

## Tobacco Europe views on TED related questions

### 1. Revision of the current EU minima on harmonized products

- Thirty years of Tobacco Excise Directives have shown us that the **convergence of nominal excise rates across EU MS is neither feasible nor desirable**. The differences in nominal tax rates and price levels are the natural result of differences in income levels and economic conditions.
- A correct comparison of excise burden borne by Member State consumers needs to be done on a purchasing parity basis reflecting divergencies in incomes. This was acknowledged by the Member States in the Council Conclusions agreed in June 2020 following the publication of the report from the Commission on the review of the Tobacco Excise Directive (TED) last year.
- Price differences across the EU are the result of differences in income levels, the cost of inputs and economic conditions which are likely to remain unstable over the next few years in light of the impact Covid-19 has had on EU economies.
- A EUROSTAT publication from 2018<sup>1</sup>, comparing price increases from 2000-2017 demonstrated that Eastern European Member States have endured extremely high tax increases accelerating their price hikes. Affordability has declined significantly in these countries over the past decade and on a purchasing parity basis tobacco is actually more expensive to consumers than in most Western European countries.
- When minimum levels are set reflecting purchasing parity basis, the excise incidence requirement becomes obsolete.
- In case the minimum incidence is kept, an increase from its current level is not warranted and the existing escape clause should remain in place
- An increase in minimum rates could exacerbate price differences between European Member States and non-EU Member States, particularly in Eastern Europe, where a persistent challenge remains the levels of duty-avoiding tobacco consumption in individual MSs of illicit tobacco sourced from outside the EU.
- Any decision on taxation should reflect the concerns and core interests of individual Member States. Therefore, minimum increase must be limited as Member States should have full control over their fiscal policy and on how they generate revenue.
- Should an increase to the minimum rate be deemed appropriate, this should be measured to preserve market stability and discourage growth of non-domestic duty-paid volumes (NDDP), especially in the countries that fall below any proposed new thresholds.
- Moreover, any increase of the minimum should be gradual, e.g. every one or two years, to minimize market disruptions and allow MS to realize their individual fiscal policy objectives.

### 2. Establishing harmonised tax regimes for new products

- Tobacco Europe would welcome an appropriate EU framework for taxation of these new products. This should be done through the creation of separate and dedicated excise categories for liquid for electronic cigarettes, tobacco-free oral nicotine pouches and heated tobacco products, underpinned by straightforward definitions.
- Clear definitions are essential when it comes to excise.

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<sup>1</sup> <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/DDN-20180903-1>

## 2 (a) Heated tobacco Products (HTPs)

- Excise should be levied on the consumable and not the device.
- Heated tobacco products are already excised in almost every market they are sold, yet this excise is applied through a variety of divergent mechanisms. A harmonised positive minimum would therefore represent a meaningful step forward.
- The level of the minimum excise should be considerably lower than that applied to combustible cigarettes in reflection of the product's distinct characteristics.

## 2 (b) Electronic cigarettes

- For e-cigarettes which do not contain tobacco, the minimum rate should be set at zero. This would give Member States the discretion to choose whether they wish to introduce excise or not; given that many Member States currently encounter difficulties in collecting taxes on e-liquids, this will notably assist in the collection of volume information whilst testing the robustness of product definitions.

## 2 (c) Tobacco free Nicotine pouches for oral use

- For oral nicotine pouches which do not contain tobacco, the minimum rate should be set at zero. This would give Member States the discretion to choose whether they wish to introduce excise or not

## 3. Introduction of raw tobacco into the scope of the excise legislation

- Tobacco Europe acknowledges the need for a harmonised approach to monitoring flows of raw tobacco within and into the EU with a view to countering illicit trade.
- Flows of raw tobacco are very different from those of finished products, where the destination country is known when the goods leave the factory.
- A harmonized excise solution to facilitate the flows of raw tobacco through EMCS would be complex and create a disproportionate administrative burden
- A more proportionate solution would be the reintroduction of a regulatory framework for the tobacco sector (implying licensing system and authorization for tobacco growers and producers, etc.)<sup>2</sup>.
- Examples of countries where proper control mechanisms are in place are notably Croatia and Italy.
- Leaving certain flows from the primary supply chain outside the scope of a regulatory framework will not solve the issue of raw tobacco diverted for illicit manufacturing
- Preferably, retail sales of raw tobacco should be prohibited.
- The definition of smoking tobacco should be enhanced to define the circumstances in which retail sales of smoking tobacco are to be considered as such.

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<sup>2</sup> Tobacco Europe position paper on Raw Tobacco (November 2019)