

## Annex

### **CECCM submission to public consultation on tobacco excise tax review (Directive 2011/64EU)**

#### **1 General comments**

##### **Clarification on country specific questions in the public consultation.**

CECCM<sup>1</sup> would like to highlight that although the country indicated in the introduction is Belgium, when answers are given to “country specific questions” (Q13, 19, 25, 35) these answers must be regarded as general views on the Tobacco Excise Directive as applied in the 28 Member States of the EU, rather than in one specific Member State. Member States can have different tax policies, the issues or consequences of tax policies applied by Member States follow similar patterns. Therefore, CECCM’s answers to these country-specific questions present the views of CECCM from an EU-wide perspective.

#### **2 Comments on Section II - conventional tobacco products**

##### **a. No increase in the minimum rates leaving the decision with the Member States**

Excise rates should be set in relative autonomy by Member State Governments and should reflect unique economic circumstances and national policy objectives.

As the difference in excise levels inside the EU are so big, only few Member States will be impacted by any increase in the minimum rates. This effectively means that the EU will impose excise increases upon the Member States where affordability is most strained, despite in absolute terms, cigarettes being cheapest. These countries, whose main borders are with non-EU countries, where cigarettes are often sold for under 1 EUR per pack, will not be able to pursue their national policies but will be subject to another obligation put on them to raise the excise in their country within a certain timeframe. Increases have already been imposed on them before joining the EU (2004/2007) up until 2018.

If the objective of the Commission is to harmonise absolute levels of excise in a meaningful way, then its focus should be on curtailing upward movements in excise levels, thus enabling the MS with lower GDPs to catch-up. Should an increase to the minimum rate be deemed appropriate however, this should be reasonable to preserve market stability and discourage growth of NDDP, especially in the countries that fall below any proposed new thresholds. CECCM also recommends that the Commission uses established economic indicators such as Eurozone inflation as the basis for any recalculation of the minimums.

CECCM would also suggest to the Commission that in place of lengthy derogations for Member States, which can result in faster than optimal rate rises as the deadline approaches, that a staged increase system is instead adopted. This would allow for improved predictability in excise receipts and avoid localised price shocks.

---

<sup>1</sup> The Confederation of European Community 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)

**b. The minimum incidence requirement has become redundant and does not benefit internal market**

Since 2010 (2010/12/EU), the absolute minimum level is no longer linked to the reference price as it was in the past but applies to all price points. This ensures the same floor for all Member States. The incidence was maintained in the TED as it was considered that this would ensure an increase in the excise in the Member States that were not impacted by the increase in the absolute minimum rates<sup>2</sup>. It is worth noting that in July 2008 (when the previous proposal on the review of the TED was made) only 2 Member States did not meet the minimum incidence requirement applying the derogation.

Today, the minimum incidence requirement is irrelevant for all but 10 Member States because excise duty is at or above €115 per thousand sticks. The minimum incidence does not lead to closer excise levels. According to the Taxud tables for July 2018, France and Bulgaria have about the same excise incidence levels (68.4%), their excise yields on Weighted Average Price (WAP) however are far different with French excise yield on WAP reaching a €232.79 per thousand sticks, the 3<sup>rd</sup> highest in the EU; Bulgaria on the other hand, reached €87.82 per thousand on WAP, the lowest in the EU, despite having the same excise incidence as France.

It is also worth noting that minimum incidence does not impact affordability of the products: For instance, taking notably the example of France and Bulgaria, even though both have the same excise incidence levels (68,4%), cigarettes are half as affordable in Bulgaria than in France with an affordability ratio of WAP per pack to average Personal Disposable Income (PDI) per capita per day of 21% and 11%, respectively<sup>3</sup>.

Finally, removing the incidence requirement would simplify the administrative burden for the Member States.

CECCM would like to stress that if the Commission chooses not to delete the minimum incidence requirement, the derogation should remain in place. The position would be similar as in the previous point: no increase on both the minimum requirement nor on the threshold for derogation.

**c. MED: legal certainty driving a need for enhanced rules on the MED**

CECCM and its member companies believe that there is a need to re-establish a “cap” on the Minimum Excise Duty (MED). The so-called cap on the MED was in place since the first version of the Excise Directive (72/464/EEC). Article 10 stated that: *“The Member States may levy on cigarettes a minimum excise duty the amount of which may not, however, be higher than 90% of the aggregate amount of the proportional excise duty and the specific excise duty which the levy on the cigarettes referred to in Article 8 (1).”*

Prior to the approval of Directive 2010/12/EU, the MED was capped at 100% of the excise yield on the MPPC. When Directive 2010/12/EU was agreed, a notable change was introduced – the reference price was changed from the MPPC to the WAP. For some Member States, where the MPPC was a

---

<sup>2</sup> “...the 63% rule would mostly affect the EU-15 Member States leading to an increase of excise duties in those Member States” – Q&A accompanying the proposal published by Taxud on 16 July 2008.

<sup>3</sup> [Excise incidence and WAP from TAXUD Excise Duty Tables July 2018](#), PDI from Economist Intelligence Unit Viewswire (for 2017)

premium brand, keeping a 'cap' on the MED linked to the new reference point i.e. the WAP, would mean a lowering of the MED. To avoid this, the current definition was introduced creating legal uncertainties in many countries from a Member State perspective as well as from company perspective.

CECCM agrees with the reference in the public consultation that a cap, when applied, should only impact a minority of the market, never the majority like it is the case in France and Portugal today, where the majority of brands in the market are impacted by the MED.

Providing clear rules re-implementing a cap would be preferred by CECCM members. In terms of minimum tax mechanisms, a clarification is indeed necessary to allow Member States to make use of this provision against low price cigarettes in a more efficient manner, as stated in the Commission Report and, inter alia, confirm the legality of the current models in place in Germany, Italy and Portugal.

#### **d. Definitions: benefits could be achieved with improved definitions**

Considering the recent issues caused in some Member States following the misinterpretation of the Eko-Tabak judgement<sup>4</sup> and the misapplication of customs tests, CECCM believes that there is a need to improve the definition of smoking tobacco. Both issues are leading to unintended consequences by bringing unmanufactured tobacco into the scope of the TED, creating additional administrative burdens and increased costs in addition to the legal uncertainty that has been created by those Member States. Only manufactured tobacco products which are ready to be consumed by the purchaser should be subject to excise tax. In this respect, CECCM refers to the note and presentation submitted to the Excise Contact Group of the 31<sup>st</sup> May 2018.

---

<sup>4</sup> Case C-638/15, Eko-Tabak