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Subject: Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco

Delegations will find in Annex I the Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco, which were approved by the Council by a written procedure which was completed on 1 June 2020 (CM 2383/20), accompanied by a statement by Hungary (Annex II).

COUNCIL CONCLUSIONS

**CONCERNING THE STRUCTURE AND RATES OF EXCISE DUTY APPLIED TO
MANUFACTURED TOBACCO**

The Council:

1. WELCOMES the latest Commission Evaluation of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco and the findings set out therein;
2. RECALLS AND CONFIRMS the Council conclusions of 8 March 2016, adopted in response to the Commission Report of 2015 to the Council on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco;
3. TAKES NOTE of the reasons that led to the decision of the European Commission not to table a legislative proposal to amend Directive 2011/64/EU in 2017, as requested by the Council in its conclusions of 2016;
4. MAINTAINS THE VIEW that amendments to Directive 2011/64/EU are needed for the proper functioning of the internal market and a high level of health protection across the EU;
5. RECOGNISES that the current provisions of Directive 2011/64/EU have become less effective, as they are either no longer sufficient or too narrow to address current and future challenges, concerning some products, such as liquids for e-cigarettes, heated tobacco products and other types of next-generation products, which are entering the market;

6. REITERATES that it is therefore urgent and necessary to upgrade the EU regulatory framework, in order to tackle current and future challenges in respect of the functioning of the internal market by harmonising definitions and tax treatment of novel products (such as liquids for e-cigarettes and heated tobacco products), including products, whether or not containing nicotine, that substitute tobacco, in order to avoid legal uncertainty and regulatory disparities in the EU, taking into account the relevant good practices and experience gained by Member States in this area, and, where appropriate, the objectives of Directive 2011/64/EU, which also includes the objective that the various types of tobacco products, distinguished by their characteristics and by the way in which they are used, should be defined;
7. CONFIRMS that it is necessary to increase the coherence and synergy of the tax and fiscal objectives of Directive 2011/64/EU with other EU policies and legislation, taking on board all relevant aspects of tobacco control, including public health, customs regulations, the fight against illicit trade, tax evasion and protection of the environment;
8. HIGHLIGHTS, in this context, that consumption of tobacco products remains one of the greatest avoidable and preventable health risks in the EU, CONFIRMS the need to obtain more coherence in view of the EU agenda in the fight against cancer and RECALLS, that the EU and the Member States are parties to the World Health Organization Framework Convention on Tobacco Control;
9. NOTES that, in accordance with the findings of the European Commission in its latest report on the evaluation of Directive 2011/64/EU, illicit trade in tobacco products remains substantial and continues to constitute a source of concern, as Member States are confronted with illicit traffic, both within the EU and from third countries, which undermines public health policies and increases tax evasion. Therefore, EU and Member States' initiatives for seeking further synergies with and strengthening of law enforcement policies are necessary, in order to curb demand for illegal products and combat smuggling and illegal production;

10. UNDERLINES that the illegal trade in ‘bulk’ tobacco is on the rise and ACKNOWLEDGES the need for a system to control the movement of raw tobacco, and that the risks of diversion to the illegal circuit should be addressed at EU level by establishing a common definition of raw tobacco and appropriate control rules, with a clear assessment and understanding of the costs and benefits of increased control and monitoring, taking into account the relevant practices introduced by Member States in this area and avoiding risks of double taxation;
11. DEEMS IT NECCESARY to explore tax induced substitution across products and related illicit trade as well as the possibility to improve the definitions, in order to address the tax control, revenue collection and health protection issues;
12. MAINTAINS the view that definitions of certain manufactured tobacco products in EU legislation on excise duties should be improved, as the presence of some subjective criteria in these definitions results in legal uncertainties that need to be addressed. In this context, definitions based on the classification for customs purposes in the Combined Nomenclature could be considered. Where necessary, new product categories as well as a definition of raw tobacco should be added to the Directive 2011/64/EU;
13. IS CONVINCED that action at EU level is required in order that minimum excise duty rates regain traction in terms of making an effective contribution to reducing consumption of tobacco products and the minimum rates of excise duties on a number of tobacco products would have to be increased, having due regard to the factors set out in these Council conclusions and to the fact that a number of Member States have recently increased the rates of excise duty applied to manufactured tobacco;
14. HIGHLIGHTS the fact that more convergence in excise duty rates across the EU is necessary, as the current situation generates considerable levels of cross-border flows in some Member States and in this context NOTES that the provisions as set out in Directive 2008/118/EC and Directive (EU) 2020/262 have to be more effective and more efficient;

15. IS DEEPLY CONCERNED that wide disparity in taxes (and prices) of tobacco products between some Member States is facilitating illegal trade in cheaper tobacco products across borders inside the EU, which was not the intended effect under Directive 2011/64/EU, thereby contradicting the principle that excise duties have to be applied and paid in the country of consumption;
16. NOTES that the issues identified in these Council conclusions generate significant and increasing tax revenue losses for some Member States, and that this also presents a major and pressing concern in terms of the public health objectives adopted by a number of Member States;
17. NOTES that, it remains important to avoid destabilisation of the market and not to incite illicit production, movement or trade, as income levels and economic conditions are different across the Member States;
18. TAKES THE VIEW that, when revising the system of excise duty rates in the EU, better functioning of the internal market needs to be ensured together with the objectives of revenue, public health and public security, and a number of diverse factors that play a role need to be considered in the overall balance, such as the differences in product characteristics, the burden that represents the social cost of tobacco use, the total tax burden (including VAT), the purchasing power parities, economic situation and geographical position of the Member State or Member States concerned;

19. NOTES, nevertheless, that increase of the minimum rates as set out in Directive 2011/64/EU should take place in a gradual and proportional manner, providing Member States with sufficient flexibility to achieve their revenue and public health objectives, and taking into account the overall macro-economic situation of the Union and the economic realities of Member States, and HIGHLIGHTS the fact that total convergence in excise duty rates and prices on tobacco products is difficult to achieve, given the divergence in levels of disposable income and economic situation in Member States;
 20. INVITES the European Commission to take account of these Council conclusions, while continuing its work aimed at improving the overall functioning of rules on excise duties applied to manufactured tobacco, and REQUESTS that the European Commission present, on the basis of up to date information and after carrying out relevant technical analyses, public consultations and impact assessments, a legislative proposal to the Council, with the objective of resolving, as appropriate, the concerns set out in these conclusions.
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STATEMENT BY HUNGARY

"While supporting the text of the Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco, Hungary declares that the last turn of point 13 of these conclusions cannot be interpreted as Hungary's commitment that, in case of raise of (minimum) excise duty on any tobacco product, such raise will have to be aligned to those applicable in Member States, which have recently increased the rates of excise duty on such tobacco product."
