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EUROPEAN CIGAR MANUFACTURERS ASSOCIATION

European Commission DG SANCO Unit C6  
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Belgium  
By e-mail: [ec.europa.eu](mailto:ec.europa.eu)

Tilburg, 18 January 2010

Re.: Interim report assessing the impacts of revising the tobacco products directive

Dear

As agreed during the informal meeting with stakeholders on the interim report of the impact assessment on the possible revision on the tobacco products directive on 4 December 2009, the European Cigar Manufacturers Association (ECMA) herewith would like to inform you about its preliminary views on the interim report. ECMA is the trade association of cigar manufacturers in the Member States of the European Union. ECMA members together account for over 90% of the cigars produced in the European Union.

Before reviewing specific points of the draft report, ECMA would like to make some general comments:

- As stated by various industry representatives during the meeting on 4 December, the status of this draft report is unclear. However, both RAND Europe and the Commission have agreed it was neither a baseline scenario nor an impact assessment.
- The report hardly contains any assessment of the effectiveness of the TPD and the limited assessment that can be found only concerns cigarettes, which is not relevant to cigars.
- It is not clear from the draft report what the policy objectives and the concrete policy options of possible regulatory interventions would be. The potential areas of change mentioned are not clearly defined. ECMA suggests that a more rigorous and precise approach is required to comply with the Commission impact assessment guidelines<sup>1</sup>.

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<sup>1</sup> European Commission, Impact Assessment Guidelines, 15 January 2009, SEC(2009) 92



ECMA

- The draft report does not consider which of the possible “five areas of change” are within EU competencies. According to the Commission impact assessment guidelines, the Commission should also verify whether the EU has the right to take action.<sup>2</sup>
- Contrary to what is stated several times in the document, there is no rigorous review of the evidence and the materials referred to are not critically assessed.

During the meeting we noted that we are mainly concerned about the fact that the interim report does not, in any way, take into consideration the specific structure of the cigar industry and the very particular characteristics of its products and consumers. For that reason we would like to start our comments with a short description of these specificities. For a more detailed description we would like to refer to the attached DVD that was made by one of our members and which shows a clear picture of the cigar sector.<sup>3</sup>

#### **Cigar tobacco**

A European cigar normally consists of three parts, the filler, the binder and the wrapper. The filler consists of small pieces of tobacco, blended from different harvests and different tobacco varieties. The composition of the filler contributes to the taste, good burning characteristics and a consistent flavour. The tobacco leaves destined to become the wrapper and binder of the cigar are distinctive, both in type as well as in method of cultivation. They are grown in a limited number of countries, such as Indonesia, Brazil, Cuba, Ecuador and the United States of America. Hardly any wrapper or binder tobaccos are grown in Europe. In the tobacco growing countries, an estimated 500,000 people are employed in jobs relating to the production of these tobaccos, three quarters of which are purchased by the manufacturers in Europe. The reliance of the cigar producers on these distinctive types of very expensive tobacco, their limited areas of production and the annual nature of crop production inherently imposes high levels of leaf cost and capital employment within the industry. Given the variable yield and quality levels of each crop, it is necessary to maintain sufficient leaf stocks in order to maintain product consistency.

#### **Cigar production**

Cigar making continues to be a labour intensive process. In general, labour costs account for some 40% of the cost price. The total number of people employed within Europe is estimated at some 7,000, employed by around 60 companies. Cigar manufacturing is characteristically small scale and craft based, consisting of many small to medium sized businesses. Nearly half of the relatively “big” ECMA members are still family owned. The remainder of the European industry (some 40 companies) generally employ between 1 to 20 people, and are also family owned. The production units are in most cases specific, i.e.

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<sup>2</sup> European Commission, Impact Assessment Guidelines, 15 January 2009, SEC(2009) 92, paragraph 5.2.

<sup>3</sup> This DVD was made by Agio Cigars in 2004, and is not used for consumer purposes. Please note that its content does not necessarily reflect the views of all ECMA member companies.



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their sites are separate from other tobacco product locations, and often well away from the major industrial centres. Many cigar factories are located in the more rural and vulnerable areas of the European Union. Generally a cigar machine produces between 20 and 50 cigars per minute, whereas cigarette machines nowadays produce up to 18,000 pieces per minute. One of the most salient features of the cigar industry is that its products are being produced and sold in an enormous variety of models, sizes, brands, types of packaging and prices. The variety of products causes that cigars are generally produced in small production runs.

### **Cigar consumption**

With an annual consumption of approximately 6.3 billion pieces (2008, see annex), cigar consumption represents barely 0,8% of the total consumption of tobacco products (cigarettes, smoking tobacco and cigars) in the European Union. The cigar smoker generally is a male adult of mature age: the majority of cigar smokers are over 35 years of age. The Special Eurobarometer report<sup>4</sup> "Smoking and the environment: actions and attitudes" dated November 2003 concluded that "far more men smoked pipes or cigars than did women (2.2% to 0.2%), as did somewhat older individuals (1.9% of 40-54 year-olds smoked cigars or a pipe)". According to the Special Eurobarometer report<sup>4</sup> "Attitudes of Europeans towards tobacco" dated January 2006 only 1% of European Union citizens in 2005 smoked cigars (compared to 27% for cigarettes and 5% for roll your own). We are not aware of more recent EU data. Should more recent cigar data be available we suggest RAND to consider these sources as well. For these smokers, cigar smoking is an occasional enjoyment.

### **ECMA comments on chapter 2: The current regulatory framework**

**Paragraph 2.1.1** describes the scope of the current regulation. In that context it is worth mentioning that, within the European Union, tobacco products are defined by Directive 95/59/EC. In order to come to a more clear differentiation within the category of tobacco products "that can be smoked as they are" (i.e. cigarettes and cigars), the ECOFIN Council on 10 November 2009 agreed to amend the definition of cigars as follows: "The following shall be deemed to be cigars or cigarillos if they can and, given their properties and normal consumer expectations, are exclusively intended to be smoked as they are:

- (a) rolls of tobacco with an outer wrapper of natural tobacco;
- (b) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouth-piece, is not less than 2.3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm".

**ECMA position:** Any cigar studies taken into consideration should as a basis have a cigar definition comparable to this or the previous EU definition.

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<sup>4</sup> See: [http://ec.europa.eu/health/ph\\_determinants/life\\_style/Tobacco/keydo\\_tobacco\\_en.htm](http://ec.europa.eu/health/ph_determinants/life_style/Tobacco/keydo_tobacco_en.htm)



**Paragraph 2.1.2** describes the “emerging problems” and “evidence of effectiveness” as regards the labelling requirements. **ECMA position:** As noted during the meeting on 4 December, all studies cited in the interim report examine the effect of text-only, pictorial or combined warnings on *cigarette packaging* only. The same is true in the case of plain packaging (and TNCO labelling), where it is noted that “the arguments in favour of plain packaging rely on the literature which indicates that current *cigarette pack designs* undermine the warning labels displayed on the packs”.

As was stated before, the effect of warnings or plain packaging on cigar consumers cannot be predicted by studying the effect on cigarette smokers, as the cigar consumer has a totally different profile (i.e. a male adult of mature age, with low and mostly occasional consumption). Health warnings (or plain packaging) may have a totally different effect on cigar consumers.

**Paragraph 2.1.3** deals with reporting and registration. **ECMA position:** ECMA members support the principle of the common reporting format for ingredients disclosure as suggested by the DG SANCO “Practical Guide on ingredient reporting” dated 31 May 2007. We would welcome an initiative from the Commission to make this Practical Guide binding for the EU Member States and to incorporate an electronic reporting system like EMTOC, and apply the proposed solutions to the outstanding issues in the Practical Guide. We consider it to be critical that all EU Member States agree to and adopt the common reporting formats for ingredient disclosure and accept tobacco product ingredients submission via the latest set of templates. This adoption should be facilitated and/or endorsed by the Commission.

**Paragraph 2.1.4** deals with ingredients, and states that the definition of ingredients in the current Directive is considered to be too limited. **ECMA position:** This statement is however not substantiated in the report. ECMA supports the current definition of ingredients covering ‘any substance or any constituent except for tobacco leaf and other natural or unprocessed tobacco plant parts used in the manufacture or preparation of a tobacco product and still present in the finished product, even if in altered form, including paper, filter, inks and adhesives’. This definition adequately captures the ingredients that are added to the product for a specific purpose by manufacturers. These ingredients are reported to member state authorities under Article 6 of the Directive.

The interim report furthermore considers the fact that “the industry is asked only to provide *available* scientific data on toxicology or addictiveness of ingredients” to be problematic. **ECMA position:** For the cigar industry, however, the word “available” is of vital importance. Most cigar manufacturers do not have the means to do research on their own, and therefore rely on data available in the publicly available scientific literature. The current provision stipulating that the ingredients list shall be “accompanied by the toxicological data available to the manufacturer or importer” should therefore remain unchanged.



ECMA

**Paragraph 2.1.5** describes various possible restrictions on sales arrangements that could be introduced, such as a ban on the sale of single or unpacked cigarettes, rules regarding a minimum legal purchasing age and regulation of the display of tobacco products in retail outlets. **ECMA position:** Currently measures like these are dealt with in the context of the Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control. As these measures do not deal with tobacco control in the context of the completion and consolidation of the internal market and the abolition of obstacles to its smooth operation, ECMA questions whether there is an appropriate legal basis to incorporate them into the tobacco product directive (even if they were proportionate and necessary which has not been demonstrated). It is unclear, therefore, why, prior to properly assessing their legal basis, these measures appear to be part of the remit of RAND.

#### **ECMA comments on chapter 3: Health impacts**

According to the introduction, "the aim of this chapter is to provide a picture of both the proportion of the population using tobacco (prevalence) and the intensity of consumption (measured in *cigarettes* consumed per capita)". **ECMA position:** Unfortunately the chapter does not contain any information as regards the consumption of cigars. Such information is however required if a baseline scenario is to be produced for the EU cigar market. As was stated before, with a total number of 6.3 billion cigars being consumed within the European Union in the year 2008, cigar consumption represents barely 0,8% of the total consumption of tobacco products (cigarettes, smoking tobacco and cigars) in the European Union.

As regards the "smoking prevalence among men and women" (paragraph 3.1.4) we would like to refer to the conclusions drawn in the before mentioned Special Eurobarometer reports, i.e. "far more men smoked pipes or cigars than did women (2.2% to 0.2%), as did somewhat older individuals (1.9% of 40-54 year-olds smoked cigars or a pipe)" (November 2003) and "only 1% of European Union citizens in 2005 smoked cigars (compared to 27% for cigarettes and 5% for roll your own)" (January 2006).

It is worth mentioning that other, national, reports come to similar conclusions:

- The report "Living in Britain: Results from the 2000/01 General Household Survey" (ISBN 0 11 621479 1) for example concluded "A decline in the prevalence of pipe and cigar smoking among men has been evident since the survey began, with most of the reduction occurring in the 1970s and 1980s. In 2001, only 5% of men smoked at least one cigar a month, compared with 34% in 1974. Only a small number of women smoked cigars in 1974, and since 1978, the percentages have been scarcely measurable on the GHS".
- In the more recent UK NHS Report "Statistics on Smoking: England, 2008" (ISBN 978-1-84636-245-3) cigar and pipe smokers are not even mentioned anymore.
- Finally the interim report itself concludes that "A variety of tobacco products can be found on the market in the EU-27; however, outside of Sweden, the use of these





products remains low among the overall populations relative to the use cigarettes” (page 34).

These findings confirm that the cigar smoker generally is a male adult of mature age, with low and mostly occasional consumption.

#### **ECMA comments on chapter 4: The tobacco production and trade sector**

According to **paragraph 4.1.1** the aim of this chapter is to "present statistical information on the size and value of the market for initial stages (unmanufactured tobacco) and final stages (i.e. sales of final products to consumers of smoking tobacco, cigarettes and cigarillos/cheroots/cigars)". **ECMA position:** In our comments on chapter 2 of the interim report we have explained the EU cigar definition as adopted in November 2009. We would like to note that within the cigar world "cigarillo" is simply the generic name for a small (straight) cigar model, just like "corona" is the name for a big cigar model and "senoritas" is the name for a medium sized cigar model. The name "cheroots" is only used outside the European Union. We therefore suggest that only the name "cigars" is used to describe our product category.

According to **paragraph 4.1.3** (Structure) prices are often a good indicator of market activity. "The average price per tonne of tobacco is approximately € 2,500". **ECMA position:** Although this average price might be true for cigar filler tobacco, the average price of cigar wrapper and binder tobacco is much higher (€ 48,000 per tonne). The highest prices range from € 4,500 per tonne for filler tobacco to € 110,000 per tonne for wrapper tobacco.

**Paragraph 4.1.4** gives an overview of the manufacturing sector. "The general structure of the manufacturing sector of the tobacco industry is that there are few large firms with several enterprises operating in few countries of Europe". **ECMA position:** In our introduction we explained that this is not the case in the cigar sector. Cigar manufacturing is characteristically small scale and craft based, consisting of many small to medium sized businesses. Nearly half of the relatively "big" ECMA members<sup>5</sup> are still family owned. The remainder of the European industry (some 40 companies) generally employ between 1 to 20 people, and are also family owned. The description that "the global tobacco industry is largely concentrated in the hands of five companies" (page 48) does certainly not reflect the situation in the cigar sector.

Figure 4.7 of **paragraph 4.1.5** describes the top five EU countries for export value of manufactured tobacco products sold. **ECMA position:** It should be noted that two of the main Dutch cigar manufacturers have production facilities in Belgium as well. The value of cigar exports from these two countries will therefore largely overlap due to intra company shipments.

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<sup>5</sup> See [www.ecma.eu](http://www.ecma.eu) for an overview of the ECMA member companies



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Finally we doubt whether the number of enterprises in the wholesale and retail sector as mentioned in table 4.12 is correct, as for example the number of retail outlets ranges from only 4 in Finland to almost 27,000 in Italy. We suggest RAND to contact the tobacco retailers association in order to clarify these tables.

#### **ECMA comments on chapter 5: Cost and administrative burden of tobacco regulation**

According to **paragraph 5.1.1**, based on food labelling surveys, labels would not be changed for regulatory reasons alone and tobacco products would anyhow be labelled in the absence of any regulations. The costs of labelling regulation are thus not defined as the total costs of producing a label, but only as the additional costs of including the specific requirements on the label.

**ECMA position:** ECMA doubts whether the 2004 impact assessment for food labelling referred to by RAND is relevant for tobacco products and more particularly for cigars. Furthermore, as the cigar sector is characterised by a wide range of models and sizes and types of packaging, changes in pack design for non-regulatory reasons will generally only take place once every 5 to 8 years. The cigar industry would therefore never change the design of all its packs at the same time, unless regulatory changes would require the industry to do so. For that reason, ECMA is of the opinion that - at least for cigars - the total costs of changes in the pack design instead of only the "additional costs" should be taken into account, as all costs are directly related to the change in legislation.

**Paragraph 5.1.4** describes that one of the potential changes currently considered by the European Commission is a restriction of the display of tobacco products at the point of sale. It is noted that these measures are likely to have compliance cost implications for retailers of tobacco products, and minor implications for tobacco manufacturers. "The regulation of tobacco displays at point of sale affects manufacturers to a lesser degree".

**ECMA position:** ECMA believes that appropriate and proportionate regulation of the industry is both necessary and right. ECMA questions whether there is an appropriate legal basis to incorporate these measures into the tobacco product directive (even if they were proportionate and necessary which has not been demonstrated).

We would also like to mention that we fear that a regulation of tobacco displays at the point of sale might prevent smokers from seeing the full range of tobacco products available to them. This will undermine consumer choice and hinder free trade by making market access far more difficult for potential new market entrants, and it will distort competition between different manufacturers and importers.

Due to its small sales volumes, the cigar sector will be disproportionately disadvantaged by any restrictions on the display of tobacco products at point of sale. Smaller and/or newer manufacturers will struggle to compete in an environment where the consumer is unable to



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see the product choice available. Restrictions will make it very difficult for a company to enter a market through the launch of brands which have not already been well established there. As such any restrictions will create a disproportionate barrier to trade by curtailing the ability of new entrants and brands to access markets; thus, disadvantaging them by comparison to their already present rivals.

The display of products at the point of sale facilitates choice for those adults who wish to smoke and are legally entitled to do so. If display is removed this will undermine smokers' choice and new, smaller or 'niche' brands will be highly disadvantaged, and outlets may well decide not to even stock these brands.

Finally it is worth noting that the administrative cost and burden information obligations for business (**paragraph 5.1.5**) for the cigar sector will be disproportionately high due to its small sales volumes, large assortments and small to medium sized businesses.

#### **Conclusion**

We hope to have made clear that the interim report assessing the impacts of revising the tobacco products directive does not, in any way, take into consideration the specific structure of the cigar industry and the very particular characteristics of its products and consumers.

A "one size fits all approach" for all tobacco products would not work, as it would create a disproportionate burden for the cigar industry. Due to its enormous variety of models, sizes, and brands, its small scale production processes and its many small to medium sized businesses, of which a big part is still family owned, the cigar industry simply does not have the resources and know-how to comply with the same rules as big multinational companies with much smaller assortments and higher sales volumes.

Therefore we urge the European Commission DG SANCO and RAND Europe to take into account the specificities of the various tobacco products before presenting any proposals to amend the tobacco product directive.

Yours sincerely,

Secretary General

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) Europe





ANNEX EU Cigar sales since 1975

Year	Cigar sales in million of pieces
1975	10.904
1980	9.859
1985	8.089
1990	6.998
1995	6.102
2000	6.708
2005	6.768
2008	6.305

Source: European Cigar Manufacturers Association

Note: all figures are based upon the actual EU Member States in that year, for example 15 MSs in 2000, 25 MSs in 2005 and 27 MSs in 2008