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From:	General Secretariat of the Council
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To:	Delegations

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Subject:	Commission Report to the Council on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco - Council conclusions (8 March 2016)
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Delegations will find in the annex the Council conclusions on the Commission Report to the Council on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco, adopted by the Council at its 3454th meeting held on 8 March 2016.

**COUNCIL CONCLUSIONS ON THE COMMISSION REPORT TO THE COUNCIL ON
THE REFIT EVALUATION OF DIRECTIVE 2011/64/EU AND ON THE STRUCTURE
AND RATES OF EXCISE DUTY APPLIED TO MANUFACTURED TOBACCO**

The Council (ECOFIN):

1. WELCOMES the Report from the Commission to the Council on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco.
2. NOTES that the Union's fiscal legislation on tobacco products needs to ensure the proper functioning of the internal market and, at the same time, a high level of health protection, as required by Article 168 of the Treaty on the Functioning of the European Union, bearing in mind that the consumption of tobacco products causes serious harm to health.
3. RECALLS that the EU is a party to the WHO Framework Convention on Tobacco Control and that tobacco products should be seen as an avoidable health risk in the EU and, in this context, Directive 2011/64/EU is an adequate tool for combating this threat.
4. CONFIRMS that one of the objectives of the Treaty on European Union is to maintain an economic union, whose characteristics are similar to those of a domestic market, within which there is healthy competition. As regards manufactured tobacco, achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in this sector does not distort conditions of competition and does not impede their free movement within the Union.
5. TAKES NOTE of the findings and recommendations set out in the Commission's report referred to above.

6. RECOGNISES the need for creating, where relevant, more accurate definitions in Directive 2011/64/EU, in order to reduce legal uncertainty, hamper substitution by borderline products and avoid possible different approaches in Member States and potential distortion of the internal market.
7. HIGHLIGHTS that efforts should be made towards simplification and clarification of the structure of the current excise duties on manufactured tobacco by adjusting, where appropriate, the categories or definitions of manufactured tobacco in the excise legislation to avoid inconsistencies with, and take account of, where relevant, the classification for custom purposes and the corresponding Explanatory notes to the Combined Nomenclature.
8. NOTES that Directive 2011/64/EU contains specific provisions to allow certain transitional periods and reduced rates of excise duties on cigarettes for certain Member States.
9. RECALLS that the Commission should, pursuant to Article 19 of Directive 2011/64/EU, continuously monitor the rates and the structure of excise duty laid down in that Directive, so that the objectives sought by EU legislation in that area are continuously attained.
10. OBSERVES that some of the products, such as e-cigarettes, defined in Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products, do not fall into any of the categories of products subject to excise duty under Directive 2011/64/EU.
11. NOTES that in most of the Member States some of such non-categorised products, often being niche-products in the market, are not subject to an excise duty or any other specifically designed tax, and AGREES that the situation in the market should continue to be monitored and, should the market share of such products show a tendency to increase, the ongoing efforts to develop an efficient taxation method for such products would have to be intensified.

12. UNDERSCORES that, in this context, a solution for excise taxation of e-cigarettes, heated tobacco, other novel tobacco products and, where relevant, of products related to tobacco products, needs to be practical and foresighted, and strike the right balance between the revenue, expenses of tax administration and public health objectives.
13. CALLS upon the Commission, in this context, to examine possible ways forward towards the introduction of new product categories or definitions into Directive 2011/64/EU in order to facilitate an appropriate, equal taxation treatment of new products within the internal market and remove potential inconsistencies and legal uncertainty, which would lead to a even more unified approach at the level of EU legislation.
14. STRESSES that any potential amendments to the current text of Directive 2011/64/EU have to be proportional and, inter alia, where possible, aim at the reduction of an administrative burden to businesses and the competent authorities concerned, as well as simplification of compliance requirements, without undermining the functioning of the excise duty system. In this context, the particular circumstances of small and medium enterprises should be borne in mind.
15. EMPHASISES that any initiatives for adjustments of the EU legal framework on excise duties should also aim at reducing tax fraud, including initiatives in respect of products which are not currently controlled within a harmonised EU framework, such as raw tobacco. In this context, the solutions leading to a more systematic monitoring of movement of raw tobacco could also be explored.
16. REQUESTS that the European Commission, taking into account these Council Conclusions, as well as the objectives set out in Directive 2011/64/EU, undertakes all relevant studies and, after carrying out relevant technical analysis, public consultations and impact assessment, submits to the Council an appropriate legislative proposal in 2017 or, in case it chooses not to submit a proposal, informs the Council of the reasons.

17. TAKES NOTE that some of the recommendations in the Commission Report on Directive 2011/64/EU are aimed at improving the overall system of excise duty collection in Member States and, consequently, LOOKS FORWARD to receiving, in due time, the Commission Report on the parallel and on-going evaluation of Council Directive 2008/118/EC.
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