

# Summary Report

## Public consultation on excise duties applied to manufactured tobacco and the possible taxation of novel products

### 1. Background

Council Directive 2011/64/EU (the 'Directive') sets out EU rules on the structure and rates of excise duty applied to manufactured tobacco. The purpose of the Directive is to ensure the proper functioning of the internal market and a high level of health protection. It sets the structure and overall minimum rates of the excise duty for the different categories of manufactured tobacco, in particular: cigarettes, cigars and cigarillos, and smoking tobacco.

The European Commission is required to prepare every four years a Report on the functioning of the Directive, accompanied - if appropriate - by a proposal for revision. To this purpose, the Commission has started an evaluation<sup>1</sup> of the Directive that included, among other things, a comprehensive consultation of EU citizens and stakeholders.<sup>2</sup> This consultation was intended to gather views of all interested parties on the current excise duty rates and structures for manufactured tobacco and the possible options for revision. The evaluation also covers the issue of the harmonisation of novel products, such as 'heated tobacco products' and 'electronic cigarettes' (e-cigarettes), on which no final position could be adopted so far due to insufficient information available.<sup>3</sup>

### 2. Overview of the Consultation and Respondents

#### ➤ OVERVIEW

The consultation of stakeholders involved various activities, including an Open Public Consultation of general public, whose results are reported here.<sup>4</sup> The public consultation was intended to gather the views of any interested party - from economic operators, to non-government organisations (NGOs), to individual citizens etc. on two main issues:

- (1) The current taxation of conventional tobacco products (cigarettes, cigars and cigarillos, and smoking tobacco) and specifically the level of rates and structures;
- (2) The status of novel products, in particular 'electronic cigarettes' and 'heated tobacco products', which are not explicitly covered by the Directive.

The public consultation was carried out through an online questionnaire translated in all EU official languages (except Gaelic) and administered through the EU Survey platform. The consultation was launched on the 23<sup>rd</sup> of May and closed on the 3<sup>rd</sup> of September 2018.

The questionnaire consisted of 26 questions, including both general questions and more technical ones. None of the question was mandatory, so respondents could focus on certain

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<sup>1</sup> See the Commission Evaluation Roadmap: [https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-701914\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-701914_en)

<sup>2</sup> See the Commission Consultation Strategy: [https://ec.europa.eu/taxation\\_customs/sites/taxation/files/consultation\\_strategy\\_tobacco\\_taxation\\_final\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/consultation_strategy_tobacco_taxation_final_en.pdf)

<sup>3</sup> See the Report from the Commission to the Council on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco - COM(2018) 17final.

<sup>4</sup> This Summary Report provides a brief analysis of the most relevant results. For a complete overview of results see the consultation webpage: [https://ec.europa.eu/info/consultations/public-consultation-excise-duties-applied-manufactured-tobacco-and-possible-taxation-novel-products\\_en](https://ec.europa.eu/info/consultations/public-consultation-excise-duties-applied-manufactured-tobacco-and-possible-taxation-novel-products_en)

sections of the questionnaire and skip others, based on their knowledge and interest. On average, respondents replied to some 77% of the questionnaire, with some questions answered by 99% of respondents while others by 'only' 65% of them.<sup>5</sup>

### ➤ PROFILE OF RESPONDENTS

Overall, the public consultation received 11,388 valid responses<sup>6</sup>, of which the vast majority (96%) from citizens responding on an individual capacity and some 4% from representatives of industry, NGOs, public administrations, academic institutions and other corporate entities. The high rate of response among individual citizens is primarily explained by the parallel petition launched by various e-cigarettes consumers organisations. The petition attracted some 50,000 supporters who were also called on to take part in the public consultation to "*defend the right of access to tax-free vaping throughout Europe*".<sup>7</sup> In this sense, the feedback from the +10,000 EU citizens who took part in the public consultation should be seen as representing primarily the views of the vape-supporting communities. This occurrence is in line with the nature and purpose of an open public consultation, which is not to provide a statistically-significant representation of EU population (as in the case of Eurostat surveys or the Eurobarometer) but to allow all interested parties to contribute their views in the EU policy process. In this respect, any public consultation is by design subject to 'self-selection bias', since participants are more likely to have a direct interest in the subject matter (as consumers or economic operators etc.) than the 'average' EU citizen or entity. It is essential to keep in mind such bias for a correct analysis and interpretation of answers.

Some half of non-individual respondents are economic operators, including both businesses operating in the e-cigarettes sector and in the 'conventional' tobacco products sector. The sub-sample of economic operators includes both large companies (11%), SMEs (68%), and self-employed entrepreneurs (21%). It should be highlighted that some national affiliates to large corporations self-classified themselves as SMEs. If all such entities were classified as their parent companies, the share of SME in the sample would reduce to 58%.

As regards the other categories of respondents, some 0.8% qualified themselves as business organisations or advisory body, 0.5% as NGOs, some 0.1% as public administrations<sup>8</sup> and the remaining 0.6% as other miscellaneous entities. It should be noted that a review of self-categorisations revealed some inconsistencies in the way respondents interpreted and selected these categories with, for instance, trade organisations qualified as NGOs, medical societies qualified as business organisations and academics scattered across different categories. Some possible inconsistencies were also detected in the 'individuals' and 'economic operators' categories due to the fact that in about 13% of cases (1,461) the name of respondent was absent, incomplete or invalid (e.g. 'nicknames').<sup>9</sup>

For the analysis presented in this report, an alternative classification has been elaborated, which focuses on the apparent 'direct interest' of respondents on the subject matter rather than the juridical status of the respondents (see Table 1). This classification regards only non-individual respondents and it is based on respondents' declarations and/or the nature or mission of the concerned entity. According to this classification, out of a total of 434 non-individual respondents, some 44% consists of entities with direct interest on e-cigarettes sector, 20% of respondents have direct interest in the tobacco sector, and 9% have interests in both sectors (e.g. retailers of both tobacco and e-cigarettes, big companies with subsidiaries in all sectors etc.). Some 12% of responses came from stakeholders with an apparent

<sup>5</sup> These figures do not include introductory questions (regarding the profile of respondents) and open-ended questions.

<sup>6</sup> The total replies received amounted to 11,410 but 22 records appeared as duplicate submissions from the same entity so were excluded from the analysis. Possible duplicate submissions from individual citizens were instead not excluded given the possibility of homonyms.

<sup>7</sup> See: <https://www.change.org/p/european-commission-act-now-to-stop-the-eu-vape-tax>. Last access: 15.09.2018.

<sup>8</sup> The apparent low rate of responses from public administration should be seen in the light of the fact that tax, customs and public health authorities of the Member States were surveyed in parallel through an *ad hoc* and more detailed consultation. Nearly all administrations who took part to the OPC were in fact local administrations.

<sup>9</sup> In the other cases, some 53% (6,048) respondents asked to remain anonymous while the remaining 34% consented to the publication of his/her name.

affiliation to or direct interest in public health and tobacco control, while the remaining 15% include other type of businesses (e.g. consultancies), intermediate bodies (generalist employers and trade associations, like chambers of commerce etc.), academicians, think-tanks, local administrations and a few other miscellaneous entities.<sup>10</sup>

The 'tobacco' and 'cross-sector' subgroups can be further segmented by category of product. Obviously, in this case interests are often overlapping since operators generally produce or trade different types of products. At this level the distribution appears quite balanced, with some half of the subgroup showing 'interests' in cigarettes, fine-cut tobacco (FCT) and cigars and cigarillos and about one-third with 'interests' in pipe tobacco and heated tobacco products.

**Table 1 – Classification of non-individual respondents by possible interest in the subject matter**

<b>Subgroup</b>	<b>No.</b>	<b>%</b>
<b>Public Health</b> (NGOs, medical societies, and other entities active on tobacco control and public health protection)	50	12%
<b>E-cigarettes</b> (operators exclusively active in this sector, consumers and trade associations, advocacy bodies, promoters etc.)	191	44%
<b>Tobacco</b> (operators exclusively active in this sector – manufacturers, distributors, retailers, growers etc. – consumers and trade associations)	86	20%
<b>Cross-sector</b> (operators active in both e-cigarettes and tobacco sectors, such as manufacturers, distributors and retailers).	40	9%
<b>Other</b> (no direct interest identified, including economic entities, public administration, NGOs and civil society organisations not linked to tobacco control, universities, research institutes, academicians etc.)	67	15%
<b>TOTAL</b>	<b>434</b>	<b>100%</b>
<b>Sub-classification of tobacco and cross-sector stakeholders by product*</b>	<b>No.</b>	<b>%</b>
<b>Cigarettes</b>	69	55%
<b>Cigars and cigarillos</b>	72	57%
<b>Fine-cut tobacco</b>	66	52%
<b>Water-pipe tobacco</b>	19	15%
<b>Pipe tobacco</b>	41	33%
<b>Heated tobacco products</b>	37	29%
<b>General (e.g. raw tobacco) or unspecified</b>	33	26%
<b>TOTAL</b>	<b>126</b>	<b>n.a</b>

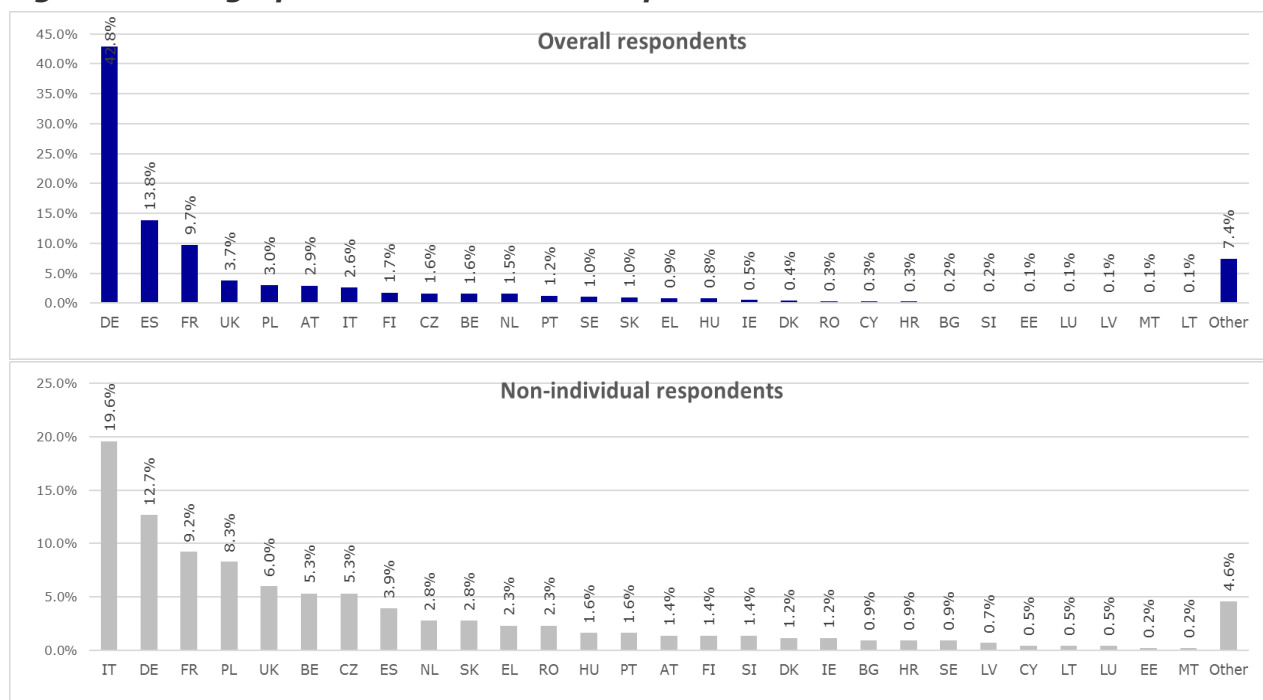
**Note:** (\*) this classification regards all stakeholders with a possible interest on tobacco products including also those who might have also a simultaneous interest in e-cigarettes (such as retailers or certain large manufacturers). These subcategories are evidently not mutually exclusive.

#### ➤ GEOGRAPHICAL DISTRIBUTION OF RESPONSES

Nearly 93% of answers come from EU-based respondents, some 2% from non-EU countries, while for the remainder the origin is not specified. All EU countries are represented in the respondents' sample, but the distribution is skewed, with three Member States (DE, ES and FR) accounting for 66% of total responses. However, considering only responses from non-individual entities the distribution appears significantly more balanced and coherent with MS size, as shown in Figure 1 below.

<sup>10</sup> Of course, it cannot be ruled out that also the 'other' subgroup members have a direct interest on the subject matter, but this is not immediately recognizable as it is in the case of tobacco or e-cigarettes producers, retailers trade associations etc.

**Figure 1 – Geographical distribution of respondents**



**Note:** the 'Other' category includes both non-EU countries and unspecified responses.

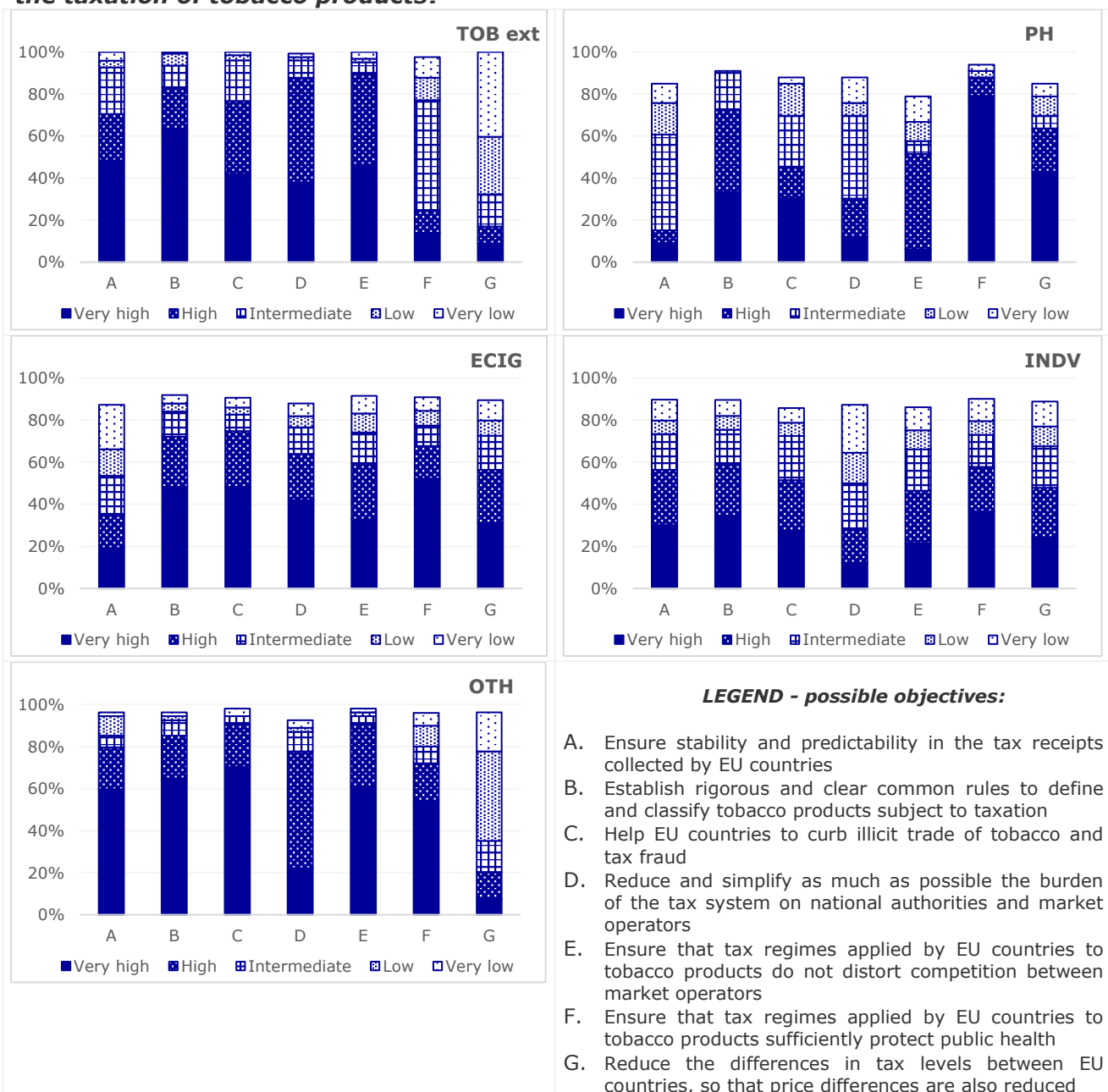
### 3. Summary of Results – Conventional Tobacco Products

#### ➤ OVERALL PURPOSE OF EU LEGISLATION

One of the main questions in the public consultation regards the importance that stakeholders attribute to the possible objectives of the Directive. In particular, respondents were asked to rate from 'very high' to 'very low' the importance of seven policy objectives (see the legend of Figure 2 below). Unsurprisingly, answers vary greatly across sub-groups and outcomes can be summarised as follows:

- The policy objective that received the highest degree of support regards the harmonisation of rules, tax categories and definitions of products. All sub-groups of respondents recognised it as a most important task of the EU legislation.
- Conversely, there is limited support to one of the other main objectives of the Directive, that is to reduce the difference in tax (hence price) levels between MS. The tobacco stakeholders and other economic stakeholders were particularly negative in this regard while clear support came only from public health stakeholders.
- For tobacco stakeholders (as well as the 'other' subgroup) it is also important that the EU framework fosters fair competition and prevents market distortion.
- Needless to say, the most important objective for public health stakeholders is the contribution of the Directive to public health protection – an objective largely shared by the majority of e-cigarettes stakeholders and individual respondents.
- E-cigarettes stakeholders and the 'other' subgroup also mentioned the contribution to the fight of illicit trade and fraud as a major objective of the Directive.
- Finally, there seems to be limited interest on the administrative simplification of excise duty systems and on the effects of the Directive on tax revenue stability (with the partial exception of individual respondents and the 'other' subgroup).

**Figure 2 – Question: What should the main goals of the EU legislation be as regards the taxation of tobacco products?**

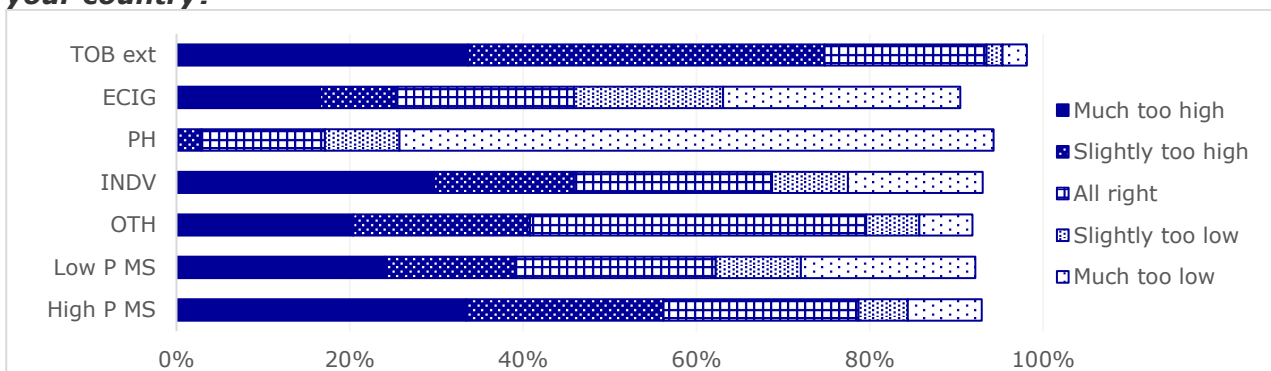


**Notes:** 'TOB ext' - tobacco and cross-sector stakeholders; 'ECIG' - e-cigarettes stakeholders; 'PH' - public health stakeholders; 'OTH' - other non-individual stakeholders; 'INDV' - individual respondents. Questions left blank are not computed in the statistics; 'don't know' answers are computed but not displayed.

➤ **TAX AND PRICE LEVELS OF CIGARETTES**

As Figure 3 shows, the respondents' view on the current price of cigarettes is highly polarised, with the near totality of public health stakeholders considering prices too low while most of tobacco stakeholders perceiving them as too high. E-cigarettes stakeholders tend to agree with public health stakeholders, while for the majority of individual respondents price levels are too high. This discrepancy is evidently coherent with the diverging interest of the subgroups concerned. Respondents' outlook was largely consistent with actual market conditions, so prices were more frequently perceived as too high in countries where they are actually higher than EU average (in consumers' purchasing power terms) and *vice versa*.

**Figure 3 – Question: (...) How do you rate the current levels of prices of cigarettes in your country?**

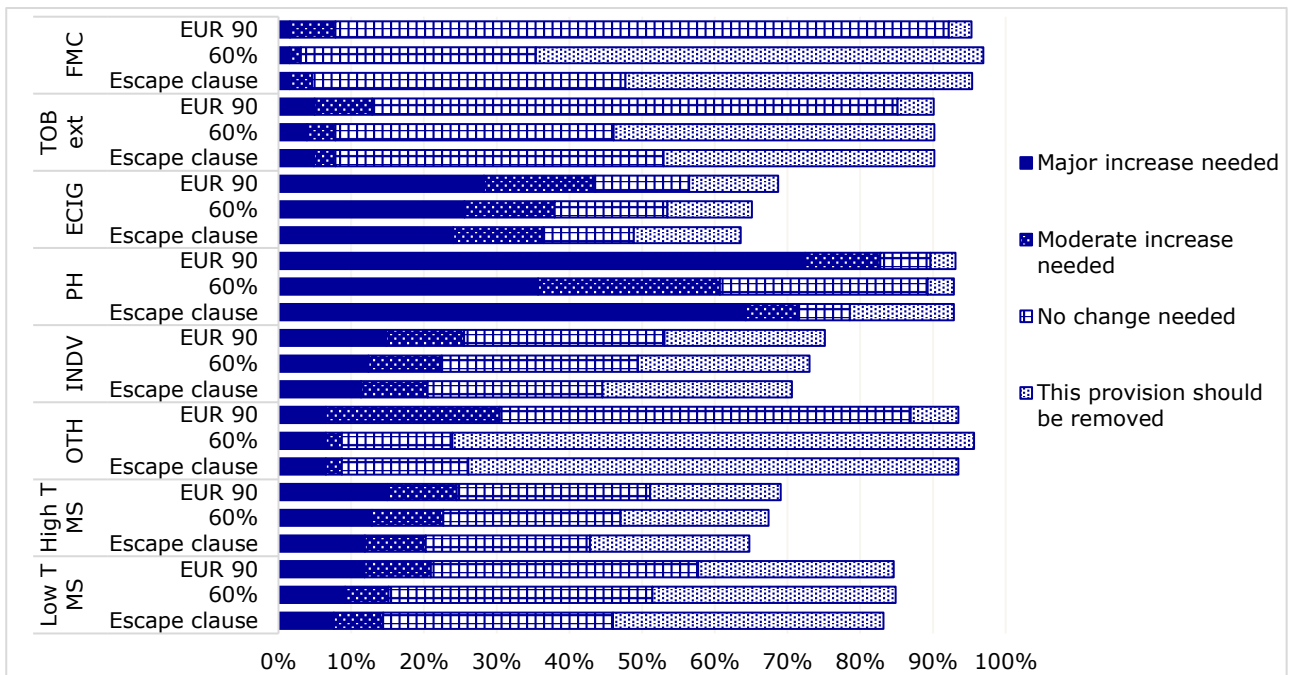


**Notes:** 'TOB ext' - tobacco and cross-sector stakeholders; 'ECIG' - e-cigarettes stakeholders; 'PH' - public health stakeholders; 'OTH' - other non-individual stakeholders; 'INDV' - individual respondents. 'Low/High P MS' - non-individual replies from the 5 MS with the lowest / highest price in purchasing power parity terms. Questions left blank are not computed in the statistics; 'don't know' answers are computed but not displayed.

Coherently with the above, the demand for a tax increase on cigarettes prevails among public health stakeholders and to a smaller extent among e-cigarette stakeholders (who in many cases also opted for an agnostic position). Predictably, such demand is instead very low among tobacco stakeholders - and particularly cigarettes stakeholders - as well as among individual respondents. It is interesting to note how the demand for an increase in the EU minimum rates is somehow greater in countries where taxes are higher in nominal terms, which are also the countries where such measures would have no effects - whereas stakeholders from low-taxing countries would mostly prefer to maintain the current levels. This clearly reflects the fact that on the one hand high-taxing countries are more negatively affected by large disparities in price levels between countries, on the other hand the incidence of taxation is often higher in low-taxing countries than in high-taxing ones, so there is smaller room for further increases (see Figure 4).

Finally, it can be noted that all subgroups support more often an increase of the minimum fixed amount (€ 90 per 1000 sticks) than an increase of the relative minimum (60%) or the related 'escape clause' threshold (€ 115 per 1000 sticks). Actually, the vast majority of tobacco stakeholders and a non-negligible share of individual and 'other' respondents would agree with the removal of the relative minimum rate.

**Figure 4 – Question: (...) Is there a need in your opinion to revise the EU minimum rates for cigarettes?**



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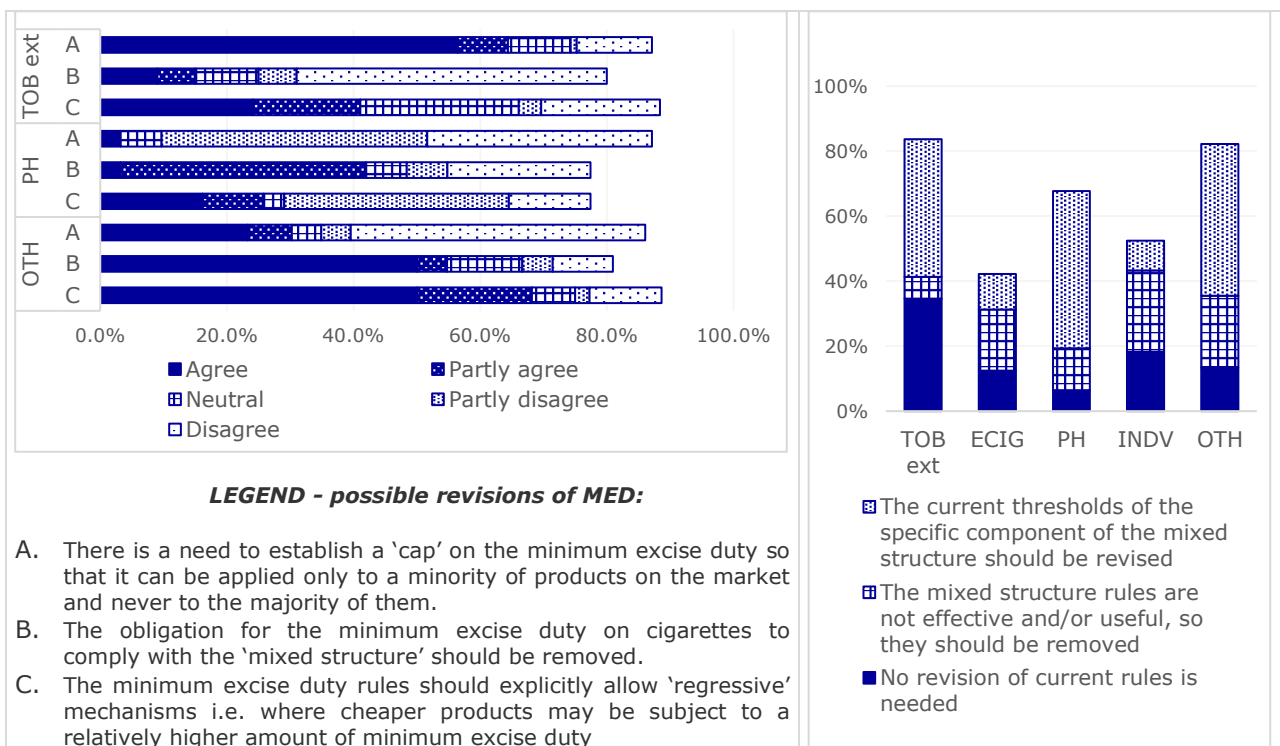
Respondents were also surveyed on the revision of Directive's provisions regarding excise duty structures, and in particular (1) the obligation to apply a 'mixed structure' to cigarettes i.e. including a 'specific component' (i.e. a fixed monetary amount) and an 'ad valorem component' (i.e. a percentage of the retail selling price), and (2) the 'minimum excise duty' (MED) that allows MS to set a sort of tax floor. Both matters are quite technical so, as expected, various respondents skipped these questions or declared they do not have a view on them.

With respect to 'mixed structure' obligation for cigarette, it is interesting to note how tobacco stakeholders appear almost evenly divided between those that would support a revision of current rules and those that see no need for change. Public health stakeholders and the 'other' subgroup are instead more frequently in favour of a revision, while a relative majority of individual respondents would remove such obligations. The current rules require in particular that the specific component of the mixed structure is comprised between 7.5% and 76.5%. When asked about a possible revision of such thresholds, only a few respondents indicated alternative levels. In general, public health respondents demand higher levels of specific excise duty, whereas the tobacco stakeholders more frequently support a balanced convergence of both lower and upper thresholds.

As regards the minimum excise duty, it should be noted that a clear divergence between tobacco stakeholders - who demand the re-introduction of a 'cap' on minimum excise duty level and the obligation to respect the mixed structure rules to be maintained - and public health stakeholders who are in favour of a minimum excise duty mechanism, which is not constrained by caps or mixed structure obligations. On the possibility of a 'regressive' minimum excise duty - i.e. a mechanism where the amount of minimum excise duty applied is inversely related to selling price - positions are more mixed with only the 'other' subgroup clearly in favour of it.

**Figure 5 - Stakeholders feedback on a possible revision of excise duty structure provisions for cigarettes.**

**A) Question: Please, express your agreement with the following possible options to reform the minimum excise duty (MED)** **B) Question: Is there a need to revise the 'mixed structure' requirement for cigarettes?**



On the expected impacts of an increased taxation of cigarettes, stakeholders' views again diverge (see Figure 6). In particular there are four highly divisive matters:

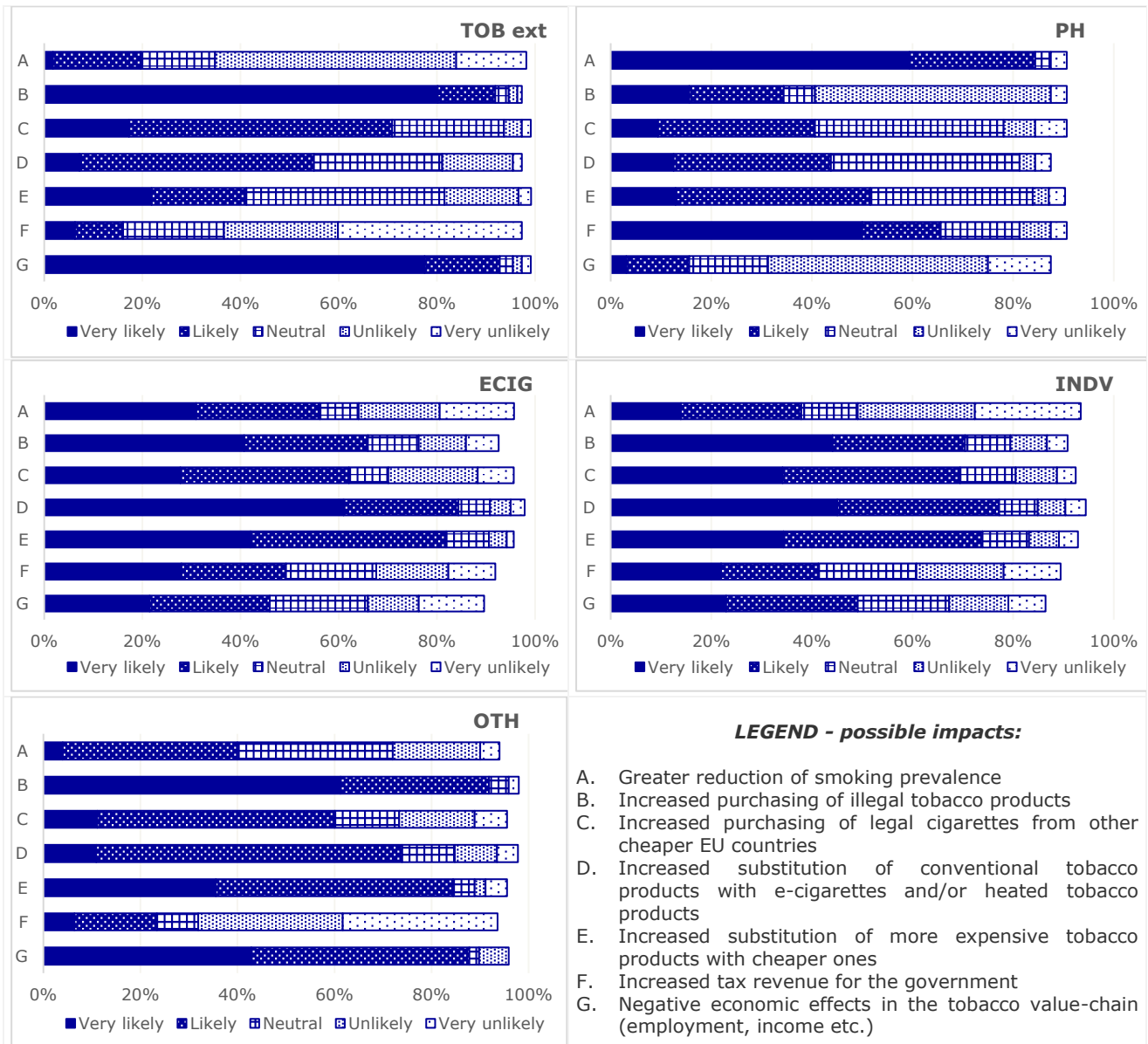
- public health stakeholders anticipate a reduction of smoking prevalence that tobacco stakeholders (and to a lesser extent e-cigarettes and individual respondents) consider unlikely;
- an increase of illegal consumption is expected by tobacco stakeholders as well as by most of other stakeholders, except the public health sub-group;
- in line with that, tobacco stakeholders foresee negative economic effects on their value-chain (i.e. adverse effects on income, employment etc.) which are instead unlikely for public health and e-cigarettes stakeholders;
- finally, public health stakeholders expect an increase in tax revenues whereas tobacco stakeholders anticipate a decline.

On the other hand, there seems to be a higher degree of consensus stakeholders on a few likely effects of an increase in the taxation of cigarettes:

- an increase in the volume of 'cross-border shopping' from low-price to high-price EU countries;
- an increase in the substitution of cigarettes with 'novel products' such as e-cigarettes and heated tobacco (considered likely especially by e-cigarettes stakeholders);
- moderately likely substitution of cigarettes with other tobacco products.

**Figure 6 – Question: An increase in the taxation of cigarettes may have various impact. Please indicate the likelihood of the following in your country.**





**Notes:** 'TOB ext' - tobacco and cross-sector stakeholders; 'ECIG' - e-cigarettes stakeholders; 'PH' - public health stakeholders; 'OTH' - other non-individual stakeholders; 'INDV' - individual respondents. Questions left blank are not computed in the statistics; 'don't know' answers are computed but not displayed.

➤ **OTHER TOBACCO PRODUCTS**

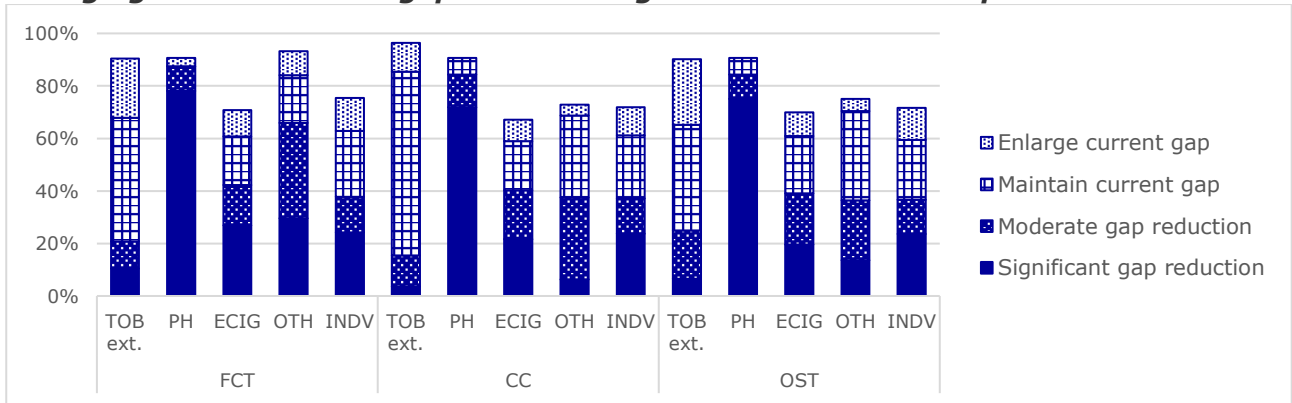
As regards tobacco products other than cigarettes, the public consultation investigated stakeholders' perceptions on current price levels in their countries and whether the current 'tax gap' between the level of taxation of cigarettes and of other products should be maintained, reduced or enlarged in the future. This also relates to the issue of cross-product substitution, which is considered a 'major problem' by the majority of public health stakeholders and to a more limited extent by tobacco stakeholders and the 'other' subgroup. Coherently, in public health stakeholders' view the price of all tobacco products are invariably 'too low', whereas the positions of other stakeholders appear more articulated:

- as regards fine-cut tobacco (FCT), positions did not differ from those on cigarettes, with tobacco stakeholders and to a less extent individuals considering prices as too high, e-cigarettes stakeholders viewing them as too low, and the majority of 'other' subgroup stating they are all-right;
- the price level of cigars and cigarillos seems generally fine for tobacco stakeholders, while it is too high for most of individual respondents;

- pipe tobacco prices are appropriate or so for large shares of respondents (except public health stakeholders), but water pipe tobacco appears too expensive according to tobacco stakeholders or too affordable according to the 'other' subgroup.

From the results summarised in Figure 7, it emerges that within all groups of stakeholders – except the tobacco sub group– the positions in favour of tax gap reduction prevail. This seems particularly the case with fine cut tobacco , while for other products 'no change' views were slightly more frequent.

**Figure 7 – Question: (...) Please indicate whether a possible revision [of minimum rates for products other than cigarettes] should lead to maintaining, reducing or enlarging the current 'tax gap' between cigarettes and the other products.**

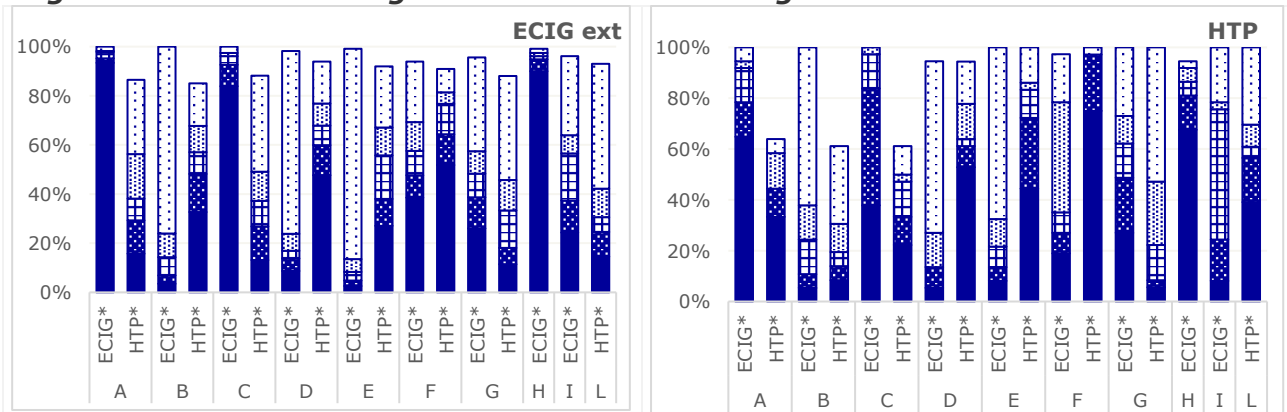


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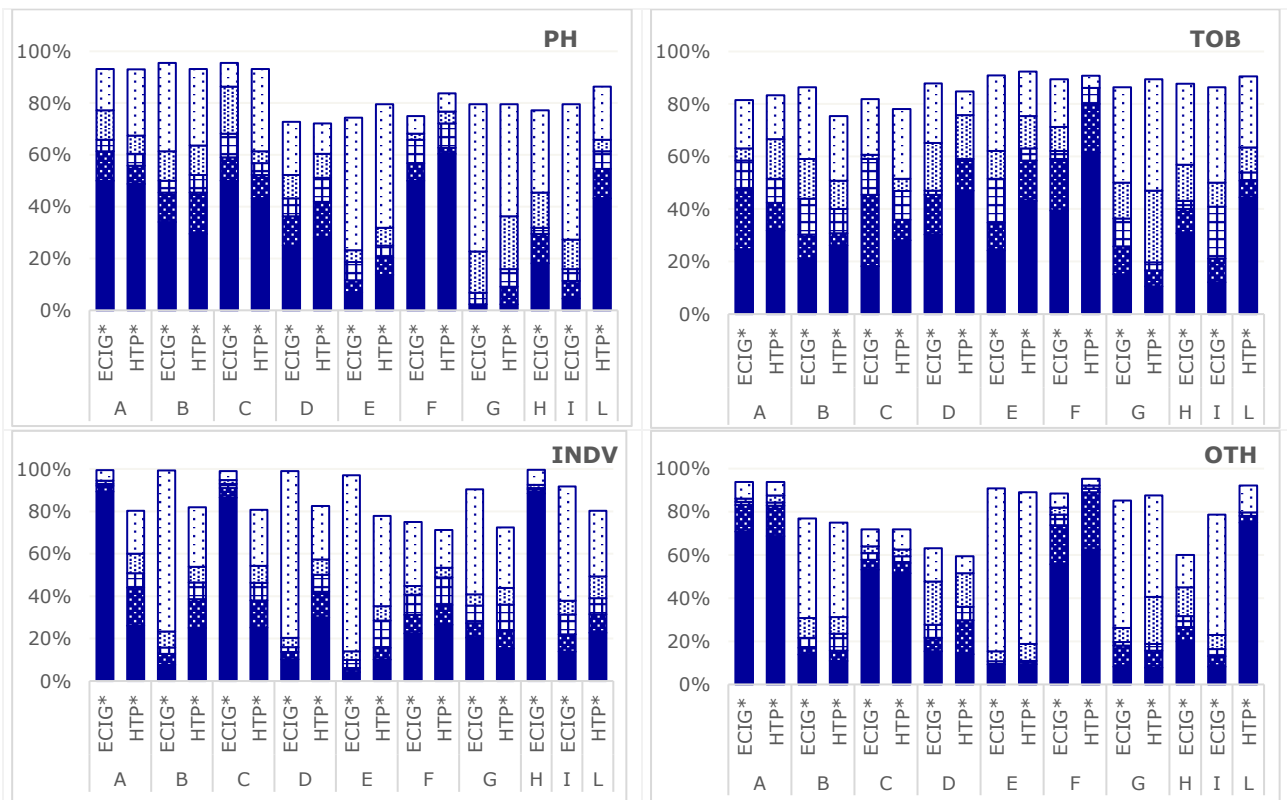
#### 4. Summary of Results – Novel Products

The last part of the questionnaire was targeting novel products, in particular e-cigarettes and heated tobacco products (HTP). In the first place, stakeholders were asked to provide their feedback on a set of possible underlying arguments variously raised in favour or against the inclusion of such products among excisable goods. As expected, positions vary between stakeholders' groups, although on a few subjects there is some consensus (see Figure 8). The individual respondents' feedback was generally coherent with e-cigarettes stakeholders' view, confirming that this group was primarily made of e-cigarettes consumers.<sup>11</sup>

**Figure 8 – Question: (...) Please express your agreement with the following arguments in favour or against the taxation of e-cigarettes and HTP**



<sup>11</sup> This clearly emerged also from qualitative answers in the questionnaire and the contents of the additional statements submitted.



**Legend: arguments in favour or against the taxation of e-cigarettes and HTP**

- A. It is much less harmful than conventional tobacco products
- B. It may represent a gateway to nicotine addiction for non-smokers
- C. It may support smoking cessation
- D. It is essentially a substitute product of conventional cigarettes so it should be treated consistently to ensure fair competition
- E. The consumers' substitution of cigarettes with it may cause undue tax revenue losses that should be avoided
- F. There is a need to harmonise its taxation at EU-level to avoid that national taxes become an obstacle to the functioning of the EU market
- G. There is insufficient data and information on its market to properly design a tax regime
- H. \*\*E-cigarettes are not tobacco products so they should not be subject to tobacco excise legislation
- I. \*\*E-cigarettes products can be easily produced and moved illicitly, so the enforcement of taxation and control against frauds would be difficult and expensive
- L. \*\*Heated tobacco is essentially a different product from smoking tobacco so it cannot be comprised under any of the existing tax categories

- Disagree
- ▨ Partly disagree
- ▤ Neutral
- ▧ Partly agree
- Agree

**Notes:** 'ECIG ext' – e-cigarettes and cross-sector stakeholders; 'TOB' – tobacco (only) stakeholders; 'PH' – public health stakeholders; 'OTH' – other non-individual stakeholders; 'INDV' – individual respondents; 'HTP' – HTP stakeholders. Questions left blank are not computed in the statistics; 'don't know' answers are computed but not displayed.

(\*) In bar-charts ECIG\* and HTP\* (marked with an asterisk) refer to the product and not to the stakeholder group.

(\*\*) these statements refer to only one of the two novel products, so no comparison of results is envisaged.

At the general level, the results of the public consultation indicate that while e-cigarettes (and partly heated tobacco products) stakeholders do differentiate between products, all other stakeholders tend to provide similar answers for the two products. Overall, the overall scarcity of neutral feedbacks and the fact that quite frequently views within the same subgroup are split should be noted. At a more granular level, the following results emerged:

- Stakeholders from all subgroups mostly agree that novel products are possibly less harmful than conventional tobacco smoking. On heated tobacco products there are more discrepancies of views, with mixed opinions among tobacco stakeholders and individual respondents, and substantial disagreement among e-cigarettes stakeholders. A similar positive feedback was registered with the support offered by novel products to smoking cessation although, again, views on heated tobacco products are more polarised. E-

cigarettes stakeholders firmly rejected the argument that these products may represent a 'gateway' for nicotine addiction, but seem to agree that this could be the case with heated tobacco products. All other subgroups posted mixed and often conflicting views in this respect, clearly reflecting how the matter is still highly controversial.

- Novel products stakeholders generally agree that while heated tobacco products are essentially a substitute for conventional cigarettes, e-cigarettes are less so. The positions of other stakeholders on e-cigarettes were quite mixed, but to some extent they seem to agree that heated tobacco products should be treated as a substitute product to ensure fair competition. At the same time the majority of respondents in all subgroups (except individual respondents) consider heated tobacco products as different from other tobacco products thus requiring a separate tax category. Irrespective of their substitution potential, only a small share of respondents – especially among tobacco stakeholders – concur that these products can cause losses of tax revenues for the MS.
- Of all the possible 'arguments' tested a high degree of consensus was found with the need to harmonise the taxation of heated tobacco products to avoid the drawbacks of legal and administrative fragmentation among countries. The same argument in respect of e-cigarettes appears more divisive, also within the e-cigarettes subgroup.
- Finally, stakeholders agree that the lack of data and information should not represent an obstacle for the tax harmonisation of heated tobacco products. A similar view was expressed on e-cigarettes by all stakeholders except novel tobacco stakeholders. Similarly, stakeholders did not see major problems linked to the difficulty or cost of enforcing a tax regime on e-cigarettes with the exception, again, of novel products stakeholders that have more neutral or conflicting views on this point.

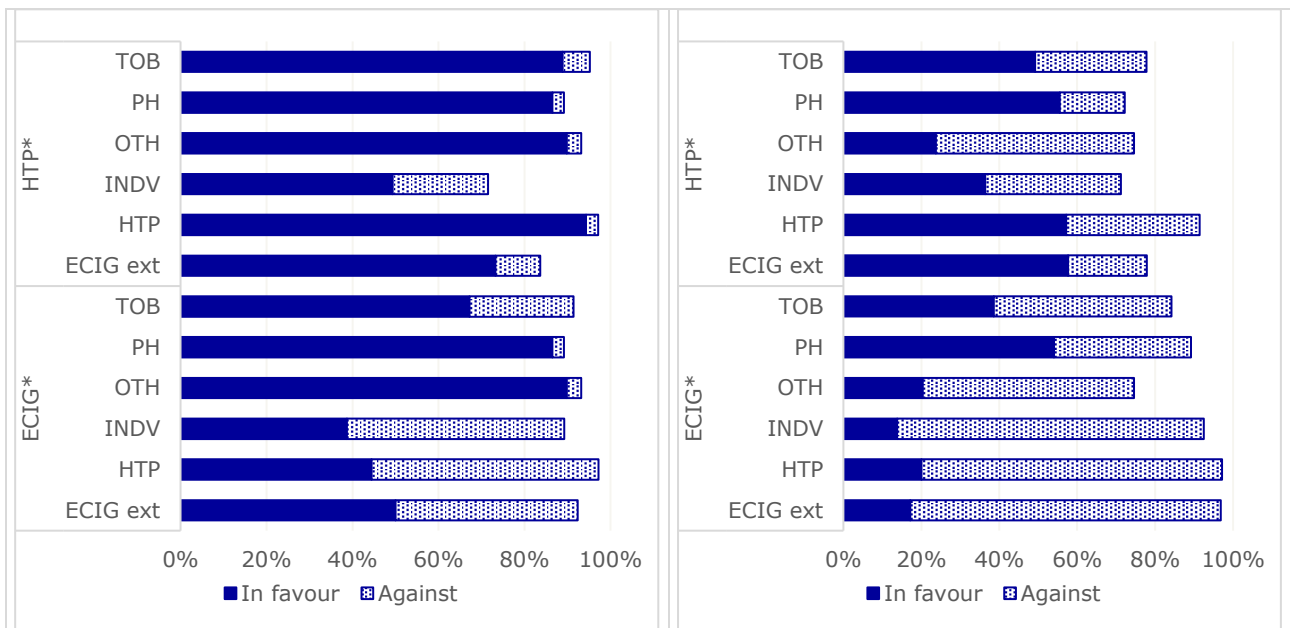
The following Figure 9 shows stakeholders' position with respect to two hypothetical EU-level measures for novel products, namely (1) the adoption of a common fiscal definition and category (irrespective of setting a positive tax) and (2) to establish a (positive) EU minimum excise duty rate on them. Evidently the two measures are connected and in particular the first would be a pre-requisite for the second.

The results indicate a vast support to the explicit harmonisation of heated tobacco products tax regime at EU-level including – with some exceptions – the setting of a minimum rate. Interestingly, most heated tobacco products stakeholders would also be in favour of an EU minimum rate. This is possibly explained by the fact that often heated tobacco products stakeholders at all levels have also an interest in various categories of tobacco products, and in this respect an EU minimum rate may reduce the risk of distortive tax-induced substitution between products. The relative majority of tobacco stakeholders and of e-cigarettes stakeholders would support a taxation of heated tobacco products between 30% and 50% of its retail price (plus VAT), while the majority of individual respondents, public health stakeholders and the 'other' subgroup were in favour of a lighter taxation (i.e. less than 10% of retail price plus VAT or VAT only).

When it comes to e-cigarettes, stakeholders' positions are less clear-cut. For novel products stakeholders the adoption of a harmonised tax category at EU level is divisive, and also among individual respondents – who are to a large extent e-cigarettes consumers – unfavourable feedback outnumbered favourable feedback slightly. All other respondent subgroups are instead clearly in favour of such measure. As regards the establishment of an EU minimum rate, favourable feedback prevail only among public health stakeholders. The tobacco stakeholders appeared divided on this matter while all other subgroups are clearly against it. Coherently, according to e-cigarettes stakeholders and individual respondents the tax burden on the price of e-cigarettes should be limited to VAT, whereas for a minority but non-negligible share of public health stakeholders (ca. 28%) there is need to tax e-cigarettes significantly.

**Figure 9 – Question: Which measures a hypothetical EU-level tax regime for e-cigarettes / HTP contain?**

<b>A) To adopt a common definition and tax category</b>	<b>B) To establish an EU minimum excise duty rate</b>
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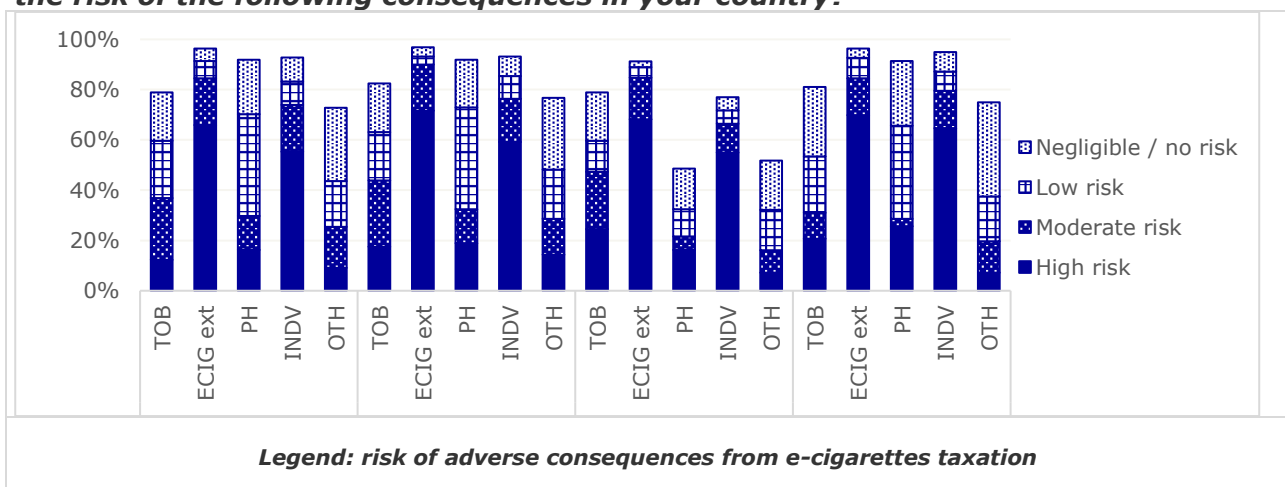


**Notes:** 'ECIG ext' – e-cigarettes and cross-sector stakeholders; 'TOB' – tobacco (only) stakeholders; 'PH' – public health stakeholders; 'OTH' – other non-individual stakeholders; 'INDV' – individual respondents; 'HTP' – HTP stakeholders. Questions left blank are not computed in the statistics; 'don't know' answers are computed but not displayed.

(\*) In bar-charts ECIG\* and HTP\* (marked with an asterisk) refer to the product and not to the stakeholder group.

Finally, the public consultation collected the stakeholders' outlooks on the possible risks of unintended consequences deriving from the taxation of e-cigarettes, and namely massive shifts of current consumers to 'do-it-yourself' practices, or to illicit products, or to conventional tobacco products, as well as possible competitive disadvantages for SMEs against big players. In these respects, respondents' views are essentially polarised by subgroup with limited differentiation across the type of effects expected. Specifically, e-cigarettes stakeholders - and to similar degree individual respondents - anticipate high risks for all the adverse effects considered<sup>12</sup>, while public health stakeholders - and to similar degree the 'other' subgroup - expect limited or no risk at all. Tobacco stakeholders are mostly in a neutral position: they mostly anticipate some risk of consumers' switching to illicit products and to 'do-it-yourself', but anticipate much less that consumers would possibly go back to conventional tobacco products (Figure 10).

**Figure 10 – Question: If an EU-level tax regime for e-cigarettes is introduced, what is the risk of the following consequences in your country?**



**Legend: risk of adverse consequences from e-cigarettes taxation**

<sup>12</sup> Evidently, it is unclear how the majority of consumers can switch at the same time to illegal products, 'do-it-yourself' and back to conventional tobacco, so the feedback from these subgroups should be probably interpreted as a general perceived risk of a massive market disruption and, perhaps, the impossibility to foresee clearly its direction.

- A. A massive switch by consumers to 'do-it-yourself' products
- B. A massive switch by consumers to illicit non-taxed products
- C. SMEs significantly penalised against big players
- D. A massive return of consumers to conventional tobacco products

**Notes:** 'ECIG ext' – e-cigarettes and cross-sector stakeholders; 'TOB' – tobacco (only) stakeholders; 'PH' – public health stakeholders; 'OTH' – other non-individual stakeholders; 'INDV' – individual respondents. Questions left blank are not computed in the statistics; 'don't know' answers are computed but not displayed.

## 5. Conclusions

The stakeholders' opinions on the issues raised in the public consultation generally diverge in accordance with the specific interests of the respondent. So public health stakeholders invariably support stricter tax measures on tobacco, while the tobacco industry and trade stakeholders advocate for minimal or no revision of the current situation. If any, a revision of the fixed amount minima seems comparatively more supported than a revision of the minimum incidence of excise duty on price. Whether higher tax rates would lead to a reduction of smoking prevalence or to an increase of illegal products are very divisive issues. Conversely, there is a moderate agreement that some substitution of cigarettes with other tobacco products, or novel products, as well as an increase of cross-border shopping are likely consequences.

With respect to novel products, the widespread concern among e-cigarettes stakeholders and consumers about the possible adverse effects of e-cigarettes taxation should be noted, although a significant share of operators would seemingly support a harmonised definition with no minimum rate attached to it. More consensus can be found on the need to harmonise heated tobacco products – a need that is supported by the industry itself to overcome the current legal fragmentation. The establishment of positive rates on novel products inevitably call into question the relative risk and contribution to smoke quitting, but as the public consultation results show, the positions of public health stakeholders on this are still not uniform.