EUROPEAN COMMISSION
DIRECTORATE-GENERAL
TAXATION AND CUSTOMS UNION
Indirect Taxation and Tax administration
Indirect taxes other than VAT

Brussels,
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MEETING REPORT

1. Subject Directive 2011/64/EU

2. Date and Place 18 July 2018, Brussels

3. Participants DG TAXUD: [redacted]
DG SANTE: [redacted]
Al Fakher Tobacco Factory: [redacted]

4. Summary of the discussion

Al Fakher, requested a meeting to provide more information about the water-pipe tobacco category, including the levels of illicit trade and counterfeit, volumes and user profile.

Al Fakher is one of the largest water-pipe tobacco producers and is active in the majority of the EU Member States. They recently opened a factory in Poland. Al Fakher produces water-pipe tobacco from tobacco leaves with low nicotine content, grown in Poland, Germany and France. Water-pipe tobacco consists for a large part (70-85%) from other substances (glycerine, flavours) than tobacco. Water-pipe tobacco is consumed at home or in lounges, depending on the market. Internet sales and home production of water-pipe tobacco are low. Some states in the US decided to license the lounges as they might contribute to the high level of illicit trade.Water-pipe tobacco is currently classified as 'other smoking tobacco' in Directive 2011/64/EU and the tax rates applies to the total weight of the product, including other substances than tobacco.

Al Fakher is of the opinion that this relatively high tax rate is responsible for the high level of illicit trade. They estimate that 60 to 70% of the water-pipe tobacco consumed in the EU is illegally imported or manufactured. The retail selling price of the products differ from 3.05 euro for a package of 50 grams in Germany to 8.75 euro in France and 14.40 euro in Cyprus. Al Fakher estimates that the level of illicit trade substantially increases in a country if the tax rate is higher than 40 euro per kilogram.

According to Al Fakher, a separate category for water-piper tobacco in Directive 2011/64/EU would help to reduce the incentive for illicit trade. They assume that Member States will set a lower rate for water-pipe tobacco if the Directive allows setting a separate rate only applying to water-pipe tobacco. Moreover, they expect that a part of the industry which is currently operating illegal will move to the legal market because the incentive would be reduced. DG TAXUD noted that in COM 2018 (17) Report from the Commission to the Council on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, the Commission concluded that the available data on water-pipe tobacco is too limited and unreliable to support a major tax reform.

Al Fakher emphasises that the users of water-piper tobacco cannot be compared with cigarettes smokers. The amount of nicotine by the consumption of the two products is also very different. Consuming water-pipe tobacco is more about the 'experience' and not so much about the consumption of a tobacco product. Al Fakher is therefore looking into alternatives for tobacco, which offer the same experience but without the harmful substances, similar to 'heated tobacco products'. Some of the herbal products without tobacco are also taxed in Member States, due to Article 2, paragraph 3 of Directive 2011/64/EU, which states that '*products consisting in whole or in part of substances other than tobacco but otherwise confirming to the definitions of a cigarette, cigarillo/cigar or other smoking tobacco*'. Al Fakher believes this part of the Directive is redundant and should be removed as the products have no link to tobacco products.

Finally, Al Fakher is of the opinion that, if a separate tax category for water-pipe would be created, the risk of the development of borderline products is low because of the specific characteristics of water-pipe tobacco.

Al Fakher agreed that the minutes of this meeting and their contact details would be shared with DG OLAF because of their interest in combatting illicit trade.

Report by: [redacted]

c.c.: [redacted], TAXUD LIST C2 [redacted] (DG SANTE)