

Manufactured tobacco: excise duty. Codification

2007/0206(CNS) - 21/12/2015 - Follow-up document

In accordance with Directive 2011/64/EU, the Commission presents a report on the structure and rates of excise duty applied to manufactured tobacco set by the Directive. Furthermore, the Directive has been identified for **evaluation under the Commission's Regulatory Fitness and Performance Programme (REFIT)**.

To recall, REFIT is a programme to review the entire stock of EU legislation, to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

The current report presents the **results and conclusions of an external evaluation** assessing the Directive from these two angles. In addition, it provides the overview of the available statistics reported by Member States concerning the development of the Weighted Average

Price (WAP), releases for consumption, tax receipts and tax burden on manufactured tobacco since the Directive entered into force in 2011.

Results of the evaluation: the report notes that overall, the evaluation found that the current structure and level of rates generally allow for **neutral conditions of competition** and the free setting of prices within the internal market.

At the same time, the evaluation findings show that some distortions within the internal market are created through differentiated application of the Minimum Excise Duty, the inconsistent treatment of e cigarettes and certain manufactured tobacco products and the tax induced substitution between and within product groups.

Within the REFIT context, the evaluation identifies **unnecessary administrative and compliance costs** for tax administrations and economic operators. These costs result from certain definitions which can lead to legal uncertainty over the treatment of specific products. In addition, the **application of different definitions** of tobacco products for excise duty and for customs purposes has been found to be problematic, in particular for SMEs as it translates into double entries and legal uncertainty.

Lastly, **with certain exceptions, the Directive has proven to be effective** and generally appropriate for enabling adequate collection of excise duties for the large majority of manufactured tobacco products.

Follow-up of recommendations by the Commission: on the basis of the evidence gathered, the evaluators put forward **16 recommendations** with the view to improving the functioning of the regulation concerning excise duty on manufactured tobacco. These definitions relate to definitions of excisable tobacco products, as well as the rates and structure of the excise duty.

The Commission finds the following to be **worthy of further consideration**:

- four recommendations that suggest creating **more accurate definitions** in order to reduce legal uncertainty, avoid different approaches in Member States and distortion of the internal market. These recommendations propose reviewing expressions such as (i) “capable of being smoked without further industrial processing”; (ii) “put up for retail sale and which can be smoked”; (iii)

“given their properties and normal consumer expectations is exclusively intended to be smoked as it is”. Addressing these recommendations would have an impact on the work parameters of other recommendations and could take priority;

- the two recommendations that aim **simplify the current structure** by adjusting the categories or definitions of manufactured tobacco in the excise legislation to take account of the classification for custom purposes and the corresponding explanatory notes to the CN;
- four recommendations that concern the **possible introduction of new product categories** - e-cigarettes, raw tobacco, water-pipe-tobacco, and intermediary products whose monitoring is necessary- in order to facilitate an appropriate, equal taxation treatment of (new) products within the internal market and allow Member States to monitor and control sufficiently;
- the recommendation regarding the **possibility of aligning minimum excise taxes on cigars / cigarillos with those of cigarettes** in order to eliminate the incentive to market “borderline” products which might attempt to circumvent payment of the higher excise duty. In this context, the Commission recalls that that derogations from the definition of cigars and cigarillos granted to Germany and Hungary, ended on 31 December 2014. Furthermore, the current Directive empowers the Member States to tackle the circumvention by increasing the excise duty on cigars only.

The Commission considers that the other recommendations either fall outside the scope of possible revision of Council Directive 2011/64/EU or to be only indirectly linked to it. These include recommendations relating to customs classification and the corresponding CN codes, or contain adjustments aimed at improving the overall system of excise duty collection in Member States.

Next steps: in the view of the findings of the evaluation, the Commission will consider the next steps in **discussions with Member State experts**. These steps could also include a revision of the Directive. Such a revision would involve carrying out a **public consultation and an impact assessment**.

In addition to giving consideration to the specific recommendations of the evaluation, the Commission will examine how to best achieve the following objectives:

- a uniform understanding of application of the Minimum Excise Duty;
- limiting tax induced substitution within and between product categories where possible;
- providing clarity as regards the harmonized definitions and the treatment of novel products, in order to: (i) support consistent treatment and legal clarity on classifying excise products within the EU; (ii) allow Member States to monitor the movement and production effectively; (iii) avoid unnecessary administrative costs.

In deciding on next steps, the Commission will also give due consideration to any relevant recommendations made by the Council or European Parliament.