

Brussels, 23rd July 2024

To

Mr David Boubilil
Head of Unit
Behavioural Taxation and Other Indirect Taxes (TAXUD.C.3)
DG TAXUD
Rue de Spa 3 / Spastraat 3
B- 1000 Bruxelles / Brussel

Cc

Ms Gintare Milkamanaviciene

Subject: Tobacco Europe¹ request for clarity on the use of the EMCS for (tobacco free) Herbal Heated Products

Dear Mr Boubilil,

Tobacco Europe understands that discussions took place during the Indirect Tax Expert Group Meeting on June 28th regarding the use of the EMCS for (tobacco free) Herbal Heated Products.

We do not, at this stage, want to take a position on the tax treatment or tax levels of these products.

We would, however, like to express our concern about the potential disruption to the supply chain for (tobacco free) Herbal Heated Products in the event that there is an inconsistent approach by different Member States to using the EMCS for the movement of these products.

There are two practically viable ways in which these products could be moved between Member States:

1. As is currently the case, the movement of (tobacco free) herbal heated products is not covered by the EMCS. These products are, instead, shipped throughout the EU accompanied by the appropriate delivery documentation.
2. Alternatively, (tobacco free) Herbal Heated Products are transported throughout the EU under the EMCS with all the Member States adopting the procedure.

If, however, only a subset of Member States adopts the EMCS for the movement of (tobacco free) Herbal Heated Products and others do not, this will inhibit the movement of these products throughout the EU.

Such disruption occurred when there was an inconsistent approach to using the EMCS for the movement of heated tobacco products in the EU. Due to divergent EU Member States positions on using the EMCS for these products, our supply chain was disrupted and goods were prevented from moving between Member States. We are keen, as we are sure you will understand, to avoid such unnecessary, and avoidable, disruption to the movement of (tobacco free) Herbal Heated Products.

¹ [Tobacco Europe](#) AISBL is the umbrella organisation representing the three largest tobacco and nicotine products manufacturers, namely British American Tobacco, Imperial Brands and Japan Tobacco International.

We, therefore, are writing to urge the European Commission to ensure that the movement of (tobacco free) Herbal Heated Products under the EMCS (or not) is properly coordinated at the EU level in a way to ensure a uniform approach across the EU Member States.

We call on the Commission to provide clear guidance to the EU Member States on the use of the EMCS for (non-tobacco) Herbal Heated Products.

We also request that if the Commission's guidance is that Member States should use the EMCS for the movement of (tobacco free) Herbal Heated Products through the Single Market, the guidance would cover the following information required in the EMCS (e-AD) at the EU level:

- Box 17.b from the EMCS (e-AD) requires companies to select the excise product code. At this stage, there is no excise product code allocated for (tobacco free) herbal heated products. DG TAXUD together with the EU Member States should clarify whether companies should use the excise procedure code **T500-Other Smoking Tobacco**. This is the excise procedure code currently used for heated tobacco products in the majority of Member States.
- Box 17.c from the EMCS (e-AD) requires selecting the CN customs tariff code from an EU pre-defined list. Currently, the CN customs tariff code 2404.12.00 is not available. Therefore, **DG TAXUD should amend the EMCS CN customs tariff pre-defined list and allow companies to select CN customs tariff code 2404.12.00**. The EU Customs Code Committee in September 2022 determined that (tobacco free) herbal heated products should be classified under TARIC code 2404.12.00.90.

These measures would ensure a consistent approach to using the EMCS across all Member States and would, in so doing, minimise the risk of inconsistencies that would disrupt the movement of products through the EU.

Moreover, in order to further minimise potential supply chain disruptions, we also request that a reasonable transition period should be allowed for companies to prepare and ensure that the relevant excise duty authorisations are obtained/amended accordingly in order to ensure full compliance for the EMCS movements of (tobacco free) Herbal Heated Products. We consider that 6-12 months to prepare would be a reasonable transition period for EU wide deployment of the EMCS for (tobacco free) Herbal Heated Products.

We hope you will consider our request outlined in the above, and we look forward to hearing from you.

Yours sincerely,

On behalf of Tobacco Europe members

A handwritten signature in blue ink, appearing to read 'Darge', with a horizontal line drawn through it.

Nathalie Darge
Director General