



Forest EU
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FOREST EU COMMENTS TO THE COMMISSION PUBLIC CONSULTATION ON GENERAL ARRANGEMENTS FOR EXCISE DUTY - HARMONISATION AND SIMPLIFICATION

I. ABOUT FOREST EU

The Freedom Organisation for the Right to Enjoy Smoking Tobacco in the European Union (Forest EU) defends the interests of adults who choose to smoke or consume tobacco, informs consumers about issues that may affect them now or in the future and engages with politicians, civil servants and the media so the views of informed adults are recognised and considered within the EU's decision-making process.

Founded in the United Kingdom in 1979 the Freedom Organisation for the Right to Enjoy Smoking Tobacco (Forest) has been the leading voice for adults who choose to smoke and non-smoking adults who are tolerant of other people's enjoyment of tobacco.

Forest Ireland was founded in 2010. The launch of Forest EU in 2017 is an extension of our long-term goal to represent the millions of consumers throughout Europe who enjoy smoking tobacco and don't want to quit.

Forest EU is supported by Japan Tobacco International (JTI). Forest EU has an independent organizational structure and represents the consumer, not the tobacco industry. We represent adults who choose to smoke or consume tobacco and don't want to quit. The views expressed by Forest EU are those of Forest EU alone.

We accept there are serious health risks associated with smoking tobacco. For that reason, we do not promote or encourage smoking. We also support that proper information on health risks is made available to consumers. We do however believe that in a free society adults should be allowed to make informed choices without excessive restrictions and if adults choose to smoke that is a matter for them not politicians or unelected regulators.

II. GENERAL COMMENTS

Ensuring that adults in Europe can make the informed choice to get tobacco, a legal product, without excessive restrictions and taxes is the core priority for Forest EU.

Smokers represent 26% of the EU population¹. About 100m adults smoke in Europe. In January 2017, an average of 79.6% of the price of a cigarette pack in the EU was duties and taxes. Smokers contributed €81 billion to the public budgets in excise duties in 2015².

¹ Eurobarometer 458, Attitudes of Europeans towards tobacco and electronic cigarettes:
<http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Survey/getSurveyDetail/instruments/SPECIAL/surveyKy/2146>

² Forest EU Manifesto: <http://forestonline.eu/news/press-releases/european-smokers-group-launches-manifesto>



Forest EU welcomes the opportunity to provide comments on this consultation and appreciates the Commission's efforts to improve the existing legal framework. Forest EU believes that important issues are raised in the consultation and urges the Commission to acknowledge the views of smokers in Europe, a large minority whose rights should be protected. Forest EU has limited its comments to those areas in which it believes it has sufficient experience for those comments to be informed and of value. Forest EU comments below follow the order of the consultation.

III. RESPONSES TO CONSULTATION QUESTIONS

The consultation reads:

“Excise - Acquisition by private individuals

Currently, individuals can transport excise goods, namely alcohol and tobacco, to another EU country without paying excise duty in the country of destination, provided they are for personal use.

Member States can set guide levels to help determine whether such goods are truly meant for personal use. If a traveller is carrying more than the quantity indicated in the guide level then, in the event of a control, the traveller has to show that the excise goods are really for personal use. For instance, if a private individual carries more than 110 l of beer, he or she may be asked if such quantities are indeed intended for personal use as opposed to, for instance, resale (which would be illegal unless excise tax was paid).

Guide levels are a tool to fight tax fraud and tax avoidance. They may also have an important impact on public health since countries resort to excise duties to reduce alcohol related harm.

At present, Directive 2008/118/EC on the general arrangements for excise duty does not allow Member States to set these values lower than certain thresholds (e.g.: 800 cigarettes, 110 l of beer, 90 l of wine and 10 l of spirits).

In parallel, current guide values refer to the concept of personal use. This is a concept that may create difficulties in interpretation at operational level.”

Question

7.1 Are you aware of any negative impact of Directive 2008/118/EC on public health related to tobacco or alcohol consumption?

Answer

No.

Forest EU is unaware of any negative impact on public health of the Directive 2008/118/EC³. Although tobacco consumption is associated with health risks, the Directive 2008/118/EC only details the rules of handling and moving these goods.

Forest EU underlines that the consumption of tobacco products and the associated health risks are already covered by other European and national legislations.

³ Directive 2008/118/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32008L0118>



Should the Commission wish to open further public consultation on this issue or make any policy change to the Directive 2008/118/EC, Forest EU calls the Commission to conduct a comprehensive evaluation on this issue beforehand and base any consultation or proposal on the results of this evaluation.

Question

7.4 How useful would the following measures be to mitigate these negative impacts on health?

- Lower the EU minimum thresholds of the guide levels in the Directive
- Allow national adjustments of the guide levels to prevent disproportionate negative effects on excise tax collection
- Allow national adjustments of the guide levels to prevent disproportionate negative effects on public health
- Allow national adjustments of the guide levels by removing the EU minimum thresholds

Answer

Not useful.

Article 32 of the Directive currently reads:

“3. For the purposes of applying paragraph 2(e), Member States may lay down guide levels, solely as a form of evidence. These guide levels may not be lower than:

(a) for tobacco products:

-cigarettes: 800 items,

-cigarillos (cigars weighing not more than 3 g each): 400 items,

-cigars: 200 items,

-smoking tobacco: 1,0 kg;”

Forest EU considers that lowering the minimum thresholds established by the Directive would not serve address any proven issue but would restrict smokers' legal alternatives. Forest EU underlines that the consumption of non-duty-paid or counterfeited tobacco products might increase if thresholds were lowered.

The consultation reads:

“Problem outline: currently, the Directive's guide levels refer to the concept of personal use. Personal use is a concept that may create difficulties in interpretation at operational level.

Option for improvement: increase legal certainty and operational guidance for authorities and individuals by referring to an appropriate concept (for instance: average yearly personal consumption, for which concrete statistics are available).”

Question

7.5 Should legal certainty be improved by further specifying the concept of personal use?

Answer

No.

Article 32 of the Directive currently reads:



“1. Excise duty on excise goods acquired by a private individual for his own use, and transported from one Member State to another by him, shall be charged only in the Member State in which the excise goods are acquired.

2. To determine whether the excise goods referred to in paragraph 1 are intended for the own use of a private individual, Member States shall take account at least of the following:

- (a) the commercial status of the holder of the excise goods and his reasons for holding them;
- (b) the place where the excise goods are located or, if appropriate, the mode of transport used;
- (c) any document relating to the excise goods;
- (d) the nature of the excise goods;
- (e) the quantity of the excise goods.”

Forest EU believes that the wording of Article 32 currently gives Member States sufficient legal clarity to determine if tobacco goods are used for “personal use” or not.

IV. CONTACT

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