

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

Following the publication of the [evaluation](#) report¹ on the functioning of [Directive 2011/64/EU](#) by the European Commission on 10 February, and in parallel the publication of the (Economisti Associati) [Study](#) which served as a basis for the evaluation, the European Council started discussions in the Council at the beginning of March.

The Presidency intends to adopt Council Conclusions at the ECOFIN due to be held on **19th May**.

Tobacco Europe² would like to share its key messages on the COM's evaluation report, as follows:

1. Harmonising the definitions and tax treatment of Heated Tobacco Products and E-cigarettes

Tobacco Europe welcomes an appropriate EU framework for the taxation of Heated Tobacco Products and e-cigarettes. This should be done by creating clear product definitions, with differentiated and dedicated excise categories.

For both categories, excise should only be levied on the consumables, and not the device.

Specifically on e-cigarettes, we would support the following measures:

- The development of a clearly defined, stand-alone product category which is delineated from all other tobacco products (including Heated Tobacco Products).
- Member States must be allowed to set a zero-duty rate, and should have full control on whether they wish to introduce a positive tax (or not); this will notably help Member States to collect volume data, and to test the robustness of product definitions.

2. The convergence of excise rates across the EU is not realistic

- The convergence of tax rates across the EU is unrealistic. Existing price differentials across the EU are the result of the differing income levels, the cost of inputs, and national economic conditions.
- A EUROSTAT publication from 2018³, comparing price increases from 2000-2017 demonstrated that Eastern European Member States have suffered from extremely high price increases of consumer goods, driven especially by tobacco products. Product affordability has therefore already been heavily impacted in these MSs over the past decade.
- In addition, the minimum incidence does not lead to harmonised excise levels. Any further increase in the current minimum levels of incidence would potentially contribute to an even greater divergence in tax burdens across Member States.
- Regarding the large disparity in taxes (and prices) of tobacco products between Member States and the unintended cross-border flows: the tobacco industry already keeps a track of

¹ 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.

² [Tobacco Europe](#) (formerly The Confederation of European Cigarette Manufacturers – CECCM) represents the common views of major European-based cigarette manufacturers such as British American Tobacco (BAT), Imperial Brands (IMB), and Japan Tobacco International (JTI).

³ <https://ec.europa.eu/eurostat/en/web/products-eurostat-news/-/DDN-20180903-1>

the movement of excise goods via Track and Trace (T&T), which in practice already allows authorities to determine the intended country of sale.

- The provisions regulating excise duties on goods acquired by a private individual for his or her own use⁴ already provide Member States with the flexibility and the legal clarity needed to effectively implement and enforce this legislation.
- The most significant challenge remains the availability of illicit tobacco products which are smuggled into the EU. A disproportionate increase in the minimum rates would, in several EU Member States, further fuel the availability and growth of illicit tobacco products. An increase in the minimum rates would further exacerbate the price differentials between EU Member States, and neighbouring non-EU Member States.
- Should an increase to the minimum rate be deemed appropriate, it should be moderate in order to preserve market stability and discourage the growth of non-domestic duty-paid (NDDP), especially in the countries that fall below any proposed new thresholds. Ideally, any increase of the minimum rates should be gradual, e.g. every one or two years, to minimize market disruptions and allow MSs to realize their individual fiscal policy objectives.
- Moreover, any decisions on taxation should reflect the concerns and core interests of individual Member States. Therefore, any increase in the minimum rates should not impede Member States' sovereign right to set their own fiscal policy.

3. Definitions in EU legislation on excise duties should be improved

- a. Regarding the Minimum Excise Duty (MED), more clarity and legal certainty on the rules and the application of the MED are required. A MED, when in place, should only affect a minority of the market and not the majority, as is the case today in several MSs. In addition, a legal basis to the “dynamic” MED mechanisms (such as the “minimum total tax’ inclusive of VAT) as recommended in the Study⁵ would be welcomed.
- b. Clarifying the definition of Smoking tobacco (Article 5 from 2011/64/EU) by creating a clear distinction between tobacco intended for smoking (and hence subject to excise) and unmanufactured tobacco intended for further processing. This interpretation ensures the necessary flexibility for the MSs to effectively enforce Article 5(1)(a), levying excise duties when the products are destined to be sold to the consumer.

4. Harmonised EU rules to address the diversion of unmanufactured tobacco

Tobacco Europe supports the Study and COM's evaluation report on the need to create a harmonised approach to monitor the flows of unmanufactured tobacco within, and from outside, the EU to counter illicit trade. The introduction of a regulatory framework for the tobacco sector is necessary. This should include a licensing and authorization system for tobacco growers and producers. Examples already exist within the EU, i.e. Italy⁶.

Utilising EMCS to monitor the movement of unmanufactured tobacco would not address illicit trade in unmanufactured tobacco. EMCS would only capture established manufactures which are already functioning within the legal system – i.e. the recommendation will not tackle the problem of unmanufactured tobacco diverted to counterfeit production and sold at retail.

⁴ Set out in [Directive 2008/118/EC](#) and [Directive \(EU\) 2020/262](#)

⁵ https://ec.europa.eu/taxation_customs/sites/taxation/files/summary-study-on-the-tobacco-taxation-directive-2019_en.pdf p.13

⁶ Tobacco Europe position paper on Raw Tobacco (November 2019)