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REGULATORY SCRUTINY BOARD OPINION

Impact assessment / Revision of the Directive on the structure and rates of excise duty applied to manufactured tobacco products

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Brussels,
RSB/

Opinion

Title: Impact assessment / Revision of the Directive on the structure and rates of excise duty applied to manufactured tobacco products

Overall opinion: POSITIVE

(A) Policy context

Council Directive 2011/64/EU lays down the EU rules for the taxation of manufactured tobacco products by setting the structure and minimum rates of excise duty. It aims to ensure the proper functioning of the internal market and to provide a high level of health protection. In recent years, new tobacco products have emerged (such as e-cigarettes, heated tobacco products), but the current scope and provisions of the Directive are not adapted to cope with these new market developments. The Directive also falls short in reducing illicit manufacturing of tobacco products in the EU and fighting tax fraud and tax evasion due to illegal trade.

This revision aims to address the current shortcomings and is part of a wider review of the existing acquis in the area of tobacco control, including reviewing the Tobacco Products Directive, updating the Council Recommendation on Smoke-Free Environments, linked to the Beating Cancer Plan, and to implementing the WHO Framework Convention on Tobacco Control.

(B) Summary of findings

The Board notes the useful additional information provided in advance of the meeting and commitments to make changes to the report.

The Board gives a positive opinion. The Board also considers that the report should further improve with respect to the following aspects:

- (1) The report does not sufficiently assess the expected impacts on economic operators, in particular Small and Medium-sized Enterprises. Regional and social impacts are not sufficiently assessed. The risk of unintended consequences including the increase of illicit trade in tobacco products is not sufficiently analysed.**
- (2) The report does not sufficiently detail all costs and benefits of the options under each policy area nor the combined impacts of the preferred option.**
- (3) The report does not sufficiently indicate how future-proof the revision is.**

This opinion concerns a draft impact assessment which may differ from the final version.

(C) What to improve

- (1) The report should make better use of the available evidence to better demonstrate how taxation can be an effective and critical policy instrument to reduce tobacco consumption on health grounds. The problem section should more clearly link the problems and their drivers with the scope and objectives of the revision. The report should add a visual setting out the intervention logic underpinning the revision of the Directive.
- (2) The report should further assess how economic operators will be impacted. The impacts should be presented in a more detailed and systematic way whenever disaggregated data is available. This should include the assessment of the impacts on SMEs on the basis of the SME test. The mitigation measures should be made more explicit. The analysis should also include a territorial impact analysis, since tobacco producers seem to be concentrated in a limited number of geographic clusters. Given this concentration, the report should assess potential labour and social impacts for the regions concerned.
- (3) The report should better explain the risk of potential unintended consequences. In particular, the risk of the increase in the illicit trade of tobacco products caused by higher prices should be assessed, taking into account the importance of other, non- tax specific, factors.
- (4) The report should better explain the econometric modelling of the expected reduction in tobacco consumption and additional tax revenue, integrating it with the recent available evidence of consumers' behaviour during the Covid-19 emergency. It should explain how the expected reduced sales and reduced demand were factored into the estimates of additional tax revenues. It should clarify how the potential increase in illicit trade was included in the modelling.
- (5) The report should improve the cost benefit analysis with a more systematic and comparable approach and clearer presentation. It should provide the assessment of all types of relevant impacts for all options. It should be clearer about the health benefits and explain why they were not estimated for the options related to enlarging the scope to new products and raw tobacco. The report should provide overview tables of costs and benefits under each policy area and for the preferred option, including costs and cost savings in scope of the One In, One Out approach.
- (6) The report should indicate in more detail to what extent the preferred option is future-proof. It should better explain the effect of inflation on the success of a PPP-based EU excise duty system. It should clarify which other variants or combinations of the proposed partial PPP system have been assessed and better justify the one included in the preferred option.
- (7) The report should more systematically present the views of different stakeholder categories throughout the text, in particular on the problems, options and their impacts.

The Board notes the estimated costs and benefits of the preferred option(s) in this initiative, as summarised in the attached quantification tables.

Some more technical comments have been sent directly to the author DG.

(D) Conclusion

The DG must take these recommendations into account before launching the interservice consultation.

If there are any changes in the choice or design of the preferred option in the final version of the report, the DG may need to further adjust the attached quantification tables to reflect this.

Full title	Revision of the Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco products
Reference number	PLAN/2020/8656
Submitted to RSB on	22 June 2022
Date of RSB meeting	19 July 2022

ANNEX – Quantification tables extracted from the draft impact assessment report

The following tables contain information on the costs and benefits of the initiative on which the Board has given its opinion, as presented above.

If the draft report has been revised in line with the Board's recommendations, the content of these tables may be different from those in the final version of the impact assessment report, as published by the Commission.

<i>I. Overview of Benefits (total for all provisions) – Preferred Options</i>		
<i>Description</i>	<i>Amount</i>	<i>Comments</i>
<i>Direct benefits</i>		
Public health, and healthcare system		Long-term savings on the social costs of smoking, correlated with the extent of the tax increase. Harmonised taxation of new products will reduce affordability, especially for young people. Introduction excise duty rates for new products, higher excises for traditional tobacco product will lead to potentially lower substitutability, cross-border flows and affordability. Introduction of the raw tobacco in the scope of the Directive potentially will reduce availability of low-price illegal products.
Tax revenues for traditional tobacco products	9 600	Introduction excise duty rates for traditional tobacco products will lead to increase of revenues for traditional tobacco products EUR 9 600 million. Reduction in foregone tax revenues due to new category for raw tobacco – EUR 1 000 million.
Tax revenues for new products	2 400	Introduction excise duty rates for new products will lead to increase of revenues EUR 2 500 million.
Reduction of tax evasion and fraud		The expected increase of excise duty revenues, caused by higher rates, could be largely offset the foregone revenues due a potential increase of illicit trade of tobacco products. Introduction of holding, movement and control requirements for new products and raw tobacco will improve monitoring of cross-border movements of tobacco products. Less scope for tax evasion and avoidance.
Legal certainty		Less scope for misclassification of 'borderline' products. Clarifications and harmonised EU-wide approach to new products and raw tobacco will reduce the divergent interpretations, administrative difficulties, disputes and associated costs for Member States and economic operators.
<i>Indirect benefits</i>		
Impact on market, competition and SMEs		Potentially lower substitution between traditional tobacco and new products will lead to less market and competition distortions. Harmonisation of taxation of new products will improve market integration and monitoring of market trends. Economic operators who are currently compliant with the tax rules will benefit from ensuring their competitors also pay their fair share. Greater transparency and legal certainty may result in fairer competition and improve the ease of doing business cross-border. The proposed harmonisation for new products would help establish a level playing field, whose benefits will be mostly reaped by small players. Introduction of control requirements EU level for raw tobacco will reduce the availability of illicit tobacco and tobacco products in the market, so that legal players will experience lower competitive pressure from the illegal value chain. The competitiveness of economic operators will be enhanced because of reduced availability of low-price illegal products.

<i>Administrative cost savings related to the 'one in, one out' approach</i>		
Harmonised EU rules		It will eliminate current market barriers preventing economic operators (especially SME's) to access other Member States markets (e.g. due to the need to understand national rules, engage with foreign tax administration, in another language etc.)
Harmonised movement control requirements under the Horizontal Directive		<ul style="list-style-type: none"> - For new products: it will reduce administrative burden (e.g. in the present cases, where the shipment is between Member States, one of which treats HTP as harmonised excise category (OST) and the other - with ad hoc tax regime. - For raw tobacco: it will lead to the abandonment of part of national control measures (registration of all entities involved in growing, selling and manufacturing, registration of buyers, additional control measures (e.g. additional reporting requirements).
Adoption of appropriate definitions and tax regime		<ul style="list-style-type: none"> - For new products: it will remove unintended effect on other products and the risk of legal and classification uncertainties between HTP and smoking tobacco products and across new products, what may cause administrative issues. - For raw tobacco: it will remove the risk of legal and classification uncertainties between raw and smoking tobacco (e.g. reduction in litigation costs).

II. Overview of costs – Preferred option for the revision of the minimum rates for traditional tobacco products (million euros)

		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
	Direct costs	0.00	For consumers of traditional tobacco products because of the increase of the excise duties (increase of price).	0.00	Market sales of tobacco products will decline between 5% and 16%	Minor adjustment costs for the implementation of separate categories for cigarillos and WPT	0.00
	Indirect costs	0.00	0.00	0.00	0.00	0.00	0.00

II. Overview of costs – Preferred option for the introduction in the scope of the Directive of e-cigarettes liquids, HTP, other manufactured tobacco and related products (million euros)

		Citizens/Consumers		Businesses ¹		Administrations ²	
		One-off	Recurrent	One-off*	Recurrent	One-off	Recurrent
Action (a)	Direct adjustment costs				<ul style="list-style-type: none"> - Set up a tax warehouse (investment in appropriate premise): 5.7 - Movement control EMCS (investment in an IT system): 2.7 	Movement control EMCS (updating IT infrastructure): between 2.7 and 8.1	

¹ The increase of regulatory costs for operators would be negligible except for SME's (e-cigarettes sector) for which would increase by approximately EUR 17 000 year.

² Regulatory costs incurred by Member States from the extension of holding and movement rules to operators and products which are not currently in the Directive's scope. Where national tax regimes are already in place for new products, additional regulatory costs it is considered negligible.

	Direct administrative costs			- Registration in the excise system for new operators (manufacturers and importers/wholesalers of e-cigarettes and other related products): 1.8	- Operate a tax warehouse: 25 - Movement control EMCS (transaction costs): 0.5	Registration of economic operators: 1.5	Registration of economic operators: 0.4 Movement control EMCS (transaction costs): 0.3
	Indirect costs		Increase of price due to the increase of excise duty rate.		- Holding / storing guarantee (financial cost): fixed by MS and related to the amount of duty suspended on the excise good held: 0.1 - Guarantee on movements under duty suspension (financial costs): 0.1		
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs				8.4		
	Indirect adjustment costs						
	Administrative costs (for offsetting)			1.8	25.5		

Note: No direct regulatory fees and charges and no direct enforcement costs are anticipated.

II. Overview of costs – Preferred option for raw tobacco (million euros)							
		Citizens/Consumers		Businesses		Administrations	
		One-off	Recurrent	One-off	Recurrent	One-off	Recurrent
Action (a)	Direct adjustment costs				- Movement control EMCS (investment in an IT system): 0.7	Movement control EMCS (updating IT infrastructure): between 2.7 and 8.1	
	Direct administrative costs			- Registration in the excise system for operators involved in raw tobacco business (assuming that in the 15 MS where the fiscal regimes are in place, operators are already deemed compliant): 0.09	- Movement control EMCS (transaction costs): 0.3		Movement control EMCS (transaction costs): 0.4

	Indirect costs						
Costs related to the 'one in, one out' approach							
Total	Direct adjustment costs				2.2		
	Indirect adjustment costs						
	Administrative costs (for offsetting)			0.15	0.7		

Note: Considering the zero-rate option, operators are assumed to use the duty-paid procedure instead of duty suspension and not to use tax warehouse. Regulatory costs for public administrations linked to registration of economic operators are insignificant (one-off cost of €400 per operator plus €100 for annual renovation). It is also assumed that collective organisations operate on behalf of individual growers.