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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION STAFF WORKING DOCUMENT EXECUTIVE SUMMARY OF THE EVALUATION of the Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco

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Delegations will find attached document SWD(2020) 33 final.

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Brussels, 10.2.2020  
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**COMMISSION STAFF WORKING DOCUMENT**  
**EXECUTIVE SUMMARY OF THE EVALUATION**

**of the**

**Council Directive**

**2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to  
manufactured tobacco**

{SWD(2020) 32 final}

## EXECUTIVE SUMMARY

Council Directive 2011/64/EU<sup>1</sup> (hereafter the Directive) lays down the EU rules for the taxation of manufactured tobacco products by setting the structure and minimum rates. It aims at ensuring the proper functioning of the internal market and, at the same time, a high level of health protection and fight against tax fraud, tax evasion and illegal cross border shopping.

The current evaluation assesses the performance of Directive 2011/64/EU against the evaluation criteria set out in the Better Regulation Guidelines<sup>2</sup>.

In general, the Directive has been working well in terms of predictability and stability of fiscal revenues for Member States. It has also provided a high degree of flexibility for Member States to implement their national fiscal policies regarding traditional tobacco products. The excise tax revenue in the EU in 2017 from tobacco was EUR 82.3 billion. However, the developments and emergence of new products (e-cigarettes, heated tobacco products and new addictive products containing nicotine or cannabis) reveals the limits of this legal framework. The current scope and provisions of the Directive are not able to cope with these market developments.

This evaluation shows that the impact of the Directive on public health has been moderate. The Directive gave an initial impetus with the increase of EU minima rates for cigarettes and fine-cut tobacco, but only a few Member States, with very low levels of taxation, were actually affected. In any case, the Directive is not giving this stimulus any longer. Tobacco taxation is regarded as the most effective instrument to reduce tobacco consumption and tobacco prevalence. The high number of smokers in the EU is still a matter of significant concern with 26% of the overall EU adult population and 29% of young Europeans aged 15-24 smoking. In the USA and Australia, less than 15% of adults currently smoke<sup>3</sup>.

The Directive leaves enough freedom and flexibility to Member States to pursue a more ambitious public health agenda at national level supported by higher domestic taxation rates. However, the significant difference of taxes (hence prices) between Member States may limit these ambitions where high levels of cross border shopping take place, if price gaps are representing a sufficient economic incentive to go and buy across borders. Average prices for a pack of cigarettes in Member States range from EUR 2.57 to EUR 11.37. This makes it easier for people – including young adults, to access cheaper tobacco products and ultimately weakens health policy measures taken in the country of consumption. Overall, the achievement of the ‘convergence’ objective of the Directive by means of EU minima provision appears inherently problematic. This lack of convergence of taxes across the EU is a major source of concern for some Member States, both for lost fiscal revenues and for undermining public health measures. The EU aggregated net effects of economic

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<sup>1</sup> [Council Directive 2011/ 64/EU](#) of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco. The Directive entered into force as of 1 January 2011.

<sup>2</sup> [Better Regulation Guidelines](#)

<sup>3</sup> [Centers for Disease Control and Prevention and Australian bureau of statistics](#)

driven cross border flows are estimated at approximately EUR 2.3 billion in lost revenue<sup>4</sup>.

The level of illicit trade for cigarettes and fine-cut tobacco remains a challenge in terms of enforcement, loss of revenues and impact on smoking prevalence. The evaluation indicates that the levels have actually decreased slightly over the years, but remain substantial (around 8 % of actual consumption, representing EUR 7.5 billion of potential lost excise revenues) and this calls for strengthening enforcement policies and designing tax regimes with enforcement safeguard measures. The evaluation also confirms the increase of illicit manufacturing of cigarettes within the EU calling for a harmonised approach to monitor flows of raw tobacco within and into the EU.

To conclude, the evaluation shows a low degree of coherence of the Directive with other EU policies and the need to develop synergies. There is a need to have a more comprehensive and holistic approach, 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.

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<sup>4</sup> When prices differences are sufficiently high to justify not only purchases for private consumption by tourists or travellers, but also to ensure an economic profit in case of illicit reselling or travelling for the sole purpose of buying cigarettes