



Tobacco Europe position on the tobacco excise directive review (Directive 2011/64/EU)

Tobacco Europe AISBL¹ represents the common views of major European-based tobacco and nicotine products manufacturers such as British American Tobacco (BAT), Imperial Brands (IMB), and Japan Tobacco International (JTI).

Executive Summary

Thirty years of Tobacco Excise Directives have shown us that the **convergence of nominal excise rates across EU Member States is neither feasible nor desirable**. The differences in nominal tax rates and price levels are the result of natural 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 power parity basis reflecting divergencies in incomes. Any decision on taxation should reflect the concerns and core interests of individual Member States. Therefore, any increase in minimum rates must be limited as Member States should have full control over their fiscal policy and on how they generate revenue.

Tobacco Europe would welcome the harmonized treatment of new products: separate and dedicated categories for electronic cigarettes, tobacco-free nicotine pouches (modern oral), Heated Tobacco Products and smokeless tobacco products should be created with unambiguous definitions. The excise basis, for each category, should be the consumable.

A harmonized system to monitor the flows of raw leaf as a tool to tackle the manufacturing of illicit cigarettes should be created building on experience gained in Member States. A technology-based solution such as blockchain/QR code technology which can be seamlessly introduced from grower to manufacturer and ensure the full traceability of the movement and quantities of key input materials for tobacco manufacturing within the EU should be considered.

1. Taxation on traditional cigarettes

The convergence of excise rates across the EU is neither feasible nor desirable

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 considering the impact Covid-19 has had on EU economies. A EUROSTAT publication from 2018², 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. 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.

A correct comparison of excise burden borne by Member State consumers needs to be done on a purchasing parity basis reflecting divergences in incomes. This was acknowledged by 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.

¹ <https://www.tobacco-europe.eu/>

² <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/DDN-20180903-1>



When minimum levels are set on a purchasing parity basis, the excise incidence requirement becomes obsolete. However, should the minimum incidence remain, an increase from its current level is not warranted and the existing escape clause should remain in place.

Any decision on taxation should reflect the concerns and core interests of individual Member States. Therefore, any increase in the minimum rates 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 countries that fall below any proposed new thresholds. Ideally, any increase of the minimum should be gradual, e.g. every one or two years, to minimize market disruptions and allow Member States to realize their individual fiscal policy objectives.

2. Taxation of new products

Harmonising the definitions and tax treatment of New Products: Heated Tobacco Products, E-cigarettes, tobacco-free oral nicotine pouches (Modern Oral) and smokeless tobacco products

Tobacco Europe would welcome an appropriate EU framework for taxation of these new products. This should be realized through the creation of separate and dedicated excise categories for electronic cigarettes, tobacco-free oral nicotine pouches and heated tobacco products, and underpinned by unambiguous definitions. Clear definitions are essential when it comes to excise. 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 lower than that applied to combustible cigarettes in reflection of the product's distinct characteristics.

For e-cigarettes which do not contain tobacco and which may or may not contain nicotine, the minimum rate should be set at zero. This would give Member States the discretion to decide whether 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.

Oral nicotine pouches which do not contain tobacco should also be included in a revised Directive. 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.

Other smokeless products for chewing or nasal use: smokeless tobacco products for chewing or nasal use should be included in the scope of the Directive. These products should have a separate category, delineated from combustible tobacco and HTPs. They should not be benchmarked against the other categories mentioned in Q26 of the public consultation.

3. Control of the Tobacco Supply Chain

Appropriate rules at EU level to mitigate the risk of raw tobacco diversion to the illegal circuit

Tobacco Europe supports the need to create a harmonised approach to monitor flows of raw tobacco within and into the EU with a view to countering illicit trade. However, a harmonized



excise solution to facilitate the flows of raw tobacco using EMCS is an inappropriate and sub-optimal solution due to the complexities of leaf movements and would create a disproportionate administrative burden on operators throughout the supply chain. 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 more proportionate solution would be the reintroduction of a regulatory framework for the tobacco sector, the likes of which are already in place in Croatia and Italy (requiring a licensing system and authorization for tobacco growers and producers, etc.)³ accompanied by a simplified tracking and tracing mechanism that is easy to implement and which would not be limited only to raw tobacco but would also include other key input materials (e.g. acetate tow). This could be facilitated through a technology-based solution such as blockchain/QR code technology which could apply from grower to manufacturer and ensure the full traceability of the movement and quantities of key input materials for tobacco manufacturing within the EU.

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.

Clarity on the circumstances in which retail sales of smoking tobacco take place would be an additional measure that creates legal certainty for economic operators and authorities.

³ Tobacco Europe position paper on Raw Tobacco (November 2019)