

Manufactured tobacco: excise duty. Codification

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The Commission presented a report on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

As a reminder, the Directive was identified for evaluation under the Commission's Regulatory Fitness and Performance Programme (REFIT). An external evaluation of this Directive was finalized in 2014 and was followed by a Commission Report presenting the results and conclusions of the evaluation in 2015.

On 8 March 2016, the Council (ECOFIN) requested the European Commission to undertake the necessary studies to submit a legislative proposal for revision of Directive 2011/64/EU. This report presents the results and conclusions of an external study on this subject and sets out the reasons why **the Commission has decided to not submit a proposal for revision of Directive 2011/64/EU at this moment in time.**

E-cigarettes: E-cigarettes are currently not covered by the tobacco excise duty directive. Member States may apply a national tax to e-cigarettes as they find fit under their own rules. At present nine Member States tax e-cigarettes under national rules and a few more are reported to be considering it.⁶ These different tax treatments might distort the functioning of the internal market.

The study found that the information available on e-cigarettes was limited and it was consequently difficult to draw conclusions on how the market will evolve in the future. The data currently available does not provide sufficient evidence to support a proposal for a harmonized approach for taxation of e-cigarettes.

The Commission supports the recommendation of the external study to adopt a **multi-phased approach**, starting with collecting accurate data to fill the information gap.

Heat-Not-Burn tobacco products: the study has revealed that by 2016, the Heat-Not-Burn tobacco products have been subject to largescale commercialisation in a limited number of Member States only. At present, Member States have different approaches towards the tax treatment of these products, varying from taxation at the same rate as smoking tobacco under the current directive to taxation at a different level on a national basis.

In the Commission's view, a possible treatment of these products would be to tax them at the same rate as smoking tobacco under the directive. The Commission is of the opinion that, given the novelty and evolutionary nature of the market, it would be extremely **difficult at this stage to develop a harmonised explicit definition** which captures these products both as they appear now and their future developments.

Illicit trade in raw tobacco: including raw tobacco in the scope of excisable goods would enhance control but would also impose administrative and compliance costs on all legitimate operators. These costs are high compared to the value of production; about 35 % of the market price of EU raw tobacco.

The Commission would therefore support the recommendation of the external study which concludes that including raw tobacco in the scope of excisable goods would be **disproportionate** and that similar benefits might be achievable at lower costs by a common regulatory framework for growers and first processors in the EU.

Tax-induced substitution of cigarettes by low-price cigarillos: borderline cigarillos have characteristics similar to cigarettes but can be sold for a lower price because they are classified as cigarillos and benefit

from a more favourable tax treatment. Such borderline products might cause a reduction of revenue, distortion of competition and undermine tobacco-control policies. The study found, however, that tax-induced substitution of cigarettes by borderline cigarillos had significantly declined.

Therefore, the Commission supports the recommendation of the external study that there is **little rationale for further action on this matter at EU level**.

In line with the external study, the Commission also considered that further EU measures in the area of **cigarette substitution by fine-cut tobacco** would have no obvious added value, and that the available data are too limited and unreliable to support, at this stage, a major tax reform such as the introduction of a **separate category for water pipe tobacco**.

Conclusion: taking account of the lack of data, the Commission has decided to review the question whether there is a need to propose a harmonized explicit category for e-cigarettes and **Heat-not-Burn** tobacco products in the context of the next REFIT evaluation and report on the directive due in 2019. It is expected that more information will become available from, among other sources, the reporting obligation under article 20 of the Tobacco Products Directive. The Commission will therefore continue to monitor the developments related to e-cigarettes and Heat-Not-Burn tobacco products.

The Commission considers that the **examination of the need to raise minimum rates should also take place in parallel with the REFIT evaluation**.

By 2019, when the next report and a possible revision will have to be presented, it will be almost 10 years since the approval of the current minimum rates, and no action has been taken to correct the effects of inflation. Moreover, in an annex to the Council conclusions of 8 March 2016, five Member States (Austria, Ireland, Finland, France and Sweden) welcomed the conclusion that the work on a future revision should start without delay.

Therefore, the Commission will **start the evaluation of the minimum rates in 2018**.