



**The European commission has put forward a consultation paper on the structure and rates of excise duty applied on cigarettes and other manufactured tobacco.**

[http://ec.europa.eu/taxation\\_customs/resources/documents/common/consultations/tax/consultation\\_paper\\_tobacco\\_en.pdf](http://ec.europa.eu/taxation_customs/resources/documents/common/consultations/tax/consultation_paper_tobacco_en.pdf)

**Submission has to be made by 1 July 2007.**

The Association of European Cancer Leagues (ECL) [www.europeancancerleagues.org](http://www.europeancancerleagues.org), the European Network for Smoking Prevention (ENSP) [www.ensp.org](http://www.ensp.org), the Cyprus Anti-Cancer Society [www.anticancersociety.org](http://www.anticancersociety.org), the Danish Cancer Society [www.cancer.dk](http://www.cancer.dk), the Dutch Cancer Society [www.kwfkankerbestijding.nl](http://www.kwfkankerbestijding.nl), the French League National against Cancer [www.ligue-cancer.net](http://www.ligue-cancer.net), the Foundation against Cancer Belgium [www.cancer.be](http://www.cancer.be), the Luxembourg Foundation against Cancer [www.cancer.lu](http://www.cancer.lu), the Slovenian Cancer Society [www.onko-i.si/crs](http://www.onko-i.si/crs), the League Against Cancer Prague [www.lpr.cz](http://www.lpr.cz), the French Committee against Tobacco (CNCT) [www.cnct.org](http://www.cnct.org) take the following view on the consultation procedure:

- 1) While in principle we welcome the opportunity to participate in EU policy making we believe that, in this case, the procedure will only delay important public health measures. Under the terms of the 2002/10/EC directive all interested parties were aware that the European Commission was obliged to publish a review of the tobacco excise rules by the end of 2006 and therefore sent their views to the Commission in 2006. For instance, a position paper “A public health perspective for the review of the EU tax policy on tobacco products” endorsed by the Association of European Cancer Leagues (ECL), European Network for Smoking Prevention (ENSP), European Heart Network (EHN), European Respiratory Society (ERS), Action on Smoking and Health (ASH), Cancer Research UK (CRUK), Institut National du Cancer (INCA) was sent to Commission in June 2006. We are confident all players in the tobacco trade made similar submissions. This consultation procedure risks being a repetition of submissions made in 2006.

- 2) The consultation process is based on a report by KPMG, requested by the Commission services, regarding the fourth report on the structure and rates of tobacco duties. Despite several formal and written requests by non-governmental organisations, the entire report has not been made public. Therefore recommendations of the non governmental organisations will be based on incomplete information.
- 3) Over the past two years the Commission has been very active in tackling minimum prices in some Member States, but has done nothing to encourage the increase of the extreme low minimum excise yield in some Member States. The excise yield per 1000 cigarettes for the most popular price category in January 2007 is in one Member State 11 times lower than an other Member State.
- 4) Every year Tobacco kills 650 000 citizens in the EU.<sup>1</sup> Taxation is the most effective way to reduce demand for tobacco.<sup>2</sup> The very low levels of taxation in several Member States and the lack of response from the European institutions will result in a slow and weak harmonisation process of the taxation of tobacco products. The European community is undermining its most effective tool to achieve a major public health policy objective: lower the number of deaths caused by tobacco in the EU.

The Association of European Cancer Leagues (ECL), the European Network for Smoking Prevention (ENSP), the Cyprus Anti-Cancer Society, the Danish Cancer Society, the Dutch Cancer Society, the French League National against Cancer, the Foundation against Cancer Belgium, the Luxembourg Foundation against Cancer, the Slovenian Cancer Society, the League Against Cancer Prague, the French Committee against Tobacco (CNCT) make the following comments on the questions raised by the commission:

### **1) Cigarette taxation.**

**1.1 The Commission question whether the MPPC is still in line with Internal Market objectives and justified as a reference point for setting the minimum requirements. The views of concerned parties are invited on the abolition of the MPPC and on whether EU minimum requirements should either apply to all cigarettes or should be defined in accordance with weighted average prices.**

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<sup>1</sup> The ASPECT consortium. Tobacco or health in the European Union. Past, present and future. Luxembourg, European Commission, 2004.

<sup>2</sup> Jha P, Chaloupka F, Curbing the epidemic. Governments and the economics of tobacco control, The World Bank , Washington DC, 1999.

**ANSWER:** EU tax rules on cigarettes apply only to the most popular price category (MPPC) which represents a third of the overall cigarette market. Cigarettes from *all* price categories cause death and disease. The growing popularity of cheap and discounted branded cigarettes is a concern to many Member States. We recommend removing the concept of the most popular price category and applying minimum tax rules to all cigarette price categories. (See our proposals for minimum level taxation on cigarettes expressed in percentage and in euro under 1.4)

**1.2 To what extent should Member States be allowed greater flexibility to determine the structure of the excise duties and to levy minimum excise duties on cigarettes?**

**ANSWER:** The health objectives of reduced tobacco consumption should be taken more seriously by the European Community and the 27 Member States. Article 6 of the WHO Framework Convention on Tobacco Control (FCTC), which was adopted unanimously by 192 countries in May 2003, signed by 168 countries and ratified by 147 countries, stipulates very clearly: “The Parties recognise that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons.”

The general principle should be not to allow flexibility for the member states to levy minimum taxes (excise duties and VAT) on cigarettes. Low taxation levels for cigarettes in one Member States are an incentive for cross border shopping and have a negative effect on the overall taxation levels in neighbouring countries.

**1.3 Should the current monetary minimum incidence for cigarettes (€64/1000 cigarettes) be increased, given that it only came into force in July 2006 and 10 new Member States have been granted transition periods, some of them until the end of 2009? On the other hand, would an increase in the minimum ad valorem requirement of 57% be in line with internal market and health objectives?**

**ANSWER:** While progress has been made in harmonising tobacco taxation at EU level, the big concern remains that the price of and the taxes on tobacco products varies greatly in the European Union.

For instance,

- The price of a pack Marlboro cigarettes in January 2007 varies from 1,17 euro in Latvia to 7,89 euro in the United Kingdom.
- The excise yield per 1000 cigarettes for the most popular price category in January 2007 varies from 21 euro in Latvia, 22 euro in Lithuania, 35 euro in Estonia to 248 euro in the United Kingdom.

The very low levels of excise duties in some new EU Member States in 2007 are striking. During the last two years the Commission has been very active in combating minimum prices in some Member States (France, Belgium and Ireland), but has done nothing to encourage new Member States (such as Latvia and Lithuania) to increase the minimum excise yield from 21 or 22 euro to the required 64 euro. The lack of activity in some member states can not be used as an excuse to slowdown the necessary harmonisation of taxes on cigarettes at EU level. We are in favour of increasing the minimum taxation (excise duties and VAT combined) expressed in euros as a percentage of the total price. See answer below under point 1.4

**1.4 How can the current provisions be improved in order to better achieve health objectives?**

**ANSWER:** Taxation rules on tobacco products in the EU are complex. Like most goods, cigarettes are liable to Value Added Tax (VAT). Unlike other excise taxable items, however, they are subject to a mix of two types of excise duty - specific and ad valorem. Fixed or specific excise duties are imposed as a fixed amount per 1,000 pieces or per 1,000 grams. Ad valorem excise duties are proportional to the final retail price. Ad valorem taxation and VAT have a "multiplier effect". This means that price differences at production level are multiplied with the addition of tax which leads to greater price differences between cheaper brands (which pay proportionately less tax), and more expensive brands. Specific duties do not have a multiplier effect, as the same tax is applied whatever the production cost. This means that price differences between cheaper and more expensive brands are reduced. It also means that manufacturers can increase prices without this having too high an impact on the final retail selling price.

In 1992, in view of the approaching Single European Market, the EU adopted a set of directives to ensure a level of harmonization of tobacco tax levels across member states. It represented a compromise between the ad valorem and the specific taxation proponents. The directives established an overall excise incidence (specific and ad valorem combined) of at

least 57% of the retail price of the most popular price category (MPPC). Taken with the minimum specified VAT rate set at 13.04 percent, the minimum overall level of taxation on cigarettes was 70 percent. Countries were free to set the balance between ad valorem and specific taxation—on the condition that the latter falls in the range of 5 to 55 percent of the total tax including VAT. Although they led to price increases in a number of countries, these directives did not eliminate the large differences in price and tax levels that characterized the EU market.<sup>3</sup>

The problems with the tobacco tax rules are the following:

- ❑ EU tax rules apply only to the most popular price category which represents a minor part of the overall cigarette market.
- ❑ Minimum tax rules should apply to total taxes (VAT and Excise duties) and not specifically to excise duties (the 57% rule) or to the minimum specified VAT rate (set at 13.04 percent).
- ❑ The current upper limit of the specific excise duty can not be justified. According to EU legislation, specific taxation cannot be higher than 55 percent of the total tax including VAT. Specific taxes eliminate large price differentials and should be encouraged.

The Aspect Consortium report “Tobacco or health in the European Union. Past, present and future” which was financed by and prepared for European Commission, recommended in 2004 that “tax differences should be harmonised on the basis of specific rates as opposed to ad valorem”.<sup>4</sup>

Recommendations:

- ❑ Remove the 55% maximum threshold for the weight of the specific excise component of the total tax.
- ❑ The required tax incidence (VAT and excise duties) on the retail selling price of cigarettes should be at 71% and the overall minimum tax (VAT and excise duties) shall not be less than 120 €per 1000 cigarettes from 1 January 2008. The required tax incidence (VAT and excise duties) on the retail selling price of cigarettes should be at 72% and the overall minimum tax should not be less than 130 €per 1000 cigarettes from 1 January 2010.

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<sup>3</sup> Gilmore A, McKee M. Tobacco-control policy in the European Union: the legal, ethical and policy debates. In: Tobacco Control and the Liberal State: The Legal, Ethical and Policy Debates. Feldman E, Bayer R (eds). Harvard University Press

<sup>4</sup> The ASPECT consortium. Tobacco or health in the European Union. Past, present and future. Luxembourg, European Commission, 2004.

## **2) Taxation of other tobacco products**

### **2.1 Should the structure of excise duties on fine-cut tobacco intended for the rolling of cigarettes be brought in to line with the structure for cigarettes? If yes, in which way?**

**ANSWER:** Minimum tax rates for fine cut tobacco at EU level are set at much lower level than for manufactured cigarettes: the overall excise duty levied on fine-cut smoking tobacco intended for the rolling of cigarettes shall be at least equal to 36 % of the retail selling price inclusive of all taxes, or EUR 32 per kilogram from 1 January 2004. As a consequence, hand rolling tobacco is taxed at a much lower rate than cigarettes in most countries of the EU. An increase of the price of cigarettes may result in a switch from cigarettes to hand rolling tobacco. Following the tax increase on cigarettes in France in 2003, sales of roll-your-own tobacco, for instance, increased by 12% in 2004. In Belgium the percentage of smokers of roll-your-own tobacco increased between 2004 and 2006, while the percentage of smokers of regular cigarettes decreased in the same period.<sup>5</sup> The tax rate on roll-your-own tobacco should be made equal to the tax rate on cigarette to prevent substitution towards this form of tobacco products. In this context, the Commission, upon request of a number of Member States, made the following statement to the Council minutes of 12 February 2002 : "The Commission states that, in its next review report provided for under Article 4 of Directive 92/79/EEC and Directive 92/80/EEC, it will present sufficient elements in order to proceed to an overall review of the possibility to bring the structure of excise duties for fine-cut smoking tobacco into line with the structure of excise duties for cigarettes'.

The Aspect Consortium report "Tobacco or health in the European Union. Past, present and future" recommended in 2004 that "tax on roll your own cigarettes should be raised to prevent substitution towards this form of tobacco products."

#### **Recommendation:**

Increase gradually the minimum tax for fine cut tobacco to the same level as cigarettes. The overall tax (excise duties and VAT) levied on fine-cut smoking tobacco intended for the rolling of cigarettes should be at least equal to 60 % of the retail selling price inclusive of all taxes and not be less than 60 €per 1kg from 1 January 2008. The overall minimum tax shall

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<sup>5</sup> Fondation contre le Cancer, Press Release, Brussels, December 2006.  
[http://www.cancer.be/cancer\\_be/Modules/\\_Content/FileAttach/Enquête.pdf](http://www.cancer.be/cancer_be/Modules/_Content/FileAttach/Enquête.pdf)

be at least equal to 65 % of the retail selling price inclusive of all taxes and the overall minimum tax shall not be less than 70 €/per 1kg from 1 January 2010 and to 70% of the retail selling price inclusive of all taxes and the overall minimum tax shall not be less than 80 €/per 1kg from 1 January 2012.

**2.2 How could the minimum rates for fine-cut tobacco be brought gradually into line with the rate for cigarettes, taking account of the specific characteristics of fine cut tobacco?**

**ANSWER:** See answer 2.1

**2.3 Should the minimum rates for tobacco other than cigarettes be adjusted for inflation?**

**ANSWER:** The use of tobacco is very addictive. Minimum rates adjusted for inflation are insufficient to have an impact on the tobacco users. According to the World Bank, a price rise of 10% above inflation decreases consumption by about 4% in high-income countries.<sup>6</sup> The specific excise duty for tobacco other than cigarettes should be increased at once at least by 4 to 6% above inflation on a yearly basis.

**2.4 How could the existing definitions of cigars and smoking tobacco be amended in order to avoid abuse?**

**ANSWER:**

1) The Commission observes the following: “Currently, excise tax for pipe tobacco is lower than fine-cut tobacco taxation in 13 EU markets. Some of these markets face the problem of pipe tobacco being used for hand rolling or tubing of cigarettes. Therefore, the definition of smoking tobacco should be adapted in order to better differentiate between pipe and fine-cut tobacco and to avoid inappropriate taxation.”

Pipe tobacco should be taxed at least at the same level as fine-cut tobacco. The problem will not be resolved by differentiating between pipe and fine-cut tobacco, but by taxing both products at the level of fine-cut tobacco.

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<sup>6</sup> Jha P, Chaloupka F, Curbing the epidemic. Governments and the economics of tobacco control, The World Bank , Washington DC, 1999.

2) The Commission observes the following: “However, several Member States and the trade have reported that new products have appeared which are presented and marketed as cigars - they have the colour of a cigar or cigarillo, rather than the white colour of a cigarette – but in terms of function, taste and presentation must be regarded as cigarette substitutes. The manufacturing process for these products is similar to that for cigarettes. Under the current legislation, these products are taxed in the Member States at the same rate as cigars and cigarillos.”

We would welcome tighter cigar definitions which would avoid the appearance on the market of tobacco products which are presented as cigars but which are similar to cigarettes.

3) The Commission observes the following: “Herbal cigarettes and other products not containing tobacco are marketed in a number of Member States. These cigarettes are sold without health warnings and marketed as “safer” alternatives to cigarettes with tobacco.”

Herbal cigarettes are combustion products, which are toxic and should not be presented as safer products therefore they should be taxed in the same way as cigarettes.

4) The Commission observes the following: “The current taxation requirements do not cover any kind of smokeless tobacco. This kind of products has a limited market share. Nevertheless, the possibility of including them in Community excise legislation has been suggested.”

The total absence of excise duties on these kinds of tobacco products is difficult to justify.

Taxation on smokeless tobacco should be part of the community health policy on smokeless tobacco which is now under review.

## **2.5 How can the current provisions be improved in order to better achieve health objectives??**

**ANSWER:** A specific additional health problem is cross border shopping. While the number of cigarettes that can be imported for personal consumption when travelling between EU countries is restricted its level remains high. Directive 92/12/EEC sets an indicative level to establish whether tobacco products are for personal purposes (< 800 cigarettes). Member States may lay down guide levels, solely as a form of evidence. The effect of price increases may be weakened by intensified cross border shopping in neighbouring countries. Cross-border shopping from Finland for instance takes mainly place with Estonia. It has been

calculated that 2.5 million trips are made annually from Finland to Estonia for cross-border shopping. Luxembourg has consistently pursued a policy of keeping tobacco prices at least 25% lower than in neighbouring countries to make cross-border shopping attractive. Sales in Luxembourg (population around 450,000 persons) increased as a result of tax increases in neighbouring countries (from 4.8 billion cigarettes in 2003 to 5.3 billion cigarettes sold in 2004). A survey among smokers in Belgium in 2001 found out that 25% of the people living in one of the two provinces closer to the border with Luxembourg had packs with Luxembourg stamps, whereas the percentage goes down to 4% for the rest of the country.<sup>7</sup> This shows that legal cross-border trade mainly takes place within a range of 50 to 100 km from the border: the probability of people travelling to buy cheaper cigarettes will decrease with the distance and increase with the price differential.

Recommendations:

- Reduce the indicative level for cigarettes for personal use when travelling between EU countries to 200 cigarettes.
- Establish a maximum of 40 cigarettes for import from outside the community for personal use.

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<sup>7</sup> Ligue Nationale contre le Cancer. Seminar on Tobacco Taxation and Prices in Europe, 28 January 2005, Paris, 2005.