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**IMPACT ASSESSMENT OF DIRECTIVE 2010/12/EC OF THE  
COUNCIL ON THE STRUCTURE AND RATES OF EXCISE DUTY  
APPLIED ON MANUFACTURED TOBACCO**

**Svetla Boneva\***

***Abstract:** The paper gives an overall idea of the essence, importance and application of impact assessment undertaken by European institutions. The initiatives requiring impact assessment as well as the European commission suggestions that do not need impact assessment have been pointed out. The types of procedures for impact assessment have been presented and analysed. An example of a directive, requiring impact assessment has been given with Directive 2010/12/EC of the Council which amends the former Directives 92/80/EEC and 95/59/EEC on the structure and rates of excise duty applied on manufactured tobacco. The necessity of a change in the EU fiscal legislation concerning tobacco products, directed towards the correct functioning of the EU internal market and in the same time ensuring a high degree of human health protection has been pointed out.*

***Keywords:** impact assessment, excise duty, tobacco*

**Introduction**

Impact assessment has been defined by the European Commission (Communication COM(2002) 276) as a process of a systematic analysis of the possible impacts from the actions of the administrative bodies. It represents an integral part of the policy making process and gives the decision makers and the society as a whole a clear idea of their most possible impacts.

Impact assessment is only a complimentary tool in the decision making process, it is by no means a substitute of the political decision what should be done. Political considerations that stay behind a certain decision include many complex reasons whose scope reaches far beyond the expected impacts of a decision. Impact assessment does not necessarily give clear conclusions and recommendations whether to take a decision or not. It gives important information for the decision makers on the impacts and consequences from taking a certain decision.

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\* University of National and World Economy, Sofia, Bulgaria; svetla\_bogdanova@yahoo.com  
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## 1. Impact Assessment of EU Regulations

Impact assessment is an instrument for determining the basic expected impacts that the implementation of a certain piece of legislation will have on the economy, the society and the environment. Impact assessment has been introduced in the administrative and legislative practice of the European Commission in 2003. Since then Impact assessment has replaced all integrated sectoral evaluations of direct and indirect impacts of legislation suggested by the European Commission with one single instrument that has become an obligatory part and stage of the decision making process.

Two basic strategic documents have influenced the change of the European Commission procedure of offering new pieces of legislation:

- the EU strategy for sustainable development and the will of the European Commission to undertake measures that ensure the succession of implemented policies in terms of their economic, social and environmental dimensions.
- The Program for better regulation that requires initiatives stimulating efficient and effective regulation within the context of the efforts for improvement of the business environment and for enhancement of the competitiveness of the European economy.

All impact assessments undertaken by the Commission strictly follow the basic steps indicated in:

- the Communication from the Commission called “Impact Assessment” (COM (2002) 276)
- the Working document of the European Commission, called “Impact assessment: next steps (COM (2004)1377), and
- the internal guidelines for impact assessment of the European Commission formulated in the document “Impact Assessment guidelines (SEC (2009) 92)”. These internal guidelines have been firstly formulated in 2005 and later revised in 2003.

The Communication of the Commission called “Impact Assessment” gives the framework of:

1. The essence of impact assessment
2. The procedures and mechanisms of how will the process of impact assessment take place
3. The intentions of the Commission for gradual introduction of the impact assessment after 2003.

Impact assessment is an effective and important instrument of communication. Consultations with the interested parties and stakeholders give possibilities for fruitful discussions and important information for analysis. When undertaking an impact assessment, the European Commission always searches for a larger range of opinions, follows the same principles and standards and is transparent in the whole process of impact assessment implementation, as defined in its’ Communication.

The approach for undertaking an impact assessment is truly inter-sectoral, it comprises the economic, ecological and social aspects of the assessment. This approach both integrates and replaces all partial impact assessments (such as business, gender, environmental, import/export, etc.) that have been applied before its’ implementation.

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In line with the Financial Regulation, all legislative proposals associated with public funds spending (EU budget spending), necessarily need ex-ante evaluations. Impact assessment also could be applied for most of the legislative proposals, resulting in EU budget funds spending. Ex-ante evaluations are focused mainly on the value for money and the cost effectiveness of the funds that will be spent via different policies, actions or European programs. The impact assessment guiding light is the policy proposal, and the impact assessment focus is set on researching whether the impact of this policy proposal is sustainable and whether it corresponds to the principles of good governance.

Having in mind the partial overlapping of these two evaluations (the ex-ante evaluation and the impact assessment), the specific aspects of the ex-ante evaluation are complement of the overall impact assessment (that comprises better regulation and sustainability). In practice, impact assessment includes the specific ex-ante evaluation elements, especially those concerning issues of cost-effectiveness. Thus the doubling of evaluation work is avoided as well the requirement of the Financial regulation are met.

### **2. Scope of the Legislative Proposals, Requiring an Impact Assessment**

The European Commission communication on impact assessment determines the initiatives that necessarily require impact assessment. All legislative and other political proposals of the European Commission that are suggested to be included in:

1. the Annual strategy of the European Commission concerning the European policies as well as in
2. the Working program of the European Commission,

could be a subject of the impact assessment procedure if they are a result of the strategic planning cycle and if they are expected to have economic, social and/or environmental impact, and of course if they require the adoption of particular regulations or legislation for their proper implementation.

That's why, the basic criteria for a political proposal to be classified as a subject to impact assessment is its' inclusion in the Annual strategy of the European commission on the EU policies or in its' Working program. Impact assessment is necessary for:

- legislative proposals, such as regulations and directives;
- other proposals that have economic, social and/or environmental impacts, such as white papers, financing programs or international agreements.

Notwithstanding there are a number of legislative proposals that are exempted from the impact assessment procedure, such as:

- green books for which the formulation of the certain European policy is still at an earlier stage;
- periodic decisions and papers of the European Commission;
- some legislative proposals stemming from or following international agreements;
- decisions stemming from some laws that concern implementation of technical adaptations or improvements connected with the technological progress and development.

### 3. Types of Impact Assessment Procedures

In 2003, when impact assessment has been introduced in the European Commission work, all item in the legislative and work programs of the Commission needed to be a subject to “preliminary impact assessment” that describes the basic objectives and respective problems of the legislative proposals and their potential social, ecological and economic consequences.

The college of commissioners decides whether the legislative proposal needs an “extended impact assessment” and this decision is based on the findings of the “preliminary impact assessment” and depends on whether the proposal will bring significant changes for a certain sector, policy reform or interested parties.

After a considerable experience has been gathered, in 2005 some aspects of the impact assessment application procedures have been changed – the most important of which is the replacement of the “preliminary impact assessment” with the so called “road maps” and the fact that “extended impact assessment” becomes mandatory for all elements of the legislative and work program of the European Commission.

The scope and the depth of the analysis are defined by their potential consequences and the so called “proportionate analysis” principle has been applied (the bigger the potential impact of the proposal, the deeper an broader the analysis of its’ impacts).The “road map” has to give an evaluation on:

- the time, necessary for the preparation of the impact assessment;
- a short summary of the possible impacts of each of the proposed policy variants;
- who will be affected by the proposal;
- which of the expected impacts of the proposal motivate the need of an “extended impact assessment”;
- outlines a plan for consultations;
- explains whether a Group for management of the impact assessment will be created comprising representatives of different directorates of the European Commission or different departments of a certain directorate.

The Working paper of the European Commission “Impact Assessment: next steps” (SEC (2004) 1377) offers improvements of the impact assessment methodology in the following aspects:

- the list of impacts used in the screening process has been improved and the focus of the impacts has been shifted to factors that have been considered as important for the productivity and therefore the competitiveness of the EU;
- the principle of the “proportionate analysis” has been introduced, according to which the analysis has to be focused on the most important effects of the proposed policy decision and the depth of the analysis depends on the importance and the scope of the expected impacts;
- the transparency of the impact assessment process has been improved: a special part of the European Commission website is devoted to all impact assessments undertaken by the Commission thus providing an easy access to information on the topic;
- it suggests the replacement of the “preliminary impact assessment” with the “road maps”.

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The basic questions that will be analysed in the impact assessment implementation process are:

- 1) What is the problem that will be solved with the suggested policy proposal?
- 2) What is the basic objective of the suggested policy proposal?
- 3) What are the basic scenarios for implementation of the suggested policy? What will be the European added value by the implementation of the policy proposal?
- 4) What are the expected impacts (both positive and/or negative) from the potential implementation of each of the scenarios?
- 5) Comparison of the scenarios and presentation of the results.
- 6) Monitoring and evaluation.

The organization of the impact assessment is implemented by the leading (for the respective impact assessment) General Directorate of the European Commission and it has all the responsibility for the implementation of the impact assessment of its' proposal and the collaboration with the other relevant directorates or departments of the European Commission. In case a particular impact assessment is an intersection point of several European policies and has several important dimensions, special inter-sectoral working groups are created, headed by a Leading General Directorate. The General Secretariat of the European Commission coordinates the structures in this process by the Strategic Planning and Programming. The General Secretariat also controls the final quality of the impact assessments that have been implemented, coordinated the publishing of documents concerning guidelines for the implementation of the impact assessment, coordinates the organization of trainings on impact assessment. The work of the General Secretariat is supported by inter-institutional networks.

The economic impacts that have to be analysed in each impact assessment implementation are:

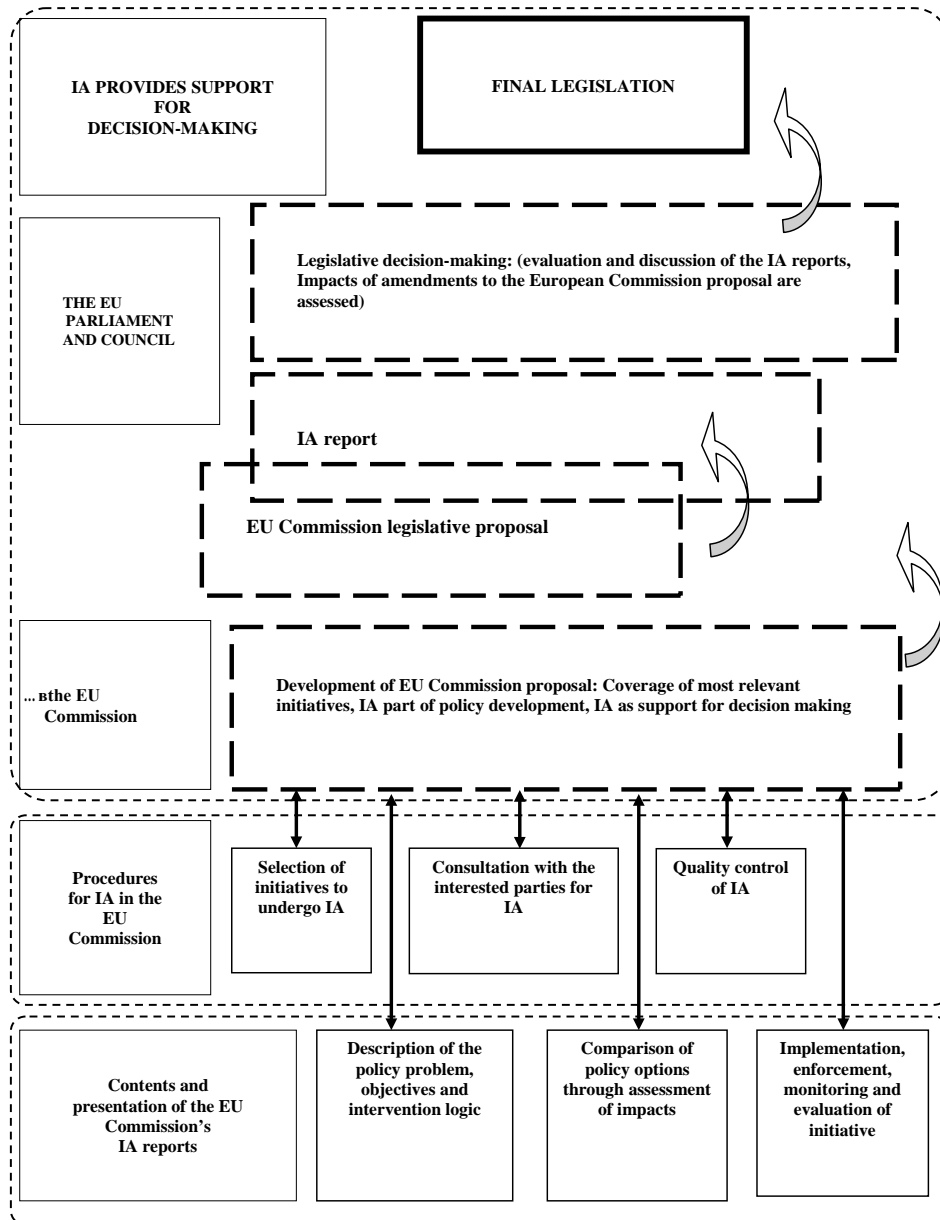
- impacts on competitiveness, markets, trade and investment flows;
- impacts on direct and indirect business costs;
- impacts on administrative regulations and regimes imposed on the business;
- impacts on innovations and research;
- impacts on certain regions, sectors or groups of workers;
- impacts on third countries and on the international relations;
- impacts on the public authorities;
- impacts on the macroeconomic indicators.

In 2009 the European Commission published its "Impact Assessment Guidelines" (SEC (2009)92) – another important publication, oriented to its' staff involved in impact assessment implementation. This publication explains clearly the essence of impact assessment, the procedures of its implementation (the procedures for its' preparation, implementation and presentation), the participants involved in this process and contains important appendixes containing concrete guidelines for the impact assessment implementation.

The impact assessment is a consequence of logical steps that have to be followed when a policy proposal is prepared. Impact assessment offers important proofs for the

political decision makers and explains the potential benefits and risks of each of the scenarios of a certain policy proposal. The results of this process are presented in Figure 1.

**Figure 1. Role of the IA in the decision making at EU level concerning European policies**



Source: The European Court of Auditors, Impact Assessments in the EU institutions: do they support decision-making?, Special report No 3/ 2010, Luxembourg, page 12

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The impact assessments undertaken by the European Commission:

- support the EU institutions to project better policies and laws;
- makes the decision taking process easier and better informed;
- guarantees the coordination between the European Commission departments involved in the impact assessment at an earlier stage;
- guarantees the coordination with a wide range of interested parties in accordance with the European Commission policy for transparency and openness to other interested institutions and the civil society;
- helps the succession of the European Commission policies, the concordance of these policies with the Lisbon treaty, the agreement of these policies with the basic rights and the coordination of these policies with the EU strategic objectives set in the EU strategy for sustainable development, the Lisbon strategy, and other EU strategies of primary importance for the Union;
- improves the quality of the legislative proposals, ensuring transparency of the benefits and the costs for the implementation of the different alternative scenarios of the respective policies and tries to make the EU legislative proposals as simple and clear as possible;
- guarantees that the principles of subsidiarity and proportionality have been followed and explains why the action that has been proposed is really necessary and advisable.

### **4. Basic Analytical Steps in the Impact Assessment Implementation**

The basic analytical steps in the impact assessment implementation are:

- 1) Identification of the problem
- 2) Determination of the objectives
- 3) Development of the basic scenarios of the policy
- 4) Analysis of the impacts and alternative scenarios
- 5) Comparison of the alternatives
- 6) Outlining of the policy for monitoring and evaluation

In 2005 An Inter-institutional agreement between the European Parliament, the European Commission and the Council has been signed on “Inter-institutional common approach to Impact Assessment” (14901/05). The European Parliament and the Council will consider the impact assessments implemented by the European Commission when discussing and taking decisions on its’ legislative and non-legislative proposals.

According to the Inter-institutional agreement for better legislation, before taking considerable legislation changes, the three institutions (the European Parliament, the European Commission and the Council) have to undertake impact assessment in the cases they consider it will support and the legislative process. When the European Parliament and the Council undertake impact assessment, it is a rule that they use the European Commission impact assessment as a starting point of their analysis. Moreover, they are obliged to make their impact assessments comparable to the assessments of the European Commission and to avoid doubling with its’ work.

In order to support the work of the European Parliament and the Council, the European Commission has to share the methodology that has been used in the process of the impact assessments preparation (for example: econometric modeling, cost-benefit analysis, multi-variance analysis etc.). The European Commission is obliged to support the European Parliament and the Council by explaining all aspects of its evaluation and sharing all data that have been used as well.

### **5. Possibilities for Application of the Instrument of Impact Assessment in the Case of Decision Making Concerning Excise Duties of Tobacco Products**

Taxation (in particular excise duties) applied on tobacco products is an ideal example for a subject to impact assessment procedure. Excise duties applied on tobacco products have two objectives: the primary one is to reduce the consumption of tobacco products and the second one is to gather resources for the income part of the respective state budget. In order to reduce smuggling and to improve the functioning of the Internal Market, the EU has taken steps to converge the excise duties applied on tobacco products in the EU member states. The result from this action will be a comparatively close final market price for all types of tobacco products, increase in the price level, a decrease in the tobacco products sales and increase of the degree of human health protection. To make all this happen, the European Council adopted a directive (2010/ 12/ EC) defining the structure and rates applied to manufactured tobacco.

To undertake an impact assessment procedure, an administration needs well educated experts. In the case of impact assessment on tobacco excise duties experienced experts in human health, taxation of tobacco products and illegal trade and smuggling of tobacco products are of crucial importance. They have to be very well informed of:

- the mechanism of formation of the prices of tobacco products and the way of taxation of tobacco products with excise duties (for example, how excise duties are calculated as a percentage of the price of the tobacco products);
- how the increase of the prices of tobacco products affects the consumption of the respective products;
- how the prices of the tobacco products could be increased as a result of the excise duties of the tobacco products sector;
- how the tobacco industry manipulates the prices of the tobacco products;
- how the different structures of the excise duties of tobacco products affect the incomes from duties;
- how the change in the excise duties rate on tobacco products affects the distribution channels of these products, the mortality, the rate of increase of some illnesses, caused by the consumption of tobacco and as a result of this how the change in the excise duties rate on tobacco products affects the costs of public budget funds for the cure of these illnesses;
- the indicator HLYI (Healthy Life Years Indicator);
- excise duties hiding and contraband of tobacco products.

The objective of the impact assessment of excise duties levied on tobacco products is to stimulate the research on policies in the tobacco sector at both EU and national levels and should be done in cooperation with different health organizations and networks for



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control of the tobacco sector in the EU. After an impact assessment is performed, a Strategy for setting optimal tax levels should be defined. Although the EU has set minimal tax rates on tobacco products, all tax rates above this minimum are set by the member states. Thus each EU member country could formulate an individual strategy for taxation of tobacco products oriented towards the respective country's conditions.

Generally, the defenders of deepening of the control on tobacco sector are not well acquainted with the specific aspects of taxation of tobacco products. That's why, these people have to be educated and involved in the process of decision making concerning the sector.

The Council of the EU has undertaken an extensive review of the rates and structures of the excise duties levied on tobacco products in the EU. In order to provide the functioning of the Internal market of the EU and in the same time to provide a high level of protection of the human health, the Council of the EU adopted changes in the fiscal legislation of the EU relating the tobacco products. Directive 2010/12/EC of the Council introduces changes to the previous directives 92/79/EEC, 92/80/EEC, 95/95/EC and Directive 2008/118/EC of the Council from 16 December 2008 concerning the general arrangement for excise duty.

The minimal excise duties on cigarettes in the EU are set by the EU legislation and are 75% of the weighted average retail selling price of the cigarettes released for consumption. This excise is no less than 64 Euro for 1000 pieces of cigarettes, no matter what is the weighted average retail selling price of the cigarettes.

Directive 2010/12/EC of the Council from 16 February 2010 replaces the concept of most popular price category (MPPC) with the concept of weighted average retail selling price (WAP) as a reference for the minimal requirements of the EU. Moreover, to underline the importance of human health protection, the directive plans to increase the minimal excise duty to 90 Euro for 1000 pieces of cigarettes and no less than 60% of the weighted average retail selling price, no matter what is the weighted average retail selling price of the cigarettes. And finally, this increase in the minimal excise duties will have one more result – the difference in the prices of the most expensive and the cheapest cigarettes in the EU will significantly decrease.

### **Conclusion**

The convergence of excise duties applied on tobacco products could contribute to a reduction in smuggling in the European Union and for ensuring a high degree of human health protection.

The increase in the excise duty levels in all member states will result in a higher economic convergence in the Internal Market of the EU, increase in the final market prices of tobacco products and respectively in a decrease in their consumption. This therefore results in a decrease of tobacco products sales.

Directive 2010/12/EC of the Council concerning the structure and rates of excise duty applied to manufactured tobacco contributes for the better regulation of the tobacco industry in the EU.

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**PROCENA UTICAJA DIREKTIVE 2010/12/EC NA STRUKTURU I  
STOPE AKCIZE U PROIZVODNJI DUVANA**

***Rezime:** U radu se daje generalna poruka o važnosti procene uticaja koje se sprovode pod okriljem Evropskih institucija. Inicijative kojima se zahteva procena uticaja kao i sugestije Evropske komisije. Predstavljene su i analizirane procedure za procenu uticaja. Jedan primer directive, kojom se zahteva procena uticaja je i Direktiva 2010/12/EC, kojom je izmenjena prethodna Direktiva 92/80/EEC i 95/59/EEC u vezi strukture i stope akcize na duvan i prerađevine od duvana. Ukazuje se na neophodnost promena u onom delu fiskalnom zakonodavstvu Evropske unije koje se tiče proizvoda od duvana, a sa ciljem urednog funkcionisanja unutrašnjeg tržišta i zaštite zdravlja potrošača.*

***Ključne reči:** procena uticaja, akscize, duvan.*