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Indirect taxes other than VAT

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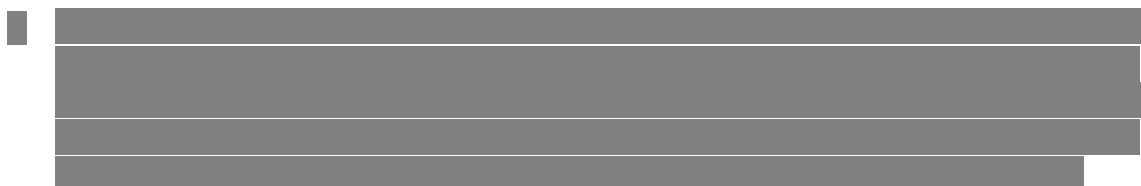
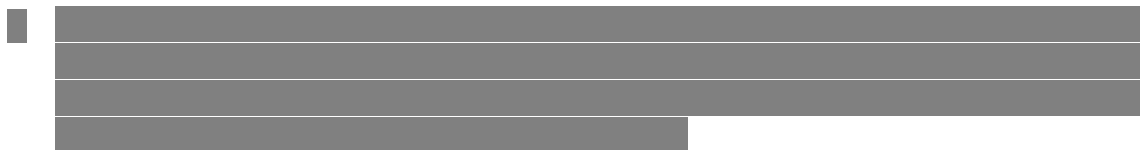
1. ADOPTION OF THE AGENDA



2. PLANNING OF UPCOMING MEETINGS AND EVENTS OF RELEVANCE TO TRADERS



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5. Treatment of processed raw tobacco

A Trade Federation **Delegation**¹⁴ presented the diverging interpretations of Eko-Tabak judgement and the concerns of Member States (available on [CIRCABC](#)). The **Delegation** stated the key issues and briefly explained each one of them:

1. Eko-Tabak judgement
 - a. Background information
 - b. Examples of unmanufactured tobacco (raw tobacco)
 - c. Examples of smoking tobacco
 - d. Diverging interpretation in EU Member States & Impact
2. Smoking test
 - a. Background information
 - b. Practical case
3. Conclusion
4. CECCM's suggestions

The Trade Federation **Delegation**¹⁵ concluded by underlying the following points:

- They argued that the smoking tests should not be applied for excise classification, and referred to Advocate General Kokott who maintained that the excise classification should be performed on the basis of the Excise Directive and not the Combined Nomenclature
- They acknowledged that there is a major issue with the movement of illegal tobacco in the EU and are willing to collaborate with the Commission and the Member States to find a practical and efficient solution as they consider EMCS to be ineffective for this issue
- They proposed to reconsider the distinction of the application of customs rules and excise rules for treatment of excisable goods
- Regarding to Eko-Tabak, they recognised that the system was abused by fraudulent traders and suggested to consider applying targeted measures to tackle that issue. One solution would be to review the Tobacco Excise Directive to include clearer definitions. Since this option is time consuming, a more immediate solution would be to impose rules through a system of licensing and a system of control of movement (EMCS)

A Trade Federation **Delegation**¹⁶ highlighted that any broadened interpretation of the smoking tobacco definition that includes processed raw tobacco as excise goods, will pose considerable threat to their business and their members, including the livelihood of thousands of tobacco farmers and farm workers. They added that recent interpretations of the smoking tobacco definition have led some customers to request that they operate via EMCS which is not feasible as they do not have Tax Warehouses, and that caused a lot of

¹⁴ Confederation of European Community Cigarette Manufacturers (CECCM)

¹⁵ CECCM

¹⁶ CELCAA

consternation to their members. The same Trade Federation **Delegation** requested that the Commission and the Member States try to understand how their business works, and to craft the legislation so as to not put their products under excise tax, otherwise their business will be less competitive with the tobacco growers and processors outside the EU.

They emphasised that they ship cartons of 40-200 kilograms which contain products not intended for retail sale. Another Trade Federation **Delegation**¹⁷ shared the same concerns as CECCM and CELCAA, and explained that the disputed interpretation has created substantial obstacles to the free circulation of goods with obvious economic impact to European smaller companies. They supported that unmanufactured tobacco should not be excisable and subjected to EMCS, and that EMCS can work only if harmonization through the Union is ensured. A third Trade Federation **Delegation**¹⁸ fully supported the point of view and arguments of CECCM.

A Member State **Delegation**¹⁹ was of the opinion that this subject could only be addressed at the European level by a joint approach, and that steps taken individually by Member States present a risk of fragmentation and would cause problems in the EMCS for economic operators. Another Member State **Delegation**²⁰ stated that they will provide their position at the appropriate meeting or forum. A Trade Federation **Delegation**²¹ concurred with the European joint approach that was proposed earlier, and that the current forum is not the appropriate one to discuss policy measures, and suggested that a Fiscalis PG would be more ideal.

A Trade Federation **Delegation**²² from the wine industry argued that the companies in their industry are mainly small family businesses and use the EMCS without any issues. The **Chairman** underlined that the problem is not EMCS but the requirement to have Tax Warehouses, and assured that all the proposed suggestions will be taken on board by the Commission. In addition, the **Chairman** identified two aspects of the issue especially regarding illicit trade: (a) the classification issue between raw and smoking tobacco, (b) the use of EMCS without involving Tax Warehouses which should be possible within the next two years. A Member State **Delegation**²³ noted that it is very difficult to register and track the raw tobacco producers in EMCS. In our Member State, the raw tobacco producers and the producers of partially processed tobacco are registered in a national register. A Trade Federation **Delegation**²⁴ clarified that the tobacco industry is not questioning the efficiency of EMCS in general and also not the cost. Rather the delegation noted that there is a much larger number of illegal traders in tobacco compared to the wine industry.

¹⁷ European Smoking Tobacco Association (ESTA)

¹⁸ European Cigar Manufacturers Association (ECMA)

¹⁹ MS-DE

²⁰ MS-ES

²¹ CECCM

²² ETRC

²³ MS-RO

²⁴ CECCM

Having encountered problems with other Member States concerning the definition of raw and smoking tobacco, a Member State **Delegation**²⁵ explained that the main issue is the definition and not the classification; for example, according to CECCM, tobacco refuse is considered raw tobacco, whereas according to the excise definition in Article 5, it is considered manufactured tobacco. Therefore, the Member State **Delegation** supported that the nature of the product must be taken into account, and acknowledged that it is a very thin line between raw and manufactured tobacco. Nevertheless, further discussions should be initiated in order to come to a harmonised conclusion.

COM pointed out that the Commission cannot provide final interpretation of the legal text as this is conducted only by the Court of Justice. **COM** noted that this item will be added to the next ITEG meeting in November 2018 in order to further discuss the Eko-Tabak judgement, the possibilities to reduce illegal trade, and the increase of monitoring and control. A Fiscalis PG will be also planned for the discussion with the trader federations. On the longer term, the Commission is looking into the Tobacco Directive with possible revisions concerning the rates, structures, e-cigarettes, and heated tobacco products. **COM** reminded that a questionnaire was sent to the Member States where they can disclose their views including their views on the definition of Article 5 of the Tobacco Directive.

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