



EUROPEAN LEAF TOBACCO INTERBRANCH

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Sweden

Subject: "Fi2020/02469/S2 European Leaf Tobacco Interbranch organization"

**European Leaf Tobacco Interbranch organization - ELTI¹ response to the
Public Consultation from Swedish Ministry of Finance on
New excise duty on other forms of tobacco**

Sales of certain tobacco products raise concerns for Swedish authorities as they undermine tax revenues and public health policies. As a solution, Swedish Ministry of Finance wants to excise all forms of tobacco which are not covered by the European Council Directive on the structure and rates of excise duty applied to manufactured tobacco² (TED) and put additional measures for producers of snus and chewing tobacco.

ELTI members, representing the majority of thousands of EU raw tobacco growers, first and second processors and merchants, and hundreds of thousands of waged workers in the sector are worried about the, even if unintended, possible negative impacts that the Swedish law proposal could determine to the sector.

Raw tobacco, produced in 10 EU Member States (MS), mainly in southern and eastern Europe, does not receive any kind of EU or National subsidy but still remains a supply chain which represents an important and often irreplaceable source of jobs and economy for the rural areas lacking any significant alternative. Tobacco growing and first processing require more manpower per cultivated area than any other crop: from 200 up to 2.500 work hours per hectare per year, where more than 50% is female work.

ELTI agrees with the European Council and the Commission to exclude raw unmanufactured tobacco from the excise tax system since it is an industrial semi-finished product not put up for retail nor intended for the final consumers, and

¹ For a brief description of ELTI please refer to Annex 1 to this note.

² <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF>

actively cooperates with the EU and National Public Authorities to tackle the illicit tobacco market which, among many others, seriously affects our business.

ELTI completely agrees upon the urgency to tackle the illicit tobacco market in the EU but needs to point out that, due the high production cost of the EU tobacco, compared with the world exporters origins (Brazil, India, Pakistan, southern African countries), mainly arising from the cost of labour and of energy, almost all seizures of illicit tobacco carried out in the EU by the Customs and police have involved tobacco originating from third countries.

Considerations:

1. At page 31 of the draft law document, para 3 reads (translated in English), more or less: *“such tobacco is sometimes referred as to raw tobacco just in Custom Tariff. However, this is not a term or concept in tax laws”*.

Indeed the Treaty on the Functioning of the European Union (TFEU) at article 38 point 1, second para and point 3³, while referring to the products listed in Annex I Chapter 24⁴: states that such products are 100% (first-stage processing) agricultural products, hence they cannot be put - by principle - under the scope of the TED. The presence of “refuse” confirms that we are not talking about living green plant matters.

The rationale behind is that green tobacco leaves simply picked from the plant are not marketable if they do not undergo a first-processing. This is also confirmed by the multiple EU Regulations regarding the raw tobacco Common Market Organization (CMO), in force since crop 2010⁵. Green tobacco leaves (cured/dried or not) are not classified in the EU Treaty as an agricultural product, while raw processed but not manufactured tobacco, and the remnants of the processing activity: tobacco refuse, are in the list.

³ Article 38 (ex Article 32 TEC)

1. *The Union shall define and implement a common agriculture and fisheries policy.*

The internal market shall extend to agriculture, fisheries and trade in agricultural products. ‘Agricultural products’ means the products of the soil, of stockfarming and of fisheries and products of first-stage processing directly related to these products. References to the common agricultural policy or to agriculture, and the use of the term ‘agricultural’, shall be understood as also referring to fisheries, having regard to the specific characteristics of this sector.

2. *Save as otherwise provided in Articles 39 to 44, the rules laid down for the establishment and functioning of the internal market shall apply to agricultural products.*

3. *The products subject to the provisions of Articles 39 to 44 are listed in Annex I.*

4. *The operation and development of the internal market for agricultural products must be accompanied by the establishment of a common agricultural policy.*

⁴ TFEU Annex I code 24.01 - Unmanufactured tobacco, tobacco refuse.

⁵ [Council Regulation \(EC\) No 864/2004 of 29 April 2004 amending Regulation \(EC\) No 1782/2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers](#)

Accordingly any rules concerning the establishment and functioning of the internal EU market with respect to unmanufactured tobacco (i.e. tobacco which has undergone first processing but which is not manufactured tobacco) should fall under the jurisdiction of the Common Agricultural Policy (CAP) and its CMO and should not be independently addressed or regulated at individual EU Member State level (except as required to support harmonised rules established at CMO level).

Referring to Arts 38-44 of the TFEU, it is evident that matters directly affecting the distribution/movement of agricultural products such as unmanufactured tobacco, should be coordinated by the CMO and not by the fiscal policy individually developed by one or more member states without regard to the economic and social impact such regulations might have on many thousands of farmers, processors and salaried workers located in other EU MS (particularly those where tobacco is grown and processed). Each time any of the 27 EU member states develops its own separate regulations controlling the movements of unmanufactured tobacco, this creates an additional barrier to intra-community trade in unmanufactured tobacco. It does not take more than a handful of EU member states to do its own thing and the single market for unmanufactured tobacco would cease to exist. The beneficiaries of such local initiatives will be tobacco growers and processors located outside the EU – who would continue to be keen to export their unmanufactured tobacco to the EU – meanwhile the increased burden of local regulation impeding the movement of EU origin unmanufactured tobacco will cause disproportionate harm to the livelihoods of EU tobacco farmers, processors and associated waged workers, in fact threatening the continued existence of their business.

As you can see, local measures aimed at controlling the movement of unmanufactured tobacco do not fit with the underlying aims of Arts 38-44 of the TFEU and may well constitute an unlawful breach of the provisions of the TFEU.

2. In February 2020, the Commission published its report⁶ on the revision of the TED. The Commission flagged the illicit trade in unmanufactured tobacco as an issue. This was confirmed by the MS in the Council Conclusions⁷ calling for a solution at EU level. MS have stated that appropriate control rules should be established with a clear assessment and understanding of the costs and benefits of increased control and monitoring, taking into account the relevant practices introduced by MS in this area and avoid double taxation. The Commission now has to look into this and is expected to come with a proposal. The proposal is expected in 2021⁸. Rather than introducing a measure that will probably need to change after 1-2 years, it would save money and reduce

⁶ https://ec.europa.eu/taxation_customs/sites/taxation/files/10-02-2020-tobacco-taxation-report-summary_en.pdf

⁷ <https://www.consilium.europa.eu/media/44235/st08483-en20.pdf>

⁸ <https://data.consilium.europa.eu/doc/document/ST-8086-2020-INIT/en/pdf>

administrative burden by waiting until the Commission comes with a proposal to solve this issue at European level.

3. If the flows of unmanufactured tobacco products need to be controlled, an option, like in Denmark is to prohibit sales of unmanufactured tobacco to consumers. The measure is easy to implement and does not disproportionately increase the administrative burden. Consumers wanting to roll their own cigarettes or make their own snus can buy smoking tobacco.

Any alternative measure that authorities want to put in place should make a clear distinction between sales to consumers, or retail sale and sales/movements between businesses.

Sales of tobacco products for their consumption (i.e. smoking, heating, chewing, sucking, etc), should always be subject to excise. Even if the sale is not directly to the consumers but goes through intermediates, who do not have a tax warehouse, the excise is due the moment the goods leave the tax warehouse.

4. By imposing excise on trade between businesses, a discrepancy is created with the Council Directive 2020/262/EU of 19 December 2019 concerning the general arrangements for excise duty, which in Article 6 states that excise on products become due at the moment of release for consumption. Alternative measures should be adopted.
5. Additional measures can be put in place; France, for example, is implementing a solution that could be used by Swedish authorities as long as a European solution is not in place.

ELTI, together with other Organizations of the EU supply chain, is currently cooperating with it the France Customs department that is about to introduce a measure where all transports of raw unmanufactured tobacco into/out of and across France will need to carry a special delivery note that allows customs to check whether the goods are part of genuine supply chain.

All the operators participating to the measure will be included in a special register issued by the French customs authorities.

Information that will need to be entered by operators include: description of the goods and value, name of the shipping and name of the receiving company, an auditable number of the delivery note, purpose of the delivery, a contact that customs can reach during the inspection, etc.

6. In view of creating a solid definition, also the example of the UK can be used⁹: "Raw tobacco means the leaves or any other part of a plant of the genus *Nicotiana* but does not include:
 - a. Any part of a living plant
 - b. A tobacco product

⁹ <https://www.gov.uk/government/publications/excise-notice-2003-tobacco-duty-the-raw-tobacco-approval-scheme/excise-notice-2003-tobacco-duty-the-raw-tobacco-approval-scheme>

Tobacco products are explained in [Notice 476: Tobacco Products Duty](#). If tobacco is not covered within the definition, then it is potentially liable to Excise Duty". The UK legislation also requires that transport above certain weight of tobacco need to be approved.

In addition, strict record keeping requirements have been put in place. And quite importantly, penalties are foreseen in case of non-compliance with the regulation.

We remain at your disposal for any need of further information and clarification.

On behalf of the President Gennarino Masiello,



Carlo Sacchetto - Secretary General of ELTI








ANNEX 1

ELTI - *European Leaf Tobacco Interbranch* organization is the only transnational Interbranch Organization officially recognized by the EU Institutions under the Common Agricultural Policy (CAP) in the agriculture-agribusiness sector according to the Regulation (EU) 1308/2013 of the European Parliament and of the Council (Single CMO) and to the Commission Delegated Regulation (EU) n. 2016/232. **ELTI** main goal is to defend and stabilize the production of the EU leaf tobacco in every EU Member States.

The Members of **ELTI**, whose associates are operative in Italy, Spain, Poland, Greece, Bulgaria, France, Hungary, Germany, Portugal, Belgium and Switzerland, are:

-  **UNITAB** - *Union Internationale des Producteurs de Tabac* (International Union of Tobacco Growers) established in 1952, federates the EU (and Switzerland) tobacco growers' National Associations.
-  **FETRATAB** - *Fédération Européenne des Transformateurs de Tabac* (European Federation of Tobacco Processors) established in 1994, federates the EU raw tobacco industrial first and second processors and merchants National Associations/Companies.

ELTI members account for about 75% of all the EU raw tobacco grown, contracted and processed volumes, representing a unique and distinctive case in the EU agriculture panorama. **ELTI** main figures are:

-  **11** EU tobacco producing countries
-  **76,000** hectares of tobacco cultivated land
-  **150,000** tobacco tons delivered
-  **500** M€ tobacco farmers revenue
-  **12** National growers' Associations
-  **46** Producers Organisations/Cooperatives
-  **51,000** individual growers/farms
-  **4** first processors' National Associations
-  **18** first and second processing Companies
-  **350,000** workers (>50% women) + tens of thousands in associated jobs