




Procedure file

Basic information		
CNS - Consultation procedure Directive	2007/0206(CNS)	Procedure completed
Manufactured tobacco: excise duty. Codification		
Repealing Directive 95/59/EC 1994/0204(CNS)		
Subject		
2.70.02 Indirect taxation, VAT, excise duties		
3.40.12 Luxury products industry, cosmetics		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Legal Affairs		13/12/2010
		ECR KARIM Sajjad	
	Former committee responsible		
	 Legal Affairs		23/10/2007
		UEN SPERONI Francesco Enrico	
Council of the European Union	Council configuration	Meeting	Date
	Environment	3103	21/06/2011
European Commission	Commission DG	Commissioner	
	Legal Service	BARROSO José Manuel	

Key events			
11/10/2007	Legislative proposal published	COM(2007)0587	Summary
13/11/2007	Committee referral announced in Parliament		
22/01/2008	Vote in committee		Summary
29/01/2008	Committee report tabled for plenary, 1st reading/single reading	A6-0021/2008	
19/02/2008	Results of vote in Parliament		
19/02/2008	Decision by Parliament	T6-0045/2008	Summary
09/11/2010	Amended legislative proposal for reconsultation published	COM(2010)0641	Summary
08/12/2010	Formal reconsultation of Parliament		
22/03/2011	Vote in committee		Summary

29/03/2011	Committee report tabled for plenary, reconsultation	A7-0100/2011	
11/05/2011	Decision by Parliament	T7-0216/2011	Summary
21/06/2011	Act adopted by Council after consultation of Parliament		
21/06/2011	End of procedure in Parliament		
05/07/2011	Final act published in Official Journal		

Technical information

Procedure reference	2007/0206(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Codification
Legislative instrument	Directive
	Repealing Directive 95/59/EC 1994/0204(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	JURI/6/54735; JURI/7/04783

Documentation gateway

Legislative proposal	COM(2007)0587	11/10/2007	EC	Summary
Economic and Social Committee: opinion, report	CES1716/2007	12/12/2007	ESC	
Committee report tabled for plenary, 1st reading/single reading	A6-0021/2008	29/01/2008	EP	
Text adopted by Parliament, 1st reading/single reading	T6-0045/2008	19/02/2008	EP	Summary
Amended legislative proposal for reconsultation	COM(2010)0641	09/11/2010	EC	Summary
Economic and Social Committee: opinion, report	CES0059/2011	19/01/2011	ESC	
Committee final report tabled for plenary, reconsultation	A7-0100/2011	29/03/2011	EP	
Text adopted by Parliament after reconsultation	T7-0216/2011	11/05/2011	EP	Summary
Follow-up document	COM(2015)0621	21/12/2015	EC	Summary
Follow-up document	COM(2018)0017	12/01/2018	EC	Summary
Follow-up document	SWD(2020)0032	10/02/2020	EC	Summary
Follow-up document	SWD(2020)0033	10/02/2020	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Manufactured tobacco: excise duty. Codification

PURPOSE: to codify legislation on the structure and rates of excise duty applied to manufactured tobacco.

PROPOSED ACT: Council Directive.

CONTENT: the purpose of this proposal is to undertake a codification of Council Directive 92/79/EEC on the approximation of taxes on cigarettes, Council Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and Council Directive 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco. The new Directive will supersede the various acts incorporated in it. This proposal fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

Manufactured tobacco: excise duty. Codification

The Committee on Legal Affairs adopted the report drafted by Mr Francesco Enrico SPERONI (UEN, IT) approving, under the consultation procedure, the proposal for a Council directive on the structure and rates of excise duty applied to manufactured tobacco (codified version). Although the proposal was not the subject to any 'formal' amendments by the committee, it incorporates the recommendations of the Consultative Working Party of the legal services of Parliament, the Council and the Commission who made a certain number of technical remarks regarding the text of the codified proposal. The only modifications to the draft codification text are:

- in Article 1, the comma appearing after the word "harmonisation" should be removed.
- the reference "95/59/EC Art. 19" appearing in the reference box preceding Article 22 should have comprised also the indication "(adapted)".

Apart from the above-mentioned aspects, the proposal is a straightforward codification of existing texts, without any change in their substance.

Manufactured tobacco: excise duty. Codification

The European Parliament adopted a legislative resolution based on the report drafted by Francesco Enrico SPERONI (UEN, IT) approving, under the consultation procedure, the proposal for a Council directive on the structure and rates of excise duty applied to manufactured tobacco (codified version). The resolution was adopted by 621 votes for, 22 against and 17 abstentions.

Manufactured tobacco: excise duty. Codification

On 11 October 2007, the Commission presented a proposal for a Council Directive codifying Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes, Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes and Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco.

In its opinion of 21 November 2007, the Consultative Working Party of the legal services set up under the Interinstitutional Agreement of 20 December 1994 on an accelerated working method for official codification of legislative texts has stated that the initial proposal does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.

Having regard to the amendment adopted in respect of the initial proposal and in view of the work already carried out in the course of the legislative procedure, the Commission has decided to present ' in accordance with Article 293(2) of the TFEU ' an amended proposal for codification of the Directives in question.

This amended proposal also takes account of the purely formal or editorial changes proposed by the Consultative Working Party of the legal services, where these changes are considered justified.

The European Parliament has once again been consulted on this proposal.

Manufactured tobacco: excise duty. Codification

The Committee on Legal Affairs adopted the report drafted by Sajjad KARIM (ECR, UK) on the amended proposal for a Council Directive on the structure and rates of excise duty applied to manufactured tobacco (codified version).

It recommended that the European Parliament's position should take over the Commission's amended proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission.

Manufactured tobacco: excise duty. Codification

The European Parliament adopted by 596 votes to 20, with 4 abstentions, a legislative resolution on the amended proposal for a Council Directive on the structure and rates of excise duty applied to manufactured tobacco (codified version).

Parliament adopted its position after re-consultation. It approved the amended Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission.

Manufactured tobacco: excise duty. Codification

PURPOSE: to codify legislation on the structure and rates of excise duty applied to manufactured tobacco.

LEGISLATIVE ACT: Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

CONTENT: Council Directives 92/79/EEC on the approximation of taxes on cigarettes, 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco have been substantially amended several times.

In the interests of clarity and rationality the said Directives codifies them by assembling them in a single act.

The new Directive will supersede the various acts incorporated in it. It fully preserves the content of the acts being codified and hence does no more than bringing them together with only such formal amendments as are required by the codification exercise itself.

ENTRY INTO FORCE: 01/01/2011.

Manufactured tobacco: excise duty. Codification

In accordance with Directive 2011/64/EU, the Commission presents a report on the structure and rates of excise duty applied to manufactured tobacco set by the Directive. Furthermore, the Directive has been identified for evaluation under the Commission's Regulatory Fitness and Performance Programme ([REFIT](#)).

To recall, REFIT is a programme to review the entire stock of EU legislation, to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

The current report presents the results and conclusions of an external evaluation assessing the Directive from these two angles. In addition, it provides the overview of the available statistics reported by Member States concerning the development of the Weighted Average

Price (WAP), releases for consumption, tax receipts and tax burden on manufactured tobacco since the Directive entered into force in 2011.

Results of the evaluation: the report notes that overall, the evaluation found that the current structure and level of rates generally allow for neutral conditions of competition and the free setting of prices within the internal market.

At the same time, the evaluation findings show that some distortions within the internal market are created through differentiated application of the Minimum Excise Duty, the inconsistent treatment of e cigarettes and certain manufactured tobacco products and the tax induced substitution between and within product groups.

Within the REFIT context, the evaluation identifies unnecessary administrative and compliance costs for tax administrations and economic operators. These costs result from certain definitions which can lead to legal uncertainty over the treatment of specific products. In addition, the application of different definitions of tobacco products for excise duty and for customs purposes has been found to be problematic, in particular for SMEs as it translates into double entries and legal uncertainty.

Lastly, with certain exceptions, the Directive has proven to be effective and generally appropriate for enabling adequate collection of excise duties for the large majority of manufactured tobacco products.

Follow-up of recommendations by the Commission: on the basis of the evidence gathered, the evaluators put forward 16 recommendations with the view to improving the functioning of the regulation concerning excise duty on manufactured tobacco. These definitions relate to definitions of excisable tobacco products, as well as the rates and structure of the excise duty.

The Commission finds the following to be worthy of further consideration:

- four recommendations that suggest creating more accurate definitions in order to reduce legal uncertainty, avoid different approaches in Member States and distortion of the internal market. These recommendations propose reviewing expressions such as (i) capable of being smoked without further industrial processing; (ii) put up for retail sale and which can be smoked; (iii) given their properties and normal consumer expectations is exclusively intended to be smoked as it is. Addressing these recommendations would have an impact on the work parameters of other recommendations and could take priority;
- the two recommendations that aim simplify the current structure by adjusting the categories or definitions of manufactured tobacco in the excise legislation to take account of the classification for custom purposes and the corresponding explanatory notes to the CN;
- four recommendations that concern the possible introduction of new product categories - e-cigarettes, raw tobacco, water-pipe-tobacco, and intermediary products whose monitoring is necessary- in order to facilitate an appropriate, equal taxation treatment of (new) products within the internal market and allow Member States to monitor and control sufficiently;
- the recommendation regarding the possibility of aligning minimum excise taxes on cigars / cigarillos with those of cigarettes in order to eliminate the incentive to market borderline products which might attempt to circumvent payment of the higher excise duty. In this context, the Commission recalls that that derogations from the definition of cigars and cigarillos granted to Germany and Hungary, ended on 31 December 2014. Furthermore, the current Directive empowers the Member States to tackle the circumvention by increasing the excise duty on cigars only.

The Commission considers that the other recommendations either fall outside the scope of possible revision of Council Directive 2011/64/EU or to be only indirectly linked to it. These include recommendations relating to customs classification and the corresponding CN codes, or contain adjustments aimed at improving the overall system of excise duty collection in Member States.

Next steps: in the view of the findings of the evaluation, the Commission will consider the next steps in discussions with Member State experts. These steps could also include a revision of the Directive. Such a revision would involve carrying out a public consultation and an impact assessment.

In addition to giving consideration to the specific recommendations of the evaluation, the Commission will examine how to best achieve the following objectives:

- a uniform understanding of application of the Minimum Excise Duty;
- limiting tax induced substitution within and between product categories where possible;
- providing clarity as regards the harmonized definitions and the treatment of novel products, in order to: (i) support consistent treatment and legal clarity on classifying excise products within the EU; (ii) allow Member States to monitor the movement and production effectively; (iii) avoid unnecessary administrative costs.

In deciding on next steps, the Commission will also give due consideration to any relevant recommendations made by the Council or European Parliament.

Manufactured tobacco: excise duty. Codification

The Commission presented a report on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

As a reminder, the Directive was identified for evaluation under the Commission's Regulatory Fitness and Performance Programme (REFIT). An external evaluation of this Directive was finalized in 2014 and was followed by a Commission Report presenting the results and conclusions of the evaluation in 2015.

On 8 March 2016, the Council (ECOFIN) requested the European Commission to undertake the necessary studies to submit a legislative proposal for revision of Directive 2011/64/EU. This report presents the results and conclusions of an external study on this subject and sets out the reasons why the Commission has decided to not submit a proposal for revision of Directive 2011/64/EU at this moment in time.

E-cigarettes: E-cigarettes are currently not covered by the tobacco excise duty directive. Member States may apply a national tax to e-cigarettes as they find fit under their own rules. At present nine Member States tax e-cigarettes under national rules and a few more are reported to be considering it.⁶ These different tax treatments might distort the functioning of the internal market.

The study found that the information available on e-cigarettes was limited and it was consequently difficult to draw conclusions on how the market will evolve in the future. The data currently available does not provide sufficient evidence to support a proposal for a harmonized approach for taxation of e-cigarettes.

The Commission supports the recommendation of the external study to adopt a multi-phased approach, starting with collecting accurate data to fill the information gap.

Heat-Not-Burn tobacco products: the study has revealed that by 2016, the Heat-Not-Burn tobacco products have been subject to largescale commercialisation in a limited number of Member States only. At present, Member States have different approaches towards the tax treatment of these products, varying from taxation at the same rate as smoking tobacco under the current directive to taxation at a different level on a national basis.

In the Commission's view, a possible treatment of these products would be to tax them at the same rate as smoking tobacco under the directive. The Commission is of the opinion that, given the novelty and evolutionary nature of the market, it would be extremely difficult at this stage to develop a harmonised explicit definition which captures these products both as they appear now and their future developments.

Illicit trade in raw tobacco: including raw tobacco in the scope of excisable goods would enhance control but would also impose administrative and compliance costs on all legitimate operators. These costs are high compared to the value of production; about 35 % of the market price of EU raw tobacco.

The Commission would therefore support the recommendation of the external study which concludes that including raw tobacco in the scope of excisable goods would be disproportionate and that similar benefits might be achievable at lower costs by a common regulatory framework for growers and first processors in the EU.

Tax-induced substitution of cigarettes by low-price cigarillos: borderline cigarillos have characteristics similar to cigarettes but can be sold for a lower price because they are classified as cigarillos and benefit from a more favourable tax treatment. Such borderline products might cause a reduction of revenue, distortion of competition and undermine tobacco-control policies. The study found, however, that tax-induced substitution of cigarettes by borderline cigarillos had significantly declined.

Therefore, the Commission supports the recommendation of the external study that there is little rationale for further action on this matter at EU level.

In line with the external study, the Commission also considered that further EU measures in the area of cigarette substitution by fine-cut tobacco would have no obvious added value, and that the available data are too limited and unreliable to support, at this stage, a major tax reform such as the introduction of a separate category for water pipe tobacco.

Conclusion: taking account of the lack of data, the Commission has decided to review the question whether there is a need to propose a harmonized explicit category for e-cigarettes and Heat-not-Burn tobacco products in the context of the next REFIT evaluation and report on the directive due in 2019. It is expected that more information will become available from, among other sources, the reporting obligation under article 20 of the Tobacco Products Directive. The Commission will therefore continue to monitor the developments related to e-cigarettes and Heat-Not-Burn tobacco products.

The Commission considers that the examination of the need to raise minimum rates should also take place in parallel with the REFIT

evaluation.

By 2019, when the next report and a possible revision will have to be presented, it will be almost 10 years since the approval of the current minimum rates, and no action has been taken to correct the effects of inflation. Moreover, in an annex to the Council conclusions of 8 March 2016, five Member States (Austria, Ireland, Finland, France and Sweden) welcomed the conclusion that the work on a future revision should start without delay.

Therefore, the Commission will start the evaluation of the minimum rates in 2018.

Manufactured tobacco: excise duty. Codification

This Commission staff working document presents an evaluation of Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco.

The time period covered is from the adoption of the Directive until the availability of the latest reported data (2011 to 2017).

The evaluation focuses on obtaining an overview of the EU and the geographical coverage is all 28 Member States. It examines the implementation of the different provisions of the Directive, and assesses its application by the Member States. In particular, it analyses the effect of the minimum rates and structures of excise duty applied on manufactured tobacco.

The evaluation also focuses on the tax treatment of novel products such as electronic cigarettes at EU level. E-cigarettes are currently not subject to a harmonised tax under the Directive. The main commercial uptake of e-cigarettes in the EU started after the adoption of Directive 2011/64/EU, which is therefore silent on their taxation.

Main findings

This evaluation assesses the performance of the Directive against the basic evaluation criteria of effectiveness, efficiency, relevance, coherence and EU added value.

- **Effectiveness:** the overall benefits on market functioning (including substitution of fine-cut tobacco) have reduced overtime. As regards the objective to ensure the proper functioning of the internal market, the Directive provisions on minimum excise rates have been moderately effective in raising tax rates and prices in Member States. There is no convergence of tax levels, but the EU minima helped to avoid an even greater disparity across the EU. The relative level of illicit trade has slightly declined over the years but remains substantial. The deviation of raw tobacco to illicit manufacturing within the EU is a growing concern for most Member States.

- **Efficiency:** the Directive does not pose major problems with implementation or cause major administrative burdens on public authorities. The evaluation concluded that EU provisions have been efficient in reducing the cost of decreasing smoking prevalence, enhancing the benefits in terms of lives saved and reduced healthcare and productivity costs.

- **Coherence:** Directive 2011/64/EU is generally coherent with international policies (i.e. Framework Convention on Tobacco Control). However, as regards coherence with other EU legislation, there is significant room for improving synergies, notably with the public health framework and the fight against illicit trade. The lack of internal coherence among some provisions of the Directive is a source of concern.

- **Relevance:** the relevance of the Directive has diminished overtime and is no longer fit for purpose. The EU minima remain have now lost their traction effects which would contribute to a more ambitious achievement of the objectives of the Directive (public health and upwards convergence). The current provisions (minimum rates, structures, and tax categories) are therefore no longer relevant to address future challenges, in particular, for products such as e-cigarettes and heated tobacco products, and the new products coming into the market.

- **EU added value:** the contribution to harmonising fiscal classification of products so far has been important. The study finds that the revised EU minima have raised cigarettes and fine-cut tobacco price levels in some Member States more than what would have happened in the absence of the Directive. However, the direct contribution on tobacco control appears limited and most public health authorities of the Member States are not satisfied with the impact of the Directive on tobacco control targets and call for stronger fiscal measures.

Main challenges

The main challenge emerging from the evaluation of the Directive is the (re)conciliation of its two main objectives to ensure the functioning of the internal market and at the same time a high level of health protection. The main source of confusion lies with the ambivalence between the so-called internal market objective and the public health objective. The disparity of taxes (hence prices) is allowing for a very lucrative and easy trade of cheaper tobacco products across borders inside the EU. This is not what was intended under the Directive objective to ensure the functioning of the internal market and at the same time a high level of health protection.

Moreover, for recent and new products the lack of harmonisation is a source of concern from the internal market perspective. Developments have accelerated within new e-cigarettes, heated tobacco products and a new generation of modern products is coming into the market (containing nicotine or cannabis). The current scope of the Directive is not capable of providing for an explicit harmonised taxation regime for e-cigarettes and heated tobacco products. As a result Member states have established some taxation on these products but with different structures. The current lack of harmonisation of the tax regulatory framework for these products is also restricting the possibility to monitor their market development and control their movements.

Lastly, the evaluation shows a low degree of coherence of the Directive with other EU policies. Therefore, a more comprehensive and holistic approach is needed, taking on board all aspects of tobacco control including public health, taxation, the fight against illicit trade and environmental concerns. More coherence is also needed in view of the EU agenda in the fight against cancer.