



2.10.2024

NOTICE TO MEMBERS

Subject: Petition No 0107/2024 by Juhani Järvinen (Finnish) on an alleged discrimination against the trade of electronic cigarettes in Finland

1. Summary of petition

The petitioner complains that the Finnish state has allegedly put the electronic cigarette trade in an uncompetitive position compared to other companies in Finland and other EU countries. He explains that an excise duty and high VAT are imposed on the sale of glycerine or other food flavourings and liquids used in e-cigarettes in e-cigarette shops. He considers that the fact that e-smoking is treated in the same way as smoking should not be a reason to prevent trade. Therefore, he calls for measures to eliminate unequal treatment, either by putting all traders on an equal footing from a fiscal point of view and stopping imports for the consumer, or by removing the excise duty requirement in the Tobacco Act for nicotine-free liquids.

2. Admissibility

Declared admissible on 30 April 2024. Information requested from Commission under Rule 227(5) (New Rule 233(5)).

3. Commission reply, received on 2 October 2024

The Commission's observations

Taxation of liquids (with or without nicotine) for electronic cigarettes is not harmonised at EU level and does not fall under the scope of the Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco¹ (Tobacco Taxation Directive). Article 1(3) of Council Directive (EU) 2020/262 laying down the general arrangements for excise duty² allows Member States to levy taxes on products other than the harmonised excise

¹ OJ L 176, 5.7.2011, p. 24.

² OJ L 58, 27.2.2020, p. 4.

goods, provided that they do not, in trade between Member States, give rise to formalities connected with the crossing of frontiers. Hence, the application of excise duty for liquids (with or without nicotine) for electronic cigarettes falls under the national competence of Member States which may decide the scope of taxation.

Article 110 the Treaty on the Functioning of the European Union³ prohibits Member States from imposing, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. According to the information available, Finland imposes excise duty on products that are manufactured in Finland or that are sent or transported from other EU countries or non-EU countries and received in Finland⁴.

The Commission is working to update the legal framework for tobacco and related products in light of market developments. There is ongoing work to revise the Tobacco Taxation Directive, aiming to ensure the proper functioning of the internal market by adapting the rules to new developments and market trends while closing possible loopholes in the EU excise system. The Commission is also evaluating Council Directive 2014/40/EU⁵ (Tobacco Products Directive), in particular to take into account novel products and market developments in line with Europe's Beating Cancer Plan.

Conclusion

The Commission is working to update the framework for tobacco and related products in light of market developments.

3 OJ C 326, 26.10.2012, p. 47.

4 [Excise duty on tobacco - vero.fi](#)

5 OJ L 127, 29.4.2014, p. 1.