

Manufactured tobacco: excise duty. Codification

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This Commission staff working document presents an evaluation of Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

The time period covered is from the adoption of the Directive until the availability of the latest reported data (2011 to 2017).

The evaluation focuses on obtaining an overview of the EU and the geographical coverage is all 28 Member States. It examines the implementation of the different provisions of the Directive, and assesses its application by the Member States. In particular, it analyses the effect of the minimum rates and structures of excise duty applied on manufactured tobacco.

The evaluation also focuses on the tax treatment of novel products such as electronic cigarettes at EU level. E-cigarettes are currently not subject to a harmonised tax under the Directive. The main commercial uptake of e-cigarettes in the EU started after the adoption of Directive 2011/64/EU, which is therefore silent on their taxation.

Main findings

This evaluation assesses the performance of the Directive against the basic evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value.

- ***Effectiveness***: the overall benefits on market functioning (including substitution of fine-cut tobacco) have reduced overtime. As regards the objective to ensure the proper functioning of the internal market, The Directive provisions on minimum excise rates have been moderately effective in raising tax rates and prices in Member States. There is no ‘convergence’ of tax levels, but the EU minima helped to avoid an even greater disparity across the EU. The relative level of illicit trade has slightly declined over the years but remains substantial. The deviation of raw tobacco to illicit manufacturing within the EU is a growing concern for most Member States.

- ***Efficiency***: the Directive does not pose major problems with implementation or cause major administrative burdens on public authorities. The evaluation concluded that EU provisions have been efficient in reducing the cost of decreasing smoking prevalence, enhancing the benefits in terms of lives saved and reduced healthcare and productivity costs.

- ***Coherence***: Directive 2011/64/EU is generally coherent with international policies (i.e. Framework Convention on Tobacco Control). However, as regards coherence with other EU legislation, there is significant room for improving synergies, notably with the public health framework and the fight against illicit trade. The lack of internal coherence among some provisions of the Directive is a source of concern.

- ***Relevance***: the relevance of the Directive has diminished overtime and is no longer fit for purpose. The EU minima remain have now lost their traction effects which would contribute to a more ambitious achievement of the objectives of the Directive (public health and upwards convergence). The current provisions (minimum rates, structures, and tax categories) are therefore no longer relevant to address future challenges, in particular, for products such as e-cigarettes and heated tobacco products, and the new products coming into the market.

- **EU added value:** the contribution to harmonising fiscal classification of products so far has been important. The study finds that the revised EU minima have raised cigarettes and fine-cut tobacco price levels in some Member States more than what would have happened in the absence of the Directive. However, the direct contribution on tobacco control appears limited and most public health authorities of the Member States are not satisfied with the impact of the Directive on tobacco control targets and call for stronger fiscal measures.

Main challenges

The main challenge emerging from the evaluation of the Directive is the (re)conciliation of its two main objectives “to ensure the functioning of the internal market and at the same time a high level of health protection”. The main source of confusion lies with the ambivalence between the so-called internal market objective and the public health objective. The disparity of taxes (hence prices) is allowing for a very lucrative and easy trade of cheaper tobacco products across borders inside the EU. This is not what was intended under the Directive objective “to ensure the functioning of the internal market and at the same time a high level of health protection”.

Moreover, for recent and new products the lack of harmonisation is a source of concern from the internal market perspective. Developments have accelerated within new e-cigarettes, heated tobacco products and a new generation of modern products is coming into the market (containing nicotine or cannabis). The current scope of the Directive is not capable of providing for an explicit harmonised taxation regime for e-cigarettes and heated tobacco products. As a result Member states have established some taxation on these products but with different structures. The current lack of harmonisation of the tax regulatory framework for these products is also restricting the possibility to monitor their market development and control their movements.

Lastly, the evaluation shows a low degree of coherence of the Directive with other EU policies. Therefore, a more comprehensive and holistic approach is needed, taking on board all aspects of tobacco control including public health, taxation, the fight against illicit trade and environmental concerns. More coherence is also needed in view of the EU agenda in the fight against cancer.