

Brussels, 21 February 2020

**Tobacco Europe's key messages on COM's evaluation report of the functioning of Directive 2011/64/EU**

On 10 February 2020, the European Commission published an [evaluation](#) report of the functioning of [Directive 2011/64/EU](#). The evaluation examined if the EU rules for taxation of manufactured tobacco products have protected public health and ensured a proper functioning of the internal market. An [executive summary](#) is also available.

In parallel, the external consultant's (Economisti Associati) [Study](#), which served as a basis for this evaluation, was published together with an [executive summary](#) and [annexes](#).

First discussion in the Council is foreseen on 3 March at the [High-Level Working Party on Taxation \(HLWP\)](#) in which the Commission will present the evaluation of the Council Directive 2011/64/EU. Following this, the report will be discussed at the [Working Party on Tax Questions – Indirect taxation](#) which is scheduled for the 6<sup>th</sup> of March;

The Presidency intends to adopt Council Conclusions at the ECOFIN taking place on **19 May**.

Within this context, Tobacco Europe would like to share its key messages on the COM's evaluation report, as follows:

**1. Excise Rates**

- a. Decisions 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.
- b. Any increase in the minimum rates could exacerbate price differences between European Member States and non-EU Member States, particularly in Eastern European MS, increasing pressures for illicit trade.
- c. 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 (NDDP), especially in the countries that fall below any proposed new thresholds. Ideally, 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.

The convergence of tax rates across the EU is unrealistic. Price differences across the EU are the result of differences in income levels, the cost of inputs and economic conditions.

- d. Minimum incidence does not lead to closer excise levels: any increase in the current levels of incidence would potentially contribute to further divergence in tax burdens across Member States.
- e. A EUROSTAT publication from 2018<sup>1</sup>, comparing price increases from 2000-2017 demonstrated that Eastern European Member States have suffered extremely high price increases with tobacco prices accelerating this increase. Affordability has thus already been heavily impacted these countries over the past decade.

---

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



## 2. Minimum Excise Duty (MED):

- a. More clarity and legal certainty on the rules and the application of the MED would be needed. A MED, when in place, should only affect a minority of the market and not a majority as it is the case in some markets.
- b. A legal basis to “dynamic” MED mechanisms (such as the “minimum total tax’ inclusive VAT) as recommended in the Study<sup>2</sup> would be welcomed.

## 3. Raw Tobacco

As stated in the Study and COM’s evaluation report, there is a need for creating a harmonised approach to monitor flows of raw tobacco within and into the EU with a view to counter illicit trade.

Tobacco Europe supports this approach and would recommend the reintroduction of a regulatory framework for the tobacco sector (implying licensing system and authorization for tobacco growers and producers, etc..)<sup>3</sup>. At the same time, a change in definition of article 5 would help clarifying the legal uncertainty that now exists for manufacturers as well as for fiscal authorities.

Monitoring raw tobacco via EMCS would not be a solution to tackle illicit trade in raw tobacco as it will result in the control of established manufactures already functioning within the legal system – i.e. the recommendation will not tackle the problem of raw tobacco diverted to counterfeit production and sold at retail.

---

<sup>2</sup> [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/summary-study-on-the-tobacco-taxation-directive-2019\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/summary-study-on-the-tobacco-taxation-directive-2019_en.pdf) p.13

<sup>3</sup> Tobacco Europe position paper on Raw Tobacco (November 2019)