

## INCEPTION IMPACT ASSESSMENT

Inception Impact Assessments aim to inform citizens and stakeholders about the Commission's plans in order to allow them to provide feedback on the intended initiative and to participate effectively in future consultation activities. Citizens and stakeholders are in particular invited to provide views on the Commission's understanding of the problem and possible solutions and to make available any relevant information that they may have, including on possible impacts of the different options.

<b>TITLE OF THE INITIATIVE</b>	Revision of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco
<b>LEAD DG (RESPONSIBLE UNIT)</b>	DG TAXUD (C2)
<b>LIKELY TYPE OF INITIATIVE</b>	Legislative initiative
<b>INDICATIVE PLANNING</b>	Q4 2021
<b>ADDITIONAL INFORMATION</b>	<a href="https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-tobacco/revision-excise-rules-tobacco_en">https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-tobacco/revision-excise-rules-tobacco_en</a>

**The Inception Impact Assessment is provided for information purposes only. It does not prejudice the final decision of the Commission on whether this initiative will be pursued or on its final content. All elements of the initiative described by the Inception impact assessment, including its timing, are subject to change.**

### A. Context, Problem definition and Subsidiarity Check

#### Context

Excise duties are indirect taxes on the sale or consumption of specific products such as alcohol beverages and tobacco products. [Directive 2011/64/EU](#) (the 'Tobacco Taxation Directive' or the 'Directive') sets out EU rules on the structure and minimum rates of excise duty applied to manufactured tobacco. The purpose of the Directive is to ensure the proper functioning of the internal market and at the same time a high level of health protection.

The Directive is part of a broader EU policy framework that includes the common provisions applicable to all products subject to excise duties, the customs union legislation, as well as key policies such as tobacco control policies and the policies against illicit trade, tax fraud and tax avoidance. Tobacco taxation is also a key policy of the World Health Organization's 'Framework Convention on Tobacco Control' with recommendations on effective tax policies.

On 10 February 2020, the Commission published its evaluation<sup>1</sup> of the Directive. The evaluation highlights the main limitations of the current regulatory framework and concludes that the Directive does not achieve its objective in relation to the proper functioning of the internal market and at the same time a high level of health protection, as the minimum tax rates have lost their effect. Furthermore, the Directive is not able to cope with market developments and the entry into the market of new products.

On 02 June 2020, the Council adopted a set of conclusions<sup>2</sup> on the review of the Directive, based on the findings from the evaluation. The Council invited the Commission to submit a legislative proposal for the revision of the Directive on the basis of an impact assessment.

The [roadmap](#) for the Cancer Plan envisages a list of actions under four pillars: prevention, early diagnosis, treatment and quality of life. Tobacco taxation falls under the 1<sup>st</sup> pillar (prevention) as taxation has a pivotal role in reducing tobacco consumption. The Commission has also launched another initiative to address the issue of cross-border shopping of both alcohol and tobacco products<sup>3</sup>.

<sup>1</sup> [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report.pdf)

<sup>2</sup> <https://www.consilium.europa.eu/media/44235/st08483-en20.pdf>

<sup>3</sup> The [roadmap](#) of a legislative initiative in relation to the cross-border acquisitions of excise goods by private individuals (Article 32 of Directive 2008/118/EU) provides further information on this initiative.

A legislative initiative to review the Tobacco Taxation Directive could be presented by the fourth quarter of 2021.

### **Problem the initiative aims to tackle**

The evaluation concluded that there are several areas of weaknesses in the current Directive:

(i) Relevance of the minima tax rates

The minima tax rates have lost their effect as a large number of Member States tax most tobacco products above the minima. Furthermore, the real value of the minima has eroded over time and they no longer have an effect on reducing smoking prevalence and therefore protecting human health.

(ii) Convergence of taxes (and prices) for the proper functioning of the internal market

There is a strong economic incentive to purchase tobacco products in other Member States. This results in the abuse of cross border purchases, which negatively affects the functioning of the internal market, distorts public revenue and undermines public health policies of higher taxing Member States.

(iii) Market developments

The Directive has not kept up with recent market developments and the emergence of new tobacco products (such as e-cigarettes or heated tobacco) which are not explicitly covered by the scope of the Directive.

(iv) Risk of fraud

The significant price differences between Member States creates an economic incentive for some individuals and criminal organisations to engage in fraudulent activity in a significant way with minimal difficulty and risks. Furthermore, the unsupervised movement of raw tobacco at EU level increases the risk of illicit production of cigarettes within the EU.

### **Basis for EU intervention (legal basis and subsidiarity check)**

The legal basis of the present Directive is Article 113 of the Treaty of the Functioning of the EU. The European Union shares competence with Member States in this area.

No alternative national, bilateral or other international initiative would provide the same level of effectiveness in terms of addressing the shortcomings identified in the evaluation of the Directive. The Council has also invited the Commission to intervene in its conclusions on the Tobacco Taxation Directive evaluation adopted on 2 June 2020.

The lack of harmonisation of national measures to control the movement of raw tobacco results in increasing risk of fraud and the lack of a harmonised taxation regime for new products creates obstacles to the internal market.

Significant benefit consequently accrues from establishing common definitions and rules for tobacco for excise purposes at the EU level. To maximise the overall benefit across all Member States, action at EU level would be more effective and efficient.

## **B. Objectives and Policy options**

The main objectives of the review of the Tobacco Taxation Directive are reviewing the taxation of tobacco products with a view to:

- (i) Ensuring the proper functioning of the internal market.
- (ii) Ensuring a high level of human health protection and contributing to the objectives of Europe's Beating Cancer Plan.
- (iii) Strengthening the fight against fraud, tax evasion and the intra-EU cooperation.
- (iv) Preserving the EU internal market by updating the scope of the Directive and the structure of rates as well as by harmonising the taxation of new products at EU level.

The policy options outlined below do not preclude the possibility that alternative approaches may emerge through further stakeholder consultations – including public consultation - and studies.

In the baseline scenario, the Tobacco Tax Directive's essential requirements are unchanged. Significant impact on tobacco consumption and excise revenue is not expected, even though some Member States may adopt higher excise duty rates at national level.

The Commission will develop a number of policy options based on the following building blocks:

1. The minimum excise duty rates - the review will take into account various aspects impacting excise duty rates with the objective to ensure the proper functioning of the internal market and at the same time a high level of health protection in line with the objective of Europe's Beating Cancer Plan.
2. Harmonisation of the taxation of new products - the review will consider the harmonisation of tax regimes for these products (in particular e-cigarettes and heated tobacco products, as well as new modern oral products) taking into account the relevant experience gained by Member States.
3. Fight against fraud - the review will consider a harmonised approach to monitor flows of raw tobacco within and into the EU to tackle the increase of illicit manufacturing of cigarettes inside the EU. The review will also consider the potential for strengthening enforcement policies and the capacity to fight the intra-EU illicit production, based notably on experiences at European and national levels.

Moreover, clarifying and possibly revising definitions to increase legal certainty will also be addressed.

### C. Preliminary Assessment of Expected Impacts [max 20 lines]

#### Likely economic impacts

The economic efficiency and the impact of any given option on the value chain as well as the induced effects on possible product substitution will need to be assessed.

The measures proposed would strengthen the level playing field across the EU internal market while contributing to the Europe's Beating Cancer Plan goals.

Overall competition issues will be analysed, and notably the effects of tax-induced cross border flows.

The adverse effect of illicit trade undermining tobacco control measures as well as tax revenues will be analysed. The effects of the harmonisation of tax regimes for new products will be carefully assessed.

#### Likely social impacts

Social impacts will be assessed. These impacts will also be compared with the likely social impacts of inaction by looking at the social cost of smoking and the burden on public health systems.

Reducing the accessibility and affordability levels of tobacco products will influence consumption, consumer choice and public health in a positive way, contributing to a reduction of tobacco related harm.

#### Likely environmental impacts

The environmental impact is expected to be positive as the reduction of cigarettes consumption will reduce litter from post-consumption waste of tobacco products with filters containing plastic.

#### Likely impacts on fundamental rights

No impact on fundamental rights is expected.

#### Likely impacts on simplification and/or administrative burden

The evaluation of the Tobacco Taxation Directive concludes that the Directive did not lead to any considerable regulatory burden or costs for the Member States or the economic operators.

The introduction of new tax categories for new products and raw tobacco is not expected to bring significant additional burden, taking into account existing measures already in place in a number of Member States. The design of the measure will take into account the need to minimise administrative burden notably for economic operators in the value chain.

### D. Evidence Base, Data collection and Better Regulation Instruments

#### Impact assessment

An impact assessment is being prepared to support the preparation of this initiative and to inform the Commission's decision. The impact assessment will be based on a planned study analysing the impact of the different options. It will also rely on the findings of the previous studies on the Tobacco Taxation Directive<sup>4</sup>.

<sup>4</sup> [https://ec.europa.eu/taxation\\_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-tobacco/revision-excise-rules-tobacco\\_en](https://ec.europa.eu/taxation_customs/business/excise-duties-alcohol-tobacco-energy/excise-duties-tobacco/revision-excise-rules-tobacco_en)

<p>In view of the economic analysis, an econometric analysis and modelling of increasing minimum rates will be applied in order to study the macroeconomic impact of the proposed options. Where needed, notably for the taxation of new products, the sectoral impact will be supported by case studies on the experience gained by Member States who have already implemented such a tax.</p>
<p><b>Evidence base and data collection</b></p> <p>As mentioned in the evaluation, updated data and information is needed for the assessments and analyses underpinning this initiative.</p> <p>The external study will complement the already available information on rates in the Tax in Europe Database<sup>5</sup>, the data collected as part of the Commission Implementing Decision (2011/480/EU) requesting Member States to submit annual statistical data on tobacco<sup>6</sup> and the data collected in the context of the evaluation of the Directive. This initiative will also use data collected as part of the external <a href="#">study</a> (by DG TAXUD in cooperation with DG SANTE) on cross border shopping of tobacco and alcohol products. Moreover, the external study will take into account the latest developments taking place in the new markets (e-cigarettes, heated tobacco and other new products).</p>
<p><b>Consultation of citizens and stakeholders</b></p> <p>This initiative will take into account the results of relevant studies and consultations of stakeholders (during the process of the evaluation of the Tobacco tax Directive). Moreover, a new detailed stakeholder consultation will be undertaken. This consultation will include targeted stakeholder consultations in the form of workshops or surveys involving tax and health representatives from Member States, Non-Governmental Organisations (NGOs) and relevant industry bodies.</p> <p>Furthermore, citizens and other stakeholders will be consulted through a dedicated public consultation that will be launched in spring 2021. The consultation will be based on a questionnaire, which will run for a minimum period of 12 weeks and will be made accessible via the Commission's central public consultations page (<a href="https://ec.europa.eu/info/consultations_en">https://ec.europa.eu/info/consultations_en</a>). A synopsis report summarising all the results of the consultation activities will be published.</p>
<p><b>Will an Implementation plan be established?</b></p> <p>An implementation plan will be prepared.</p>

<sup>5</sup> [https://ec.europa.eu/taxation\\_customs/economic-analysis-taxation/taxes-europe-database-tedb\\_en](https://ec.europa.eu/taxation_customs/economic-analysis-taxation/taxes-europe-database-tedb_en)

<sup>6</sup> Commission Implementing Decision of 28 July 2011 concerning the list of statistical data on the structure and rates of excise duty applied on manufactured tobacco to be provided by the Member States pursuant to Council Directives 92/79/EEC and 92/80/EEC