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On 9 February 2017, the CPME Executive Committee adopted the 'CPME Consultation response on excise duties applied to manufactured tobacco' (CPME 2017/005 FINAL)

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### **CPME Public Consultation Response on excise duties applied to manufactured tobacco**

*The Standing Committee of European Doctors (CPME) represents national medical associations across Europe. We are committed to contributing the medical profession's point of view to EU institutions and European policy-making through pro-active cooperation on a wide range of health and healthcare related issues.<sup>1</sup>*

CPME welcomes the opportunity to submit a response to the public consultation on excise duties applied to manufactured tobacco. Addiction to nicotine through smoking of tobacco is a major medical problem. The negative consequences of tobacco usage on health especially affecting lungs and the cardiovascular system are huge. Along with primary interventions preventing youth to begin smoking and getting addicted to nicotine, secondary prevention in the form making tobacco less accessible and helping addicted individuals to stop with smoking is compulsory.

In response to this consultation, CPME recognises that increasing tobacco excise taxes is a highly effective measure for reducing smoking.<sup>2</sup> This should be taken into account in the revision of Council Directive 2011/64/EU which is intended to ensure a high level of health protection.

Therefore, CPME highlights that there should not be differential tax treatments for different types of tobacco products. All tobacco products should be taxed as heavily as there is no tobacco with positive effect. The uniform application of the Minimum Excise Duty (MED) is a key policy lever for the purpose of reducing tobacco consumption. CPME advocates for comprehensive tobacco control strategies at EU and Member State level including high and uniform taxation.

This public consultation is intended to gather the views of EU citizens and stakeholders. CPME reminds that increasing taxes on all tobacco products is the one of the most effective means of tobacco control.

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<sup>1</sup> CPME is registered in the Transparency Register with the ID number 9276943405-41.

<sup>2</sup> [WHO Tobacco Free Initiative \(TFI\)](#)

# Public consultation - Excise duties applied to manufactured tobacco

Fields marked with \* are mandatory.

## Background information

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[Council directive 2011/64/EU](#) sets out EU rules on the structure and rates of excise duty applied to manufactured tobacco. In particular, it defines and classifies various manufactured tobacco products according to their characteristics and lays down the relevant minimum rates of excise duty for the different types of products. The purpose of the Directive is to ensure the proper functioning of the internal market and a high level of health protection.

Every four years, the European Commission is required to submit a report to the Council on the rates and the structure of excise duties, accompanied - where appropriate – by a proposal for the revision of the Directive. [The latest report](#) (21 December 2015) was prepared in the context of the Regulatory Fitness and Performance Programme (REFIT) and was supported by [an external study](#). According to the Commission report, there might be scope to improve Directive 2011/64/EU in order to reduce administrative burden for both Member States and economic operators and reduce distortions in the internal market.

The ECOFIN Council discussed the Commission report and adopted [a set of conclusions](#) on 8 March 2016 requesting the Commission to carry out the necessary studies to prepare a possible legislative proposal for revision of the Directive. On 16 June 2016 the European Commission published an [Inception Impact Assessment](#) providing the background and a first description of the problems and possible policy options under analysis.

### **Objective and scope of the consultation**

This consultation is intended to gather the views of EU citizens and stakeholders on a set of possible options for the revision of Directive 2011/64/EU. The consultation questionnaire is divided into several sections, namely:

1st section - on respondent's profile and details.

2nd section - on the so-called electronic cigarettes and heat-not-burn products, and possible tax harmonisation issues.

3rd section - on the so-called 'borderline' cigarillos, and possible related distortions of the market.

4th section - on fine-cut tobacco, including the so-called make-your-own (or 'volume') tobacco, and possible related distortions of the market.

5th section - on raw tobacco, intermediate products, and possible legal uncertainties and diversion to the illicit trade.

6th section - on water pipe tobacco, and possible tax categorisation issues.

7th section - on the Minimum Excise Duty (MED) on cigarettes, and possible disparities of implementation.

8th section - on the correspondence between excise and customs classification systems for tobacco products, and possible uncertainties.

Final remarks. Here you can upload any document you might want to share with us (position paper, reports, statistics etc.)

A brief outline of the policy problem is provided at the beginning of each section. Each section has two parts: one that includes general questions suitable for all type of respondents and a second part with more specific questions for those participants wishing to participate in the more technical aspects of the issues at stake which require more in-depth knowledge of the functioning of Directive 2011/64. You can choose to only complete the first part of each section, or provide answers to both parts.

You can choose to reply to all sections, covering different tobacco products and issues, or only reply to a single section. When you are done with replying to the questions which are of interest to you, please go to the "Final remarks" section and click "Submit."

Completing the first part of each section should take you no more than 15 minutes.

If you wish to complete both parts for all sections, consider allocating around 45 minutes for finishing the questionnaire.

## Personal data

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\*Please select whether you participate to this consultation as:

- Individual / private capacity
- Economic operator or industry association
- Public authority (national, regional, local)
- Non-Government organization
- Other (please specify)

\*What is your name or the name of your organisation?

Please note that you can only fill in the questionnaire if your name and contact details are provided. You can still opt for your answers to remain anonymous when results are published.

CPME - Comité Permanent des Médecins Européens

\*Is your organisation included in the Transparency Register?

If your organisation is not registered, we invite you to register [here](#), although it is not compulsory to be registered to reply to this consultation. [Why a transparency register?](#)

- Yes
- No

If yes, please indicate your Register ID number

9276943405-41

Please indicate your main area(s) of activity

- Tobacco control
- Patient organisation
- Medical association / society
- Consumers association
- Other (please specify)

Please indicate whether the organisation that you represent is materially linked to the tobacco industry and/or the electronic cigarette industry, including affiliation, direct or indirect financial support, participation of industry members in the governance bodies and the like.

	Yes	No
*Tobacco industry	<input type="radio"/>	<input checked="" type="radio"/>
*Electronic cigarettes industry	<input type="radio"/>	<input checked="" type="radio"/>

**\*In which country are you based**

EU-level or multinational organisations, please select the first option;

Organisations and individuals based in one country and operating also in other countries, please select your main country of operation.

- EU-level and/or multinational
- Austria
- Belgium
- Bulgaria
- Croatia
- Cyprus
- Czech Republic
- Denmark
- Estonia
- Finland
- France
- Germany
- Greece
- Hungary
- Ireland
- Italy
- Latvia
- Lithuania
- Luxembourg
- Malta
- Netherlands
- Poland
- Portugal
- Romania
- Slovak Republic
- Slovenia
- Spain
- Sweden
- United Kingdom
- Non-EU country (please specify)

\*Please note: The European Commission will prepare a report summarizing the responses. Contributions received are thus intended for publication on the Commissions website (see specific privacy statement).

Please indicate whether your reply:

- Can be published, including your name or that of your organisation (I consent to publication of all information in my contribution)
- Can be published in an anonymous way (I consent to publication of all information in my contribution except my name/the name/Register ID of my organisation)

\*I declare that none of the information I provide in this consultation is subject to copyright restrictions.

- Yes
- No

## E-cigarettes

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**Problem outline:** The so-called 'electronic cigarettes' are not covered by Directive 2011/64. Various Member States have introduced national tax regimes for electronic cigarettes and refill containers, adopting different tax structures and rates. The lack of a harmonised approach across countries may affect competition and the functioning of the internal market, and may also encourage informal (cross-border and online) trade. A precise estimation of such effects is difficult because of the lack of official market data for these products.

The so-called Heat-not-Burn (HnB) products are new products that have been recently placed on the market in a few Member States. Being tobacco-based, these products are covered by the Directive, but their tax regime is not explicitly specified. This provides opportunity for different interpretations and the application of ad hoc tax categories in certain countries.

In your opinion, should electronic cigarettes and refill containers be subject to excise duties?

- Yes
- Only in the case of e-liquids containing nicotine
- No
- Don't know

Assuming a possible taxation of electronic cigarettes and refill containers, how should the tax rate on **electronic cigarettes and refill containers** be, compared with the tax rates applied to the following tobacco products?

	Much lower	Lower	More or less equivalent	Higher	Much higher	Don't know
Cigarettes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fine-cut tobacco for rolling of cigarettes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cigars/cigarillos	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other smoking tobacco (such as pipe tobacco)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

How should the tax rate on **heat-not-burn type tobacco** be, compared with the tax rates applied to the following tobacco products?

	Much lower	Lower	Equivalent	Higher	Much higher	Don't know
Cigarettes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fine-cut tobacco for rolling of cigarettes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cigars/cigarillos	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Other smoking tobacco (such as pipe tobacco)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section**

In your opinion what have been so far the impact of the introduction of excise duties on electronic cigarettes and refill containers in some Member States? Please indicate the perceived magnitude of the following impacts



	No impact	Marginal impact	Moderate impact	High impact	Very high impact	Don't know
Overall decline in consumption.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Specific decline in the consumption by young people.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Increase in 'informal' trade (online, cross-border 'shopping', etc.).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Better and safer products for consumers.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Improved market monitoring by public authorities.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reduced competitiveness for small players vis-à-vis large players.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Consumers switching to traditional tobacco products.	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Market 'barriers' for players to operate on the EU internal market.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please express your agreement / disagreement with the following possible approaches for the harmonisation of tax treatment for electronic cigarettes and refill containers.

	Fully disagree	Partly disagree	Neutral	Partly agree	Fully agree	Don't know
Regulatory revision: Including electronic cigarettes and refill containers in the scope of the Directive, without setting any minimum tax rate.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory revision: Including electronic cigarettes and refill containers in the scope of the Directive, setting a minimum tax rate on liquids containing nicotine.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Non-regulatory option: promote the exchange of information and practices among Member States on the tax regulation of electronic cigarettes and refill containers.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, what are the likely effects of an EU-wide harmonisation of the tax regime for electronic cigarettes and refill containers on the functioning of the EU internal market?

	Very unlikely	Unlikely	Likely	Very likely	Don't know
Reduction of market obstacles to operate across the borders	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Increased competition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Better control on cross-border movements	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Assuming a hypothetical (tax-induced) price increase of **20%** for refill liquids used in electronic cigarettes what would the likely reaction of the 'typical' user of electronic cigarettes?

	Very unlikely	Unlikely	Likely	Very likely	Don't know
The user would maintain the current level of consumption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The user would significantly reduce the level of consumption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The user would quit electronic cigarettes	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The user would purchase these products from informal sources (online, cross-border 'shopping', etc.).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The user would increase the consumption of traditional tobacco products	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Assuming a hypothetical (tax-induced) price increase of **50%** for refill liquids used in electronic cigarettes what would the likely reaction of the 'typical' user of electronic cigarettes?

	Very unlikely	Unlikely	Likely	Very likely	Don't know
The user would maintain the current level of consumption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The user would significantly reduce the level of consumption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The user would quit electronic cigarettes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The user would purchase these products from informal sources (online, cross-border 'shopping', etc.).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
The user would increase the consumption of traditional tobacco products	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please express your agreement / disagreement with the following possible approaches for the harmonisation of tax treatment for Heat-not-Burn type of products.

	Fully disagree	Partly disagree	Neutral	Partly agree	Fully agree	Don't know
Regulatory revision: Introduce in the Directive a new definition and tax category for Heat-not-Burn type of products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Regulatory revision: revise the text of the Directive to clarify which tax category applies to Heat-not-Burn type of products.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: draft a recommendation to Member States providing guidance on the applicable tax regime for Heat-not-Burn type of products based on the existing categories of the Directive.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Borderline tobacco products

**Problem outline:** In some EU countries, so-called ‘borderline’ or ‘price-fighter’ cigarillos have been placed on the market. These products have characteristics similar to cigarettes (e.g. dimension, filter, packaging, etc.), but are much cheaper than cigarettes, due to a lower tax rate. Given their affordability, they may be especially attractive for young people, and may also induce some consumers to substitute ordinary cigarettes with them.

According to Directive 2011/64/EU, these products belong to one broad category of ‘cigars/cigarillos’. So it is currently not possible to increase the tax rate on ‘borderline’ cigarillos without affecting the other products in the same category (i.e. traditional cigars and cigarillos).

In your opinion, are 'borderline' cigarillos substantively equivalent to cigarettes or substantively different from them?

- They are substantively equivalent to cigarettes
- They are only partly equivalent
- They are substantively different from cigarettes
- Don't know / I am not familiar with these products

Considering the current tax rate applied to 'borderline' cigarillos, which of the following options better reflects your view?

- There is no need to change the current tax regime
- The tax rate on 'borderline' cigarillos should be increased, without affecting other cigars and cigarillos products
- The tax rate for the entire category 'cigars/cigarillos' should be increased
- Don't know

**The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section**

What are your views on the possible economic and social issues due to the availability of low-cost 'borderline' cigarillos? Please indicate how serious the following issues are, in your opinion.

	Not an issue	Minor	Moderate	Major	Don't know
The affordability of these products may undermine the overall tobacco control policies	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The affordability of these products may in particular attract young people	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Substituting cigarettes with 'borderline' cigarillos means lower tax revenues for the State	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
'Borderline' cigarillos have an unduly competitive advantage on other tobacco products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Based on your knowledge, the consumption trend of 'borderline cigarillos' is...?

- Growing
- Stable
- Declining
- Don't know

Please express your agreement / disagreement with the following possible approaches to address the issue of tax-induced substitution between 'borderline' cigarillos and cigarettes.



	Fully disagree	Partly disagree	Neutral	Partly agree	Fully agree	Don't know
Regulatory revision: introduction of a mandatory mixed structure or a specific rate (per 1 000 pieces) for the cigars /cigarillos tax category, to discourage the development of borderline products.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory revision: align the minimum excise taxes on cigars /cigarillos with those of cigarettes, to mitigate tax-driven substitution.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Regulatory revision: in the definition of cigars /cigarillos (Art. 4.1 of the Directive) the reference to “normal consumer expectations” should be removed so as to reduce the risk of subjective interpretations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: encouraging Member States to use the instruments provided by the Directive – e.g. the option to establish a minimum amount of excise duty (Art 14.1) - to address the possible distortions caused by ‘borderline’ cigarillos, where relevant.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, to what extent may the following options have adverse effects for 'traditional' cigars and cigarillos markets?

	No adverse effects	Marginal adverse effects	Moderate adverse effects	Significant adverse effects	Don't know
Mandatory mixed structure or specific rate (per 1 000 pieces) for the cigars/ cigarillos category	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
Alignment of the minimum excise on cigars/cigarillos with that of cigarettes	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

In your opinion, in the event of a substantive alignment of the tax charge on 'borderline' cigarillos with that of cigarettes, what would be the main reaction of the 'typical' consumer of 'borderline' cigarillos?

*at most 2 choice(s)*

- The consumer would continue smoking 'borderline' cigarillos as before
- The consumer would switch to cigarettes
- The consumer would switch to other cheaper tobacco products
- The consumer would smoke less / quit smoking
- Don't know

## Fine-cut tobacco

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**Problem outline:** The extent to which fine-cut tobacco constitutes a cheaper alternative to factory-made cigarettes is an open question on which there is no consensus. The current tax regime could unintentionally influence the consumers' choice, encouraging the substitution of cigarettes with fine-cut tobacco.

The question is made more urgent by the seemingly increasing popularity of the so-called 'make-your-own' tobacco (also known as 'expanded' or 'volume' tobacco), which is in many respects more similar to cigarettes than the typical 'roll-your-own' tobacco. 'Make-your-own' tobacco is used to fill pre-made filter tubes with a simple machine to produce on a small scale cigarettes that can barely be distinguished from factory-made cigarettes, but are significantly cheaper for consumers. The definition of fine-cut tobacco of Directive 2011/64 does not distinguish between 'make-your-own' and 'roll-your-own' tobacco.

Considering the fine-cut tobacco packages available in tobacco shops, would you be able to distinguish the so-called 'make-your-own' (or 'volume tobacco') from the typical 'roll-your-own' products?

- Yes
- Maybe
- No
- Don't know

As regards the possible substitution between cigarettes and fine-cut tobacco, please express your agreement or disagreement with the following statements:

	Fully disagree	Partly disagree	Neutral	Partly agree	Fully agree	Don't know
The main driver behind the current consumption of fine-cut tobacco is its affordability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The main driver behind the current consumption of 'make-your-own' tobacco is its affordability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Make-your-own tobacco is a more evident substitute for cigarettes than the typical 'roll-your-own' tobacco	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Based on your views on consumers' substitution between fine-cut tobacco (including make-your-own tobacco) and factory-made cigarettes, would you be in favour of a revision of the current tax regimes? Please select the option that better reflects your views.

- There is no need to change the current tax regime for fine cut-tobacco
- The tax rate on fine-cut-tobacco in general should be increased so as to minimise substitution
- Only the tax rate on make-your-own tobacco should be increased
- Don't know

The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section

Since make-your-own tobacco is not a formalised category, what are in your opinion the aspects that may concur to its definition? Please rate the importance of the following elements.

	Not important	Moderately important	Very important	Don't know
A high share of expanded tobacco in the composition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Lighter (in grams) cigarettes than 'average' hand-rolled cigarettes (based on consumers' behaviour)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Intended for use with pre-made filter tubes and filling machines	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reference on the package to the number of cigarettes that can be made	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, in the absence of regulatory changes, how will the consumption of fine-cut tobacco (including make-your-own) evolve in the near future?

	Fast growth expected	Moderate growth expected	Stability expected	Decline expected	Don't know
Fine-cut tobacco, in general	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Make-your-own tobacco, in particular	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please express your agreement / disagreement with the following possible approaches to address the issue of tax-induced substitution between fine-cut-tobacco, make-your-own and factory-made cigarettes.

	Fully disagree	Partly disagree	Neutral	Partly agree	Fully agree	Don't know
Regulatory revision: align the minimum excise taxes on fine-cut tobacco with those of cigarettes, to mitigate tax-driven substitution.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory revision: introduction of a separate excise category for make-your-own with higher minimum taxes than roll-your-own tobacco.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: encouraging Member States to use the instruments provided by the Directive – e.g. the option to establish a minimum amount of excise duty (Art 14.1) - to address the possible distortions caused by make-your-own tobacco, where relevant.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: adopt measures for a better monitoring of make-your-own market trends in Member States and at EU level.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, in the event of a substantive alignment of the tax rate on fine-cut tobacco with that of cigarettes, what would be the main reaction of the 'typical' consumer of fine-cut tobacco?

*at most 2 choice(s)*

- The consumer would continue smoking fine-cut tobacco in the same quantity
- The consumer would switch to cigarettes
- The consumer would switch to other cheaper tobacco products
- The consumer would smoke less / quit smoking
- Don't know

## Raw tobacco

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**Problem outline:** Directive 2011/64 does not apply to raw tobacco and to intermediate tobacco products, unless they are in a 'smoke-able' form. However, the definitions set out in the Directive (see below) contain some 'subjective' elements, which might cause classification uncertainties, disparities of treatment across countries, and result in disputes.

Article 5.1 : "For the purpose of this Directive smoking tobacco shall mean: (a) tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing; (b) tobacco refuse put up for retail sale which does not fall under Article 3 and Article 4(1) and which can be smoked [...]"

A second problem is that raw tobacco and intermediate products can be diverted to the illicit manufacturing of smoking products or sold in small quantities to consumers for home processing. The magnitude of this problem is unknown and probably varies across countries. Since these products are not covered by the Directive, some of the key tools to prevent and fight tax fraud, including the Excise Movement and Control System (EMCS), cannot be currently used to monitor the movement of raw tobacco.

Based on your knowledge and experience, the trade and consumption of illicit raw tobacco products are... ?

- Growing
- Stable
- Declining
- Don't know

In your opinion, is there a need for additional measures at EU level to prevent and fight illicit trade and tax fraud in the field of raw tobacco?

- Yes
- Maybe
- No
- Don't know

**The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section**

Considering the possible diversion to the illicit trade of raw tobacco and other intermediate products not covered by the Directive, please indicate how serious the following issues are, in your opinion.

	Not an issue	Minor issue	Moderate issue	Major issue	Don't know
Diversion of raw tobacco to the illicit manufacturing of tobacco products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Diversion of semi-processed tobacco to the illicit manufacturing of tobacco products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Diversion of tobacco refuse (by-products and waste) to the illicit manufacturing of tobacco products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Sale of raw and semi-processed tobacco (not duty-paid) directly to consumers	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>



Please express your agreement / disagreement with the following possible approaches to address the issue of illicit trade and tax fraud on raw tobacco and intermediate tobacco products.

	Fully disagree	Partly disagree	Neutral	Partly agree	Agree fully	Don't know
Regulatory revision: introducing in the Directive a specific definition and tax category for raw tobacco and relevant intermediate products, so that they are included in the excise system and covered by the control system (EMCS).	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: encourage the adoption of administrative approaches to the raw tobacco sector - i. e. registration of growers, processors, and tobacco transactions etc. - in line with what some Member States are already doing.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: stepping up joint efforts on monitoring and law enforcement against illicit trade of raw tobacco.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, what is the risk of unintended adverse effects deriving from including raw tobacco and intermediate tobacco products in the scope of the Directive?

	Low risk	Moderate risk	High risk	Don't know
The burden associated with the excise framework and the control system (EMCS) would push EU tobacco growers out of the market	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
The burden associated with EMCS and related obligations, would encourage more players to turn to the illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Small players would be significantly more affected than large ones, with distortive effects on competition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Monitoring the flows of raw tobacco and intermediate products through the excise system and the EMCS may not work for technical reasons (e.g. variation in the weight of the products through the various steps of processing)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Significant additional burden for the tax administrations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Based on your knowledge and experience, how frequent are issues and disputes with the classification for tax purposes of the following products?

	Not an issue	Minor issue	Moderate issue	Major issue	Don't know
Raw and semi-processed tobacco	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Reconstituted tobacco (also known as 'homogenised' tobacco)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tobacco refuse (by-products and waste)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please express your agreement / disagreement with the following possible approaches to address the issue of classification uncertainties (and related disputes), concerning raw tobacco and intermediate products.

	Fully disagree	Partly disagree	Neutral	Partly agree	Agree fully	Don't know
<p>Regulatory revision: the text of Art. 5.1.(a) on smoking tobacco (see the 'Problem Outline' above) should be revised by specifying that 'industrial processing' refers to 'industrial processing in a tax warehouse', so as to reduce disparities in the interpretation of this provision.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Regulatory revision: the text of Art. 5.1.(b) on tobacco refuse (see the 'Problem Outline' above) should be revised by removing the reference to 'retail sale', so as to cover also bulk sale of tobacco refuse (if it can be smoked), so as to prevent subjectivity in the interpretation.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Non-regulatory option: there is no need for a regulatory revision but – where relevant – the European Commission may provide guidance on the interpretation of the definitions used in the Directive.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Waterpipe tobacco

**Problem outline:** Waterpipe tobacco, also known as shisha or hookah, falls in the category of “other smoking tobacco” of Directive 2011/64. As compared to the other products in this category (e.g. pipe tobacco), only a minor percentage of the waterpipe tobacco weight actually consists of tobacco. Therefore, this tobacco is taxed more heavily (in relative proportion to the actual tobacco content) than other products in this category. High taxes on waterpipe tobacco may have unduly adverse effects on market functioning and encourage illicit or informal trade (e.g. online purchases avoiding the payment of excise duties, cross-border bootlegging, etc.).

Considering the current tax regime applicable to waterpipe tobacco, please express your agreement / disagreement with the following statements:

	Fully disagree	Partly disagree	Neutral	Partly agree	Agree fully	Don't know
Waterpipe tobacco should be included in a separate tax category.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Excessive tax charges on waterpipe tobacco may result into a high rate of informal / illicit trade.	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Tobacco-free waterpipe tobacco should not be subject to tobacco excise duties.	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section**

In your opinion, to what extent is the waterpipe tobacco currently consumed, purchased and distributed through the following informal / illicit channels?

	Marginally	Moderately	Significantly	Don't know
Online and distance selling	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cross-border smuggling for personal consumption	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Illicit trade	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please express your agreement / disagreement with the following possible approaches to reviewing the treatment of waterpipe tobacco:

	Fully disagree	Partly disagree	Neutral	Partly agree	Agree fully	Don't know
Regulatory revision: the Directive should include a separate excise category, with a distinct rate for waterpipe tobacco that is more proportionate to the tobacco content of the product.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: adopt measures for a better monitoring of waterpipe tobacco market trends and 'informal' consumption in Member States and at EU level.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, what would be the consequences of a separate and more proportionate tax regime for waterpipe tobacco?

	Very unlikely	Unlikely	Likely	Very likely	Don't know
A significant switch from illicit / informal to licit / formal trade and consumption.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
A significant increase of consumers of waterpipe tobacco	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
An increased burden for tax administrations	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Minimum Excise Duty (MED) on cigarettes

**Problem outline:** Directive 2011/64 gives Member States the option to levy a Minimum Excise Duty (MED) on cigarettes, in order to mitigate the negative effects of low-cost brands on tax revenues and tobacco control policies. The Minimum Excise Duty essentially establishes a minimum excise floor, while respecting all other provisions of the Directive on the taxation of cigarettes. Twenty-five Member States have introduced a Minimum Excise Duty, but there are seemingly uncertainties and disparities in its interpretation and implementation.

In your opinion, is there a need for revised tax measures affecting the minimum price of cigarettes available on the market?

- Yes
- Maybe
- No
- Don't know

Based on your knowledge and experience, the availability and consumption of low-cost cigarettes is... ?

	Growing	Stable	Declining	Don't know
Availability on the market of low and super low-price brands	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Number of consumers switching to low or super-low price brands	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section**



In your opinion, to what extent may differences in the interpretation and implementation of the Minimum Excise Duty across Member States cause:...?

	Not at all	To a limited extent	To a moderate extent	To a high extent	Don't know
Legal uncertainties	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Distortion of competition	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please express your agreement / disagreement with the following possible approaches for clarifying the Minimum Excise Duty provisions:

	Fully disagree	Partly disagree	Neutral	Partly agree	Agree fully	Don't know
Regulatory revision: the text of the Directive should be revised to clarify the uncertainties on the nature and the implementation of the MED	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Regulatory revision: the text of the Directive should be revised to clarify the upper limits in the implementation of the MED	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Non-regulatory option: there is no need for a regulatory revision but the European Commission may issue a non-binding recommendation to Member States on how to interpret and implement MED provisions	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Correspondence between excise and customs classification systems

**Problem outline:** The EMCS (Excise Movement and Control System) is a computerised system for monitoring the movement of excise goods under duty suspension in the EU. In the case of imports from third countries, the EMCS makes use of two distinct product classifications: (i) the Excise Product Codes (EPC), based on the product categories of Directive 2011/64; and (ii) the customs Combined Nomenclature (CN) code. EPC and CN have different origins and purposes, therefore the categorisations and the definitions used do not fully match. For certain products, the disparities in definition and categorisation may contribute to classification uncertainties, disparities of treatment and possible disputes. Additionally, a better correspondence may reduce the burden of ‘dual coding’ required by EMCS for economic operators, and especially for small and medium enterprises.

**The following questions are designed for respondents who are familiar with the issue at stake and the related technical aspects of Directive 2011/64. Non-expert respondents may wish to skip to the next section**

What are your views on the legal and economic issues possibly caused by the lack of a clear correspondence between the Excise Product Codes and the Combined Nomenclature codes for certain tobacco products?

	Not an issue	Minor issue	Moderate issue	Major issue	Don't know
Additional burden for competent authorities to deal with dubious and borderline cases	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk of disputes, and related burden for both competent authorities and economic operator	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Risk of tax losses due to the wrong classification of products	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
'Dual coding' burden for small economic operators	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

In your opinion, in which product area(s) is the lack of a clear correspondence between Excise Product Codes and Combined Nomenclature codes more problematic?

Multiple answers possible. Please tick all that apply

- Cigars/Cigarillos
- Fine-cut tobacco
- Cigarettes
- Pipe tobacco
- Water pipe tobacco
- Raw and semi-processed tobacco
- Tobacco refuse (waste)
- Expanded tobacco
- Reconstituted (homogenised) tobacco
- Don't know

Please express your agreement / disagreement with the following possible approaches for a better correspondence between the excise and customs classification systems for tobacco products:

	Fully disagree	Partly disagree	Neutral	Partly agree	Agree fully	Don't know
<p>Regulatory revision: The definition and categories used in the Directive 2011/64 should be harmonised with the corresponding Combined Nomenclature definitions and classifications, for the categories of products where uncertainty can be significant.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<p>Non-regulatory option: There is no need for a regulatory revision but the European Commission may provide more guidance to stakeholders, e.g. through an (updated) correspondence table between Excise Product Codes and Combined Nomenclature codes.</p>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

## Final remarks

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Please express your general agreement / disagreement as to whether the current taxation rules applied to the following product categories under Directive 2011/64 are appropriate:

	Fully disagree	Partly disagree	Neutral	Partly agree	Fully agree	Don't know
Cigarettes	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Fine-cut tobacco	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cigars	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Cigarillos	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Pipe tobacco	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Waterpipe tobacco	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Heat-not-burn novel products	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Should you wish to provide additional information (for example a position paper) or raise specific points not covered by the questionnaire, you can upload your additional document here. The maximum file size is 1MB.

Please note that the uploaded document will be published alongside your response to the questionnaire which is the essential input to this open public consultation. The document is an optional complement and serves as additional background reading to better understand your position.

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