control procedures, but rather a subsequent control procedure where inspections and checks are carried afterwards.

Another simplified solution is applied in Hungary where non-alcoholic beverages are not considered excise goods and are not subject to excise duty but another type of tax (Public Health Product Tax). It is considered that the nature of the product (in terms of risk) and the rate applied do not justify the application of stricter rules of excise taxation. The regulation of non-alcoholic beverages is therefore much more permissive than the excise regime, with no authorisation procedure, no provision of guarantees, no monitoring of the movement of goods, no warehousing procedure, etc., which means significantly less administrative burden for the concerned businesses. The tax on the goods is assessed, declared and paid by the liable person (domestic producer or consignee) after the domestic sale or purchase. Self-declared liabilities are subject to (ex-post) tax audits, mainly based on the stocks and sales/purchases in the accounts of the debtor.

A typical feature of the Hungarian tax is the so-called "shelf" check, which means that the inspectors of the tax authority check the products offered in the commercial outlets. They verify whether the distributor has fulfilled the tax declaration obligation and paid tax on the given type of product. Additionally, the analytical examination of the given product is conducted, during which the audited laboratory of the authority examines the individual ingredients and their quantity (sugar content). If a discrepancy is found that gives rise to a tax liability or if the tax was paid in error at a lower rate, the results of the analysis are notified to the control authority, which initiates the procedure.

France provides another example of procedures different from the excise duty procedure. The French tax on non-alcoholic beverages (contribution on beverages containing added sugars) is declared and paid in the same way as VAT since 2019. The procedure is regarded easier and clearer than before.

The amount of the tax which is payable is calculated and reported in electronic form by the taxpayer, based on the volume of drinks placed on the market weighted by sugar content. The tax authority does not issue a decision on the tax return. The management system relies on controls which are guided by risk analysis. Control tools are used in the process, for example, to determine what kind of taxpayers are targeted with control measures.

As the French tax only applies to beverages containing added sugar, determining the beverages containing natural/added sugar is important. The burden of proof regarding the content of added or natural sugars lies with the taxpayer, who has to demonstrate that all sugars are naturally occurring, or otherwise it is assumed that the sugars are added sugars. However, almost no control issues have arisen due to this.

In Poland non-alcoholic beverages are subject to fee on foodstuffs (so-called sugar fee), which is easier and simpler to administer compared to excise tax. Obligations include monthly submission of fee information and payment of the fee on beverages introduced to the domestic market. Most of the revenue from the fee is transferred to the National Health Fund for educational and preventive activities and for healthcare services for patients with obesity.

8.3 Conclusion

- Several participating Member States follow harmonised excise taxation procedures for non-alcoholic beverages, although they are simplified in some respects. Duty suspension arrangements and tax warehouses are typically used, and manufacturers and consignees are usually liable for the tax.
- In Portugal, the EMCS system is used for control, enabling greater consignor and consignee control, especially in cross-border trading.
- Some participating Member States have chosen simplified tax procedures for non-alcoholic beverages. Producers may not need special licenses or guarantees, and there might not be ongoing follow-up control procedures, only subsequent control.
- In Hungary, non-alcoholic beverages are not subject to excise duty but to a different tax, which is more permissive than the excise regime. This means significantly less administrative burden for businesses. The tax is assessed, declared, and paid after domestic sale or purchase.
- In France, the tax on non-alcoholic beverages is managed the same way as VAT, and the system is regarded easier and clearer than before. The management system relies on controls which are guided by risk analysis.
- In Poland non-alcoholic beverages are subject to fee on foodstuffs (so-called sugar fee), which is easier and simpler to administer compared to excise tax.

9 Possible actions at EU level in order to reconcile difficulties in adopting effective tax models

As regards possible EU level actions, the goal of the project was not to draft a harmonised tax model for non-alcoholic beverages. Instead, the purpose was to explore what could be achieved through co-operation between Member States or in collaboration with the Commission.

9.1 Sharing information

According to many participating Member States the starting point when preparing a tax on non-alcoholic beverages is to look at information on such taxes in other Member States. Therefore, more information on taxes on non-alcoholic beverages in place in different Member States could be made available.

In addition to information regarding the details of the taxes, sharing information and advancing research on these taxes or core indicators would be valuable. Research on consumption and dietary habits in countries that have implemented such taxes could provide information on their impact. Another useful way to assess the effects would be to make available core indicators (e.g. quantities consumed) across countries. Comparing the development of these indicators could help distinguish the effect of the tax from general consumption trends.

Co-operation on the EU level could also be used to provide more information on various health effects arising from consuming non-alcoholic beverages, for example the health effects of various substances such as artificial sweeteners, and contribute to building a consensus at EU level as to what is harmful to health.

Regarding possible platforms for sharing information Taxes in Europe Database (TEDB) was mentioned. It would be possible for Member States to update information on beverage taxes in TEDB. However, some concerns over the coherency and completeness of information in TEDB were raised. A database used by some Member States for public procurements and a platform in Circabc regarding the health sector and new tobacco products were also mentioned as examples for sharing information, but their utilisation was not further evaluated. Also, updating the information in this final report, for example by means of Fiscalis workshop, was mentioned as one method to share information.

The possibility of increased information sharing between tax administrations could also be beneficial. Updating contact point information regarding beverage taxation would be useful.

9.2 Guidelines

Many participating Member States note that non-binding guidelines on how to design a tax on non-alcoholic beverages could be useful, although the possible difficulties in drafting such guidelines were brought up as Member States have divergent health policies and tax objectives.

The guidelines could address issues such as:

- tax base (e.g. what to include in the tax base based on health perspective?)
-
- definitions (e.g. what is an energy drink?)
- ingredients (e.g. what do energy drinks contain?)
- rates and sugar thresholds
- new products
- exemptions (e.g. information source for plant-based milk from a health perspective?)
- how to avoid double taxation

The possible procedure for drafting non-binding guidelines on a national tax was also mentioned as an issue to be addressed.

9.3 Harmonisation

Participating Member States' views differed on whether harmonisation of taxes on non-alcoholic beverages would be beneficial. Some did not see harmonisation as something that should be advanced.

One of the participating Member States that does not apply such a tax was of the view that the taxation of non-alcoholic beverages should remain a national competence of each Member State, thus enabling Member States to choose policy options best suited to its own needs. However, some participants saw harmonisation as the best solution. Advocates of harmonisation considered that a harmonised tax could best address health issues that are widespread in the EU countries. Taxes could also be more easily accepted on a national level by both consumers and industry if the tax were proposed at an EU level. Harmonisation could solve problems related to cross-border trade, and, depending on its nature, facilitate State aid issues. It could also mean applying known and common procedures for both operators and tax administrations.

However, advocates of harmonisation saw it as something to be advanced in the long run. Some participating Member States also noted that harmonisation might be difficult as many already have their national taxes, and some are not planning to implement such taxes.

9.4 Conclusion

- Member States should share information on non-alcoholic beverage taxes and their impacts.
- Non-binding guidelines for designing a tax on non-alcoholic beverages would be useful. Guidelines could address tax base, definitions, ingredients, rates and sugar thresholds, new products, exemptions, and avoiding double taxation. However, drafting them might be challenging due to differing health policies and tax objectives.
- Participating Member States have different views on the harmonisation. A harmonised tax could, for example, solve problems related to cross-border trade, and facilitate State aid issues, but implementation may be difficult.

10 Summary: Aspects to be taken into account when planning a tax on non-alcoholic beverages

The group has looked into the design of a tax on non-alcoholic beverages from different perspectives. The purpose of this work was not to propose a single, uniform model for such a tax, as the group fully recognises that the role of such a tax may differ between countries. For example, the view on the extent of health issues related to the consumption of non-alcoholic beverages may differ between countries. The same goes for the approach to addressing these challenges.

Therefore, the following aspects are intended to highlight key elements to consider when designing a tax on non-alcoholic beverages. They draw on legislative, economic and practical consideration as well as experiences with how such a tax would best work according to its objective while being implemented in a feasible way. In practice, however, policymakers may not have all the relevant information at the time of implementation. Therefore, it may be useful to prepare for adapting the tax as information on consumption impacts, health outcomes or administrative effectiveness emerges. Finally, it is acknowledged that the final design will need to reflect also the national policy context and political feasibility.

Aspects to be taken into account when preparing a tax on non-alcoholic beverages are:

1. Tax Objectives:

- Define the objective of the tax on non-alcoholic beverages. Identifying clear policy objectives helps in defining the tax objective. The objective of the tax is essential when designing the tax.
- The primary objective of the tax can be either fiscal or health-based, or it can be both.

- The health objective may be to reduce the intake of sugar or to cover health impacts of beverages more extensively.
- The objective determines how the tax base is defined.

2. Defining the Tax Base:

- Define the tax base logically and objectively in relation to the tax objective. This helps avoid problems with State aid rules.
- Consider substitution effects. If certain sugar-containing beverages, such as those with natural sugar, are excluded from the tax base and are close substitutes for taxed beverages, consumption may shift to non-taxable but sugar-containing options, potentially reducing the tax's effectiveness in lowering sugar intake.
- Note that natural sugar and added sugar cannot be distinguished in a scientific way.
- Artificial sweeteners, energy drinks, coffee, alcohol-free beer, fruit and vegetable beverages, as well as milk and plant-based milk substitutes may need special consideration.
- Consider how to tax concentrates.
- Consider the administrative burden of taxation on small-scale production.
- Non-prepacked beverages may require special regulation if their sugar content does not need to be declared under national legislation.
- Pay attention to beverages that are meant for special purposes, e.g. beverages for medical purposes and food supplements.
- Consider the functionality of both CN codes and the linguistic definitions in determining the tax base.

3. Tax Structure

- Determine whether the tax structure should be ad valorem (based on the value/price of the good) or specific (fixed tax based on the quantity of the good). All participating Member States that tax non-alcoholic beverages apply a specific tax.
- Determine whether the rate should be flat for all beverages, or a sugar-specific based on the sugar content.

4. Procedures

- Consider the acceptable level of administrative burden and the level of control required to prevent tax avoidance.

Annexe 1 Taxes of non-alcoholic beverages in participating Member States

Annexe 2 Summary table of tax bases in participating Member States