Regulatory Policy Committee

Tobacco Products Directive

Department of Health

RPC rating: Fit for purpose

Description of proposal

The objectives of the Tobacco Products Directive (2014/40/EU) are to increase health protection from tobacco and other smoking products and improve the functioning of the internal market for those products. This will be achieved by updating harmonised EU tobacco rules and introducing harmonised rules for herbal smoking products, novel tobacco products and electronic cigarettes. The Directive contains a large number of provisions. The key measures involve:

- regulation of ingredients and reporting requirements covering those ingredients;
- introducing more stringent labelling requirements, including mandatory warnings and minimum size requirements for health warnings;
- banning tobacco products with a characterising flavour; and
- requirements relating to the composition, labelling, advertising and reporting of e-cigarettes and refills.

Impacts of proposal

The main intended impact of the proposal is to reduce the prevalence of smoking. The Department estimates that the proposal will reduce tobacco consumption by 1.9 per cent. This is based on estimates provided by the European Commission, which in turn are derived from experiences of tobacco control agencies that have implemented comparable measures. This would reduce the number of UK smokers by 200,000, which the Department expects, based on a standard valuation of life years gained, to provide health benefits of £13 billion. This may be a conservative estimate, as it does not include changes in health care expenditures. Most of the reduction in smoking is expected to result from the effect on demand of more stringent packaging and labelling requirements. The Department also estimates that the Exchequer will lose £2 billion in tax revenue over the ten-year appraisal period. This could be partially offset by reduced demand for smoking-related health expenditure.

The main direct business impact results from the loss of profits from reduced sales by UK tobacco retailers, wholesalers and manufacturers. The Department expects this to total £130 million (NPV) over the ten-year appraisal period. Approximately £80 million of this is attributable to retailers and £40 million to wholesalers. The impact on manufacturers is relatively small, as nearly all manufacturing of tobacco products takes place overseas. The focus on these direct costs to business is consistent with

the RPC's treatment of similar measures, in particular standardised packaging of tobacco products. In addition, new labelling requirements impose a cost on business of £4.6 million over the appraisal period.

The Department expects more stringent requirements on e-cigarettes, mainly new labelling rules, to impose costs of £56 million on UK-based manufacturers over the appraisal period. Manufacturers will need to redesign the packaging of approximately 5,200 products and will need to provide an information leaflet to accompany each of the 38 million e-liquid bottles sold each year. The Department estimates that labelling changes and restrictions on the advertising of e-cigarettes will only have a small impact on consumption (see next section). The Department estimates that the loss in sales is largely offset by reduced advertising expenditure.

The Directive provides a derogation that allows Member States to introduce less onerous labelling regimes for cigars and pipe tobacco. The Department has decided to take advantage of this derogation but only for individually wrapped cigars and cigarillos. As such, the proposal goes beyond the minimum requirements of the Directive for pipe tobacco and other types of cigars. The additional labelling requirements impose a cost on business of £11 million over the appraisal period.

Overall, the Department estimates that the proposal will result in an equivalent annual net cost to business of £17.0 million, of which £1.3 million represents gold plating with respect to pipe tobacco and certain cigars.

Quality of submission

The Department has provided a comprehensive analysis of the likely costs and benefits of the proposal.

Following points raised by the RPC, the Department has further explored the impact of the advertising restrictions and labelling requirements on e-cigarettes. The Department assumes that the restrictions on advertising will only have a small, impact on demand for e-cigarettes and the degree of switching from tobacco products. The Department has provided evidence that partial bans on advertising, as imposed by the Directive, will have little or no impact on aggregate consumption. Advertising is largely expected to have an impact on the degree of switching between e-cigarette products rather than overall demand.

The Department has also provided sensitivity analysis, which suggests that any impact is likely to be small even under an extreme scenario where overall demand falls by 20 per cent. Although this assumption could have been better evidenced, given the difficulty of estimating this effect, the Department's assumptions appear reasonable. The impact assessment would also have benefitted from assessing the impact on the proportion of smokers who use e-cigarettes to stop smoking rather than as a complement to other tobacco products.

The Directive will apply to products sold in the EU, no matter where they are manufactured or where their manufacturer is registered. The Department has correctly taken a "GDP based" approach to assessing the impact on UK based activity in its impact assessment. The impact assessment explains that, in calculating the lost profit to UK-based businesses, the Department has taken into account the ongoing closure of the remaining UK manufacturing factories. The Department has also taken into account the fact that some of the value-added from the production process will remain attributable to the UK. The assumptions the Department makes concerning the degree to which the proposals influenced the decisions to close UK factories, and the amount of value-added attributable to the UK, are somewhat speculative. However, given the difficulty of modelling and estimating these elements, the Department's assumptions appear reasonable.

The impact assessment could have benefitted from providing more evidence to support the estimates of the cost of necessary adjustments to labelling and packaging of both tobacco and herbal products. Although the estimates appear reasonable, it is disappointing that the consultation did not yield better evidence in this area.

Other comments

The proposal is of European origin. A small and micro business assessment (SaMBA) is, therefore, not required. Nonetheless, the Department has provided a SaMBA, which explains that the impact of the proposal as a whole will mainly be on manufacturers and wholesalers of tobacco products that are mainly large multi-national companies. Many retailers are small and micro businesses but there are few direct restrictions on retailers. The impact assessment explains that the health and harmonisation benefits would not be realised by exempting these small and micro businesses.

Initial departmental assessment

Classification	Qualifying Regulatory Provision (IN) - gold plating element only
Equivalent annual net cost to business (EANCB)	£17.00 million, of which £1.27 million in scope
Business net present value	-£154 million
Societal net present value	£10.8 billion

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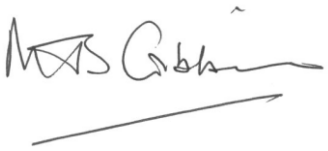
RPC assessment

Classification	Qualifying Regulatory Provision (IN) – gold plating element only
Equivalent annual net cost to business (EANCB)	£17.00 million, of which £1.27 million in scope
Small and micro business assessment	Not required



Michael Gibbons CBE, Chairman