



European Shisha Community Alliance
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Directorate-General for Taxation and
Customs Union
Directorate C — Indirect Taxation and Tax
Administration
Unit C-2 Indirect taxes other than VAT
European Commission
B-1049 Brussels

22nd of June 2021

Dear Sir/Madam,

Subject – Public Consultation on Tobacco taxation – excise duties for manufactured tobacco products

I am writing to you on behalf of *The European Shisha Community Alliance* (ESCA). We aim to represent the thousands of manufacturers, distributors, retailers and lounges that are involved in the sale of shisha - also called water-pipe, cachimba, nargile and mu'aseel - in Europe.

I am writing to you on behalf of our members to convey our views for inclusion in the *public consultation with respect to the Revision of Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco products*.

It is important to note that shisha is a unique product and is fundamentally different from other tobacco products. Shisha is a centuries old social tradition, and it contains the lowest amount of tobacco of any tobacco product¹.

¹ On average shisha products in the EU contains between 15% and 20% tobacco leaf with the remainder consisting of glycerine, fructose, and flavourings.

The vast majority of shisha users enjoy it monthly or weekly. For example, in **Spain** a recent study² shows that **94% of consumers use shisha less than once a week** and two thirds of shisha users are able to abstain completely from all tobacco products for 2 to 3 months or more after using shisha. In **Germany** **shisha is used on average 2 to 3 times per week**³ and in the **United States**, the Centres for Disease Control claims that on average **89% of users do so less than once per month**⁴.

It is predominantly served and shared in shisha lounges and requires cumbersome equipment and expertise to prepare. One shisha session takes up to 20 minutes to prepare and between 45 minutes and an hour to consume. It is heated at a much lower temperature than cigarettes and therefore does not produce tobacco smoke but rather a vapour that contains fewer and lower concentrations of constituents normally found in cigarette smoke, including nicotine^{5,6,7}. In short, it is a very different product from other tobacco and nicotine products characterised by social and occasional (infrequent) use. Of course, it is not without risk but crucially, it is not typically consumed daily and compulsively like other tobacco products. We believe that this is because it is low in tobacco and nicotine and is cumbersome and time consuming to set up and use. It requires skill, expertise and patience. These features also limit its appeal and practicality for minors as it cannot be concealed (from parents or in schools for example) or carried around easily. That being said, ESCA firmly believes that shisha is a social product for adults only and should not be accessible to minors.

Currently, the level of contraband or counterfeit shisha products has reached over 90%⁸ in some EU Member States resulting in a significant loss of potential tax revenue. Furthermore, sales of shisha have been driven 'under-the-table' and away from licenced or reputable retailers that abide by existing laws that prevent minors from purchasing tobacco products. This feature of the market threatens the sustainability of the legal shisha sector (i.e. legally operated manufacturers, distributors, retailers and lounges) which ESCA was formed to represent. The underlying conditions that are leading to the loss of tax revenue and regulatory control within the shisha sector includes:

1. **A significant range in the excise tax rates for shisha tobacco between EU Member States.** This ranges from 22 euro per kg to 159 euro per kg⁹ creating an attractive incentive for criminal groups.

² [Kantar - Study of Shisha Usage in Spain, May 2021.](#)

³ German Federal Institute of Risk Assessment, Waterpipe - Frequently Asked Questions, Online, October 17, 2011

⁴ Characteristics of Hookah Tobacco Smoking Sessions and Correlates of Use Frequency Among US Adults: Findings From Wave 1 of the Population Assessment of Tobacco and Health (PATH) Study

Robinson, Wang et al, Nicotine & Tobacco Research, Volume 20, Issue 6, June 2018, Pages 731–740,

⁵ Shihadeh, A (21 July 2002). "Investigation of mainstream smoke aerosol of the argileh water pipe". *Food and Chemical Toxicology*.

⁶ Wakeham, H. "Recent Trends in Tobacco and Tobacco Smoke Research". *The Chemistry of Tobacco and Tobacco Smoke*. Boston, MA: Springer.

⁷ Cooperation Centre for Scientific Research Relative to Tobacco. A Preliminary Comparison of flavoured waterpipe tobacco aerosol with cigarette smoke. P Wilkinson, Oct 2019

⁸ At ESCA we estimate that in France illicit trade in shisha tobacco is over 90%.

⁹ Total Excise paid for the most popular shisha brands in the respective market: Spain 22 euro per kg, Germany 27 euro per kg and France 159 euro per kg.

2. The **manufacturing of low-quality illegal shisha tobacco is not uncommon**, as it does not require complex packaging, printed material or manufacturing machinery¹⁰.
3. The shisha category is very small relative to the overall tobacco sector and therefore attracts a lower level of enforcement attention. As a consequence, the opportunities for counterfeiting and / or smuggling shisha products has attracted the interest of organised criminal groups. Such groups are further able to take advantage of **open borders across the EU to easily transport product** from Member States where taxes are low to Member States where taxes are high¹¹.
4. **'Bulk' tobacco is widely available for sale** from Europe and the Balkans¹². This tobacco is easily mixed with flavours to create a counterfeit version of shisha tobacco of very poor standard and quality.
5. Poor quality counterfeit tobacco is widely available in the EU and is **transported, stored and sold in unmarked plastic containers**¹³.

High excise rates on shisha have not delivered increased tax revenues or protected public health. *In markets where excise rates for waterpipe tobacco are high, such as France, illegally imported and counterfeit waterpipe tobacco (shisha) is widely available and consumption continues to grow in an uncontrolled and unregulated manner.*

While reliable studies on the exact size of the shisha economy in Europe do not exist, we believe it is important to consider the following:

1. It generates 200 million¹⁴ euro for European governments (and as stated above, we believe this represents only 1/3¹⁵ of what European governments should be collecting from the sector)
2. We estimate that there are 11,000¹⁶ shisha serving hospitality venues (all small and microbusinesses) in the Union, concentrated largely in countries with large Turkish, Arabic and North African populations like Germany, France and Spain. Notably, for the majority of these venues, shisha sales account for the majority of revenue.
3. We estimate that 13,550 businesses are engaged in the wholesale and retail sale of shisha products and accessories.
4. Shisha and shisha related businesses employ over 60,000¹⁷ people across Member States of the European Union.
5. We estimate that the majority of tobacco and flavour additives used in legal shisha products sold in the EU are sourced in Europe, principally Germany and France.
6. Legal shisha finished goods are also produced in Germany, Spain and Poland.

¹⁰ https://www.lokalkompass.de/mar/c-blaulich/zoll-hebt-in-nrw-produktionsstaetten-zur-illegalen-herstellung-von-wasserpfeifentabak-aus_a1480883

¹¹ [EU anti-fraud official: Tobacco smuggling is 'major source' of organised crime](#), Feb 7, 2017

¹² [Bulk tobacco smuggling increases, worrying OLAF and Commission](#), Aug 29, 2017

¹³ [Do you know what you're smoking?](#) BBC News, June 3, 2018

¹⁴ Study on Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, Final Report Volume 1, May 2017. Page 105, Table 15.

¹⁵ Report from the commission to the council on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, 12/1/2018, COM (2018) 17 final

¹⁶ ESCA Internal estimates = Lounges 10,250, Restaurant, Bar, Nightclub 750, General Retailers 12,900, Dedicated Retailers 650.

¹⁷ Employed in over 25,000 legally operating shisha related businesses including factories, lounges, bars, nightclubs, restaurants, retailers, delivery, warehousing and accessories. ESCA Internal estimates.

In short there is an important shisha value chain in the EU that requires further quantification and study.

At ESCA we believe that the most effective way to maximise revenues and regain regulatory control over this sector is to:

1. **Set excise tax rates on shisha tobacco based on the proportion or weight of raw tobacco contained in the finished product** that allows for reputable manufacturers of legally manufactured and compliant products to operate. There are examples from around the world, such as in Russia, where a new tax structure based on the weight of raw tobacco not exceeding 20% of product has converted a 100% illegal market to a 100% legal market almost overnight resulting in increased tax revenues for the government and greater control of the supply chain for regulatory purposes. For example, ingredients, packaging and reporting.
2. **Introduce a separate tax category for shisha tobacco** to take into account the low level of tobacco content, the unique cultural characteristics and occasional usage.
3. Increase enforcement and education action for shisha retailers and venues to **ensure that staff are aware of the existing minimum age laws** and the legal obligations for tobacco sale and usage. ESCA would be pleased to support law enforcement authorities in this regard. Indeed, some of our members are already doing so. We are open to **cooperate with regulators and law enforcement agencies in the fight against illicit trade in the European Union**. We have an extensive network of retailers and wholesalers which we are willing to approach for help in combatting illicit trade. We remain willing to support regulators and the law enforcement community into the future.

Our objective with this submission to the public consultation is to introduce the category in broad terms and provide pointers for a more effective manner to tax such a unique product than is currently the case. Our concern is that shisha has traditionally been a poorly understood category by regulators largely because it had not had any representation in the policy making processes. This has led to its regulation and taxation alongside other categories with which it has little similarity.

Yours faithfully,

On behalf of the Members and Partners of the European Shisha Community Alliance (ESCA)