

## OBJECTIVES AND EFFECTS DISCREPANCY OF TAX POLICY IN THE TOBACCO PRODUCTS TAXATION<sup>1</sup>

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### ***RASKORAK CILJEVA I UČINAKA POREZNE POLITIKE U OKVIRU OPOREZIVANJA DUHANSKIH PRERAĐEVINA<sup>2</sup>***

#### ***Sažetak***

*Određivanje komponenata izračuna trošarina na duhanske prerađevine ponekad rezultira neskladom ciljeva i učinaka fiskalne politike, a osobito kontradikcijom u odnosu prema politici zaštite zdravlja. Iako se povećanjem trošarina nastoji prikupiti što više sredstava u državni proračun, visina trošarina utječe na smanjivanje baze korisnika zbog štetnih utjecaja konzumacije takvih proizvoda. Posebice se ističe značaj prevencije bolesti uzrokovanih konzumacijom duhanskih prerađevina i njihovih supstituta, kao i biljnih proizvoda za pušenje.*

*Iako se Republika Hrvatska uskladila sa zakonodavstvom Europske unije u okviru direktiva koje reguliraju predmetno područje, neusklađenost stopa još se uvijek ističe kao problem. Novim je zemljama članicama Europske unije, pa tako i Republici Hrvatskoj omogućeno prijelazno razdoblje u kojem se stope moraju približiti propisanim. Učinak dosad poduzetih mjera trošarinske politike očituje se povećanom konzumacijom duhanskih prerađevina oporezivanih nižim stopama, ali i porastom ilegalne trgovine, što inicira potrebu za intervencijom države pooštrenim preventivnim i represivnim mjerama fiskalne, kaznene i ekonomske politike.*

***Ključne riječi:*** porez, trošarina, duhan, evazija, pušenje.

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## 1. INTRODUCTION

Common characteristics of specific taxes favor the fact that those are products for which there is a relatively high demand, regardless the price, and the effect is usually contrary to the basic postulates of health of the individual.

Excise duties are introduced to the fiscal system usually to achieve certain objectives of fiscal policy. One of the goals is to introduce progressivity in the tax system, as well as the situation in which, for administrative reasons, is difficult to apply complicated tax forms, especially when the goal is to discourage the consumption of certain product. The introduction of excise duty has very clear goals in eco policy, mitigation of pollution. In this way, the excise duties are being used as a convenient tool to correct the inefficient use of resources.<sup>3</sup>

The system of specific tax and excise of the Republic of Croatia includes the full range of products with different characteristics, but similar effects on the individual and the state. Specific tax on motor vehicles, specific tax on coffee and soft drinks, a specific tax on insurance premiums for automobile liability and Casco insurance of motor vehicles are considered as specific taxes. On the other hand, although it is a same time of taxation, excise duty usually occurs on alcohol and alcoholic beverages, excise duties on tobacco products, and excise duties on energy products and electricity.

For a discussion on the impact of changes in each element of excise duty on fiscal and non-fiscal objectives of tax policy, particularly interesting category are cigarettes, which occupies a significant share in the market of tobacco products. It is especially important to note the determination of the structure of excise rates on cigarettes *ad valorem* and specific duties because of frequent increases in demand of fine cut tobacco with the consequences of the increase in illegal trade, informal economy and the consequent drop in revenues from excise.

From the perspective of legislative changes and harmonization with the *acquis communautaire*, the subject of the work will relate to the analysis of fiscal elements of excise policy and their impact on the growth of tax evasion during the period 2010-2015, with a focus on 2013 which testifies to the first results of adjustment. The certainty of the effects of tax evasion will be deducted by historical-legal and descriptive method and the method of comparative analysis.

The paper is divided into five chapters. In addition to the first, introductory chapter, the second chapter gives a brief overview of the historical development of excise duties. In the third chapter, the authors touch upon the issues of harmonization with the *acquis communautaire*, in the fourth chapter emphasis is on case analysis of the effects of taxation of tobacco products, with reference to the importance of electronic cigarettes, while in the fifth chapter concluding observations are presented.

3 Kesner-Škreb, M., Excise duties (*Trošarine*), Zagreb, Financial practice, vol. 23, 6/1999, p. 765-767.

## 2. BRIEF HISTORICAL DEVELOPMENT

Excise or specific consumption taxes are a form of consumption tax, by which is taxed turnover of only one or several of the same product.<sup>4</sup> They represent one of the oldest forms of taxation, and for the first time appear in Athens at the end of the fifth century BC.<sup>5</sup> The consumption tax occurs in the Middle Age in the form of excise duty or excise<sup>6</sup> that was charged to the individual goods and services. They were first introduced in the Netherlands, and later Germany, Spain, England and her colonies, as well as other European countries. Growing role of excise duties can be attributed to the fact that the excise duty belongs to the group of indirect taxes<sup>7</sup> for which the ruler did not need the approval of aristocratic assembly in the form of a contract, but they were introduced arbitrarily. In the seventeenth and eighteenth centuries, their sharp rise was recorded, while in the nineteenth and twentieth centuries, general consumption tax had the growing importance, and in particular value added tax, so special consumption taxes took a secondary role.<sup>8</sup>

Even at the time of the Kingdom of Serbs, Croats and Slovenes various kinds of excise were levied: on the meat, wine, mineral oils, beer, yeast, sugar, spirit and city excise of Ljubljana and other major cities. In Dalmatian cities the excise duty on salt, flour, candles, rice, cheese, beans, peas, fish, etc., was levied, based on regulations from 1830 and 1875, the Interim Act (*Privremeni zakon*) on state excise, fees and charges from the 1921 attempted to create a uniformed regulation of the subject matter so the difference in the number and type of excise duty, as well as the manner of their collection in the components of the new state, was abolished. This law regulated the payment of excise duty to the following products: sugar, sweets, chocolate, candied fruit and other objects made of sugar, coffee, coffee substitute, rice, all kinds of edible oil, beer, fine wines, liquor, rum, brandy, essences for drinking, fish, fish, crabs, snails, shells, candles, electric lighting, calcium carbide, tropical fruit, figs, dates, raisins, timber, glass for windows and storefronts, beams, steel and iron pillars, cement and hydraulic lime.<sup>9</sup>

4 Similar in Jelčić, B., Jelčić, Bo., *Tax System and Tax Policy (Porezni sustav i porezna politika)*, Zagreb, Informant, 1998, p. 337.

5 Cindori, S., Pilipović, O., Kalčić, R., *VAT in Theory and Practice (Porez na dodanu vrijednost u teoriji i praksi)*, Split, Web Bookstore, 2015, p. 29.

6 In the sixteenth century, alcoholic beverages, beer, sugar and salt in the Netherlands were taxed by specific tax that was called *excijssen*, whose name derives from the old French word *assize*. See further in Kuliš, D., *op. cit.*, p. 5.

7 Indirect taxes are taxes paid before spending income, a direct are paid during its spending. See further in Jelčić, B., Lončarić Horvat, O., Šimović, J., Arbutina, H., *Financial Law and Financial Science (Financijsko pravo i financijska znanost)*, Zagreb, Official Gazette, 2008, p. 102-108.

8 Similar in Cindori, S., Barišić, M., *Legal Framework for Taxation of Tobacco Products in the Excise System of the Republic of Croatia in Terms of Sustainable Economic Development (Pravna regulativa oporezivanja duhanskih preradevina u trošarinskom sustavu Republike Hrvatske u funkciji održivog ekonomskog razvoja)*, Beograd, ERAZ 2015 Sustainable Economic Development – Modern and Multi-disciplinary Approaches, 2015, p. 236-237.

9 See further in Jelčić, B., Bejaković, P., *Development and Perspective of Taxation in Croatia (Razvoj i perspektive oporezivanja u Hrvatskoj)*, Zagreb, Croatian Academy of Arts and

This taxation system was not present after the World War II or in the first years of independence of the Republic of Croatia (hereinafter: Croatia). As part of a comprehensive tax reform, excise duties were first introduced in 1993 by then Excise Duty Act on Coffee (*Zakon o posebnom porezu na kavu*),<sup>10</sup> followed by the adoption of other laws on excise duties: the Excise Duty Act on Tobacco Products (*Zakon o posebnom porezu na duhanske proizvode*),<sup>11</sup> the Excise Duty Act on Alcohol (*Zakon o posebnom porezu na alkohol*),<sup>12</sup> the Excise Duty Act on Soft Drinks (*Zakon o posebnom porezu na bezalkoholna pića*),<sup>13</sup> the Excise Duty Act on Beer (*Zakon o posebnom porezu na pivo*),<sup>14</sup> the Excise Duty Act on Oil Derivatives (*Zakon o posebnom porezu na naftne derivate*)<sup>15</sup> and the Excise Duty Act on Car Import (*Zakon o posebnom porezu na uvoz automobila*).<sup>16</sup>

Excise duties are an essential part of modern tax system. Although the primary objects of taxation are considered to be alcohol, tobacco and energy-generating products, the circle of their reach is resilient and present an image of the time in which they are applied. Their basic features are ease of collection and a small number of taxpayers, and also the plentiful source of fiscal revenue.<sup>17</sup>

Historical development and changes in tax structures indicate certain tendencies in the development of the excise duty which can be subdivided into the following:

- increasing the number of objects of taxation, with the support on changes in consumption (standards increase initiates taxation of luxury goods due to financial and social impacts)
- the tendency of narrowing the circle of taxable objects (the reason is the tax-technical and fiscal establishment, but an important role is played by economic and social reasons - high incomes are correlated with the taxation of mass consumption, but not by taxing luxury goods)
- efforts to establish a taxation in which there is closer relationship between the amount of the tax burden and the amount of the actual cost, meaning that is striked the tax force intensified when buying goods.<sup>18</sup>

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Science, 2012, p. 22.

10 Excise Duty Act on Coffee, Official Gazette No. 66/93. (*Zakon o posebnom porezu na kavu, NN br. 66/93.*)

11 Excise Duty Act on Tobacco Products, Official Gazette No. 51/94. (*Zakon o posebnom porezu na duhanske prerađevine, NN br. 51/94.*)

12 Excise Duty Act on Alcohol, Official Gazette No. 51/94. (*Zakon o posebnom porezu na alkohol, NN br. 51/94.*)

13 Excise Duty Act on Soft Drinks, Official Gazette No. 51/94 (*Zakon o posebnom porezu na bezalkoholna pića, NN No. 51/94.*)

14 Excise Duty Act on Beer, Official Gazette No. 51/94. (*Zakon o posebnom porezu na pivo, NN br. 51/94.*)

15 Excise Duty Act on Oil Derivatives, Official Gazette No.51/94. (*Zakon o posebnom porezu na naftne derivate, NN br. 51/94.*)

16 Excise Duty Act on Car Import, Official Gazette No 51/94. (*Zakon o posebnom porezu na uvoz automobile, NN br. 51/94.*)

17 Kuliš, D., *Do We Pay European Excise Duties (Plaćamo li europske trošarine)*, Zagreb, Public Finances Institute, 2005, p. 5.

18 See further in Jelčić, B, *Taxes (Porezi)*, Zagreb, Libertas Business College, 2011, p. 240 - 241.

The recent advances in the understanding of the excise policy, encouraged by the harmonization with the European Union *acquis* (hereinafter: EU), compiled in the Excise Duty Act (*Zakon o trošarinama*),<sup>19</sup> which regulates the excise tax system on tobacco products manufactured in Croatia entered from the other Member States of EU or imported into the EU. Implementing provisions governing treatment in the application of the Excise Duty Act (*Zakon o trošarinama*) are contained in the Regulation on Excise Duties (*Pravilnik o trošarinama*).<sup>20</sup>

The negative impact of tobacco products on human health initiates the need for harsher legal regulations. It is given the growing importance on prevention of smoking, and it is carried out by fiscal policy and health protection measures. Despite all the efforts of powerful preventive and repressive policy tobacco industry still finds its ways to users by improving existing or placement of new products, such as electronic cigarettes.

### 3. LEGAL FRAMEWORK OF EUROPEAN UNION

Erasing the borders between EU member states and emerging free movement of goods, services, people and capital, and the functioning of the single market imposed the requirement for compliance tax regulations, among others. The diversity of tax systems significantly hindered its implementation. A hint of alignment and basic conditions of harmonization are result of the so-called. White Paper, adopted in 1985. The first guidelines aimed at harmonizing excise duties relating tobacco products, alcohol and alcoholic beverages and mineral oils.<sup>21</sup> Other products that are also subject of excise tax Member States regulate without the obligation of harmonization, in a way that allows free and unimpeded trade between them, “conditioned by the existence of excise warehouses and relevant documents that accompany these products in cross-border transactions”.<sup>22</sup>

Further harmonization process has characterized the adoption of systemic and structural directives. System Directive 2008/118/EC presents general rules for energy-generating products and electricity, alcohol and alcoholic beverages and manufactured tobacco, while the structural directives regulate level and structure of taxation. Directive 95/59/EC is the first directive that regulated the area of tobacco products, and other significant directives are Directive 2010/12/EC, Directive 2011/64/EC and Directive 2014/40/EU.<sup>23</sup>

19 Excise Duty Act, Official Gazette No. 22/13., 32/13., 81/13. (*Zakon o trošarinama*, NN br. 22/13., 32/13., 81/13).

20 Regulation on Excise Duties, Official Gazette No. 64/13., 129/13., 11/14., 70/14., 157/14., 8/15. (*Pravilnik o trošarinama*, NN br. 64/13., 129/13., 11/14., 70/14., 157/14., 8/15.)

21 Similar in Cindori, S., Barišić, M., *op. cit.*, p. 239.

22 Taken from Šimović, J., Šimović, H., *op. cit.*, p. 205.

23 Silmilar Cindori, S., Barišić, M., *op. cit.*, p. 239-240.

### 3.1. Council Directive 2011/64/EU

The Union's fiscal legislation on tobacco products needs to ensure the proper functioning of the internal market and, at the same time, a high level of health protection. As regards manufactured tobacco, achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in this sector does not distort conditions of competition and does not impede their free movement within the Union. As far as excise duties are concerned, harmonisation of structures must, in particular, result in competition in the different categories of manufactured tobacco belonging to the same group not being distorted by the effects of the charging of the tax and, consequently, in the opening of the national markets of the Member States.<sup>24</sup>

#### 3.1.1. *The problem of determining the excise duty base for cigarettes*

Directive 2011/64/EU is focused on the financial aspect, the structure and rates of excise duty applied to manufactured tobacco, and the availability and demand for such products. In this regard, there are several types of manufactured tobacco: cigarettes,<sup>25</sup> cigars and cigarillos, and smoking tobacco (fine-cut tobacco for rolling cigarettes and other smoking tobacco). Products that wholly or partly contain substances other than tobacco, but meet the basic features of cigarettes and smoking tobacco, are also considered such products. However, products that do not contain tobacco and used exclusively for medical purposes, are not considered tobacco products.

Cigarettes manufactured in the EU and cigarettes imported from third countries are subject to an *ad valorem* excise duty calculated on the basis of the maximum retail price, including customs duties and also specific excise computed per unit of the product.<sup>26</sup> The percentage of *ad valorem* excise duty and the rate of the specific excise duty must be the same for all cigarettes.

The percentage of the specific component of excise duty in the rate of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price. The weighted average retail selling price shall be calculated by reference to the total value of all cigarettes released for consumption, based on the retail selling price including all taxes, divided by the total quantity of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.<sup>27</sup>

In addition to general determinants the definition of tobacco products and ways of determining the excise tax, Directive 2011/64/EU provides that the overall excise

24 See further in introductory point 2, 3 and 9 of Directive 2011/64/EU.

25 Term „cigarette„ see in Article 3 and 4 of Directive 2011/64/EU.

26 Member States may exempt the customs duties on the basis of calculating the *ad valorem* excise duty on cigarettes. Taken from Article 7 Paragraph 1 and 2 of Directive 2011/64/EU.

27 Taken from Article 8 Paragraph 2 of Directive 2011/64/EU.

duty on cigarettes from 1 January 2014 should be at least 60% of the weighted average retail selling price of cigarettes (excise duty shall not be less than 90 euros for 1 000 pieces of cigarettes, regardless of the weighted retail price). However, Member States which levy excise duty of at least EUR 115 per 1 000 cigarettes on the basis of the weighted average retail selling price need not comply with the 60% requirement, as already mentioned above.<sup>28</sup>

### 3.1.2. *Legislative treatment of other tobacco products*

When it comes to cigars, cigarillos, fine-cut tobacco for rolling cigarettes and other smoking tobacco Member States shall apply an excise duty which may be: an *ad valorem* duty calculated on the basis of the maximum retail price of each product, then the specific duty expressed as an amount per kilogram alternatively for given numbers of items (in case of cigars and cigarillos), or a mixture of both, which contains an *ad valorem* element and specific element.<sup>29</sup>

The overall excise duty (specific duty and/or *ad valorem* duty excluding VAT), expressed as a percentage, as an amount per kilogram or for a given number of items, shall be at least equivalent to the rates or minimum amounts laid down for:

- a) cigars or cigarillos: 5% of the retail selling price inclusive of all taxes or EUR 12 per 1 000 items or per kilogram
- b) fine-cut smoking tobacco intended for the rolling of cigarettes: 40% of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or EUR 40 per kilogram<sup>30</sup>
- c) other smoking tobaccos: 20% of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

### 3.1.3. *Determination of retail selling price*

Manufacturers, their representatives or authorized agents in the EU and importers of tobacco from third countries are free to determine the maximum retail selling price for each of their products for each Member State in which the products are placed in consumption. However, this must not interfere the implementation of national legislative systems regarding the control over price levels or compliance with the prescribed prices, provided that they comply with EU legislation.

<sup>28</sup> Determining the amount of excise duties depends on the change of the weighted average retail selling price of cigarettes, and thus to reducing the overall excise duty below the specified percentage, as well as increasing the rate of VAT on cigarettes. See more in Article 11 Paragraph 1 and 2 of Directive 2011/64/EU and Article 1 of Directive 2010/12/EU.

<sup>29</sup> Taken from Article 13 and 14 of Directive 2011/64/EU.

<sup>30</sup> The weighted average retail selling price is calculated based on the total value of fine-cut tobacco for smoking for cigarette rolling placed in the consumption, based on retail price, including all taxes, divided by the total quantity of fine-cut tobacco for smoking cigarette rolling placed on the consumption. Shall be determined by 1 March each year on the basis of data on the total of such tobacco placed under consumption during the previous calendar year. Taken from Article 14 Paragraph 2 of Directive 2011/64/EU.

In order to facilitate the introduction of excise duty, Member States may, for each group of tobacco products, determine the scale of retail prices, as long as each scale has sufficient scope and variety and matches the diversity of products originating in the EU. Each scale is valid for all products belonging to the group of tobacco products to which it relates, without distinction on the basis of quality, appearance, origin of the product or the materials used the characteristics of the company or any other criteria.

The rules on the excise duty levy shall be adjusted at the latest in the final stage of harmonization of excise duties. In the previous phase, excise is generally charged by state markers. If Member States levy excise duty by state markers, they are obliged to make them available to manufacturers and dealers in other Member States. In the case of charging excise on any other way, Member States shall ensure that any obstacle, either administrative or technical, does not affect the conditions of trade.

### **3.2. Council Directive 2014/40/EU**

In order to ensure the proper functioning of the internal market, while the high level of health protection, the EU encourages the implementation of a number of reforms in the fiscal legislation and health care policy at EU and Member State level. Legislation at the Member State level influences the formation of neutral conditions of competition for manufacturers, but also to ensure a high level of human health protection. The level of taxation has proved to be a major factor in the price of tobacco products, which affects the smoking habits of consumers. Attention should be paid to the fact that fraud and smuggling lower price levels caused by taxes, especially cigarettes and fine-cut tobacco intended for rolling cigarettes, which ultimately affects the effectiveness of controls on trade of tobacco and health protection objectives.

#### **3.2.1. Content scope of Directive 2014/40/EU**

In addition to the need for establishing maximum limits for emission levels of tar, nicotine and carbon monoxide in cigarettes,<sup>31</sup> of importance is the implementation of the information on ingredients and emissions of tobacco products to every user of tobacco products, in order to have the opportunity to assess the attractiveness, addictiveness and insight into the toxicity of tobacco products, as well as human health risks associated with the consumption of such products.

In terms of additives that are included in the priority list, it is insisted on toughening additional reporting obligations in order to assess their toxicity, addictiveness and carcinogenic, mutagenic or reproductive-toxic properties (“CMR properties”), including the combusted form.<sup>32</sup>

31 Emission levels in cigarettes marketed or manufactured in the Member States (“the maximum level of emissions”) shall not be greater than 10 mg of tar per cigarette, 1 mg of nicotine per cigarette, 10 mg of carbon monoxide per cigarette.

32 See further in introductory points 11 and 13 of Directive 2014/40/EU.

### 3.2.2. *Health protection as a side effect of the fiscal norms*

The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States, in order to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of protection of human health, especially for young people, and to meet the obligations of the Union under the WHO Framework Convention for Tobacco Control (“FCTC”), concerning:

- a) the ingredients and emissions of tobacco products and related reporting obligations, including the maximum emission levels for tar, nicotine and carbon monoxide for cigarettes
- b) certain aspects of the labelling and packaging of tobacco products including the health warnings to appear on unit packets of tobacco products and any outside packaging as well as traceability and security features that are applied to tobacco products to ensure their compliance with this Directive
- c) the prohibition on the placing on the market of tobacco for oral use
- d) cross-border distance sales of tobacco products
- e) the obligation to submit a notification of novel tobacco products
- f) the placing on the market and the labelling of certain products, which are related to tobacco products, namely electronic cigarettes and refill containers, and herbal products for smoking.<sup>33</sup>

Emissions of tar, nicotine and carbon monoxide in cigarettes are measured on the basis of ISO standard 4387 for tar, ISO standard 10315 for nicotine and ISO standard 8454 for carbon monoxide. The accuracy of measurements of tar, nicotine and carbon monoxide shall be determined in accordance with ISO standard 8243. These measurements are checked by laboratories approved and supervised by the competent authorities of the Member States, which may not be owned by the tobacco industry nor those they may directly or indirectly manage.

On the other hand, Member States shall require manufacturers and importers of cigarettes and roll-your-own tobacco containing an additive that is included in the priority list<sup>34</sup> to carry out comprehensive studies, which shall examine for each additive whether it contributes to the toxicity or addictiveness of the products concerned and whether this has the effect of increasing the toxicity or addictiveness of any of the products concerned to a significant or measurable degree, results in characterising flavour, facilitates inhalation or nicotine uptake and leads to the formation of substances that have CMR properties, the quantities thereof, and whether this has the effect of increasing the CMR properties in any of the products concerned to a significant or measurable degree.

Those studies shall take into account the intended use of the products concerned and examine in particular the emissions resulting from the combustion

<sup>33</sup> Taken from Article 1 of Directive 2014/40/EU.

<sup>34</sup> The first list of additives shall be adopted by 20 May 2016 and must contain at least 15 additives. Taken from Article 6 Paragraph 2 of Directive 2014/40/EU.

process involving the additive concerned. The studies shall also examine the interaction of that additive with other ingredients contained in the products concerned. Manufacturers or importers using the same additive in their tobacco products may carry out a joint study when using that additive in a comparable product composition and shall establish a report on the results of these studies.<sup>35</sup>

### *3.2.2.1. Prohibition and health warnings*

In order to protect the health of consumers it is prohibited to place on the market tobacco products containing additives such as vitamins and other additives that create the impression that a tobacco product has health benefits or is less dangerous to health, caffeine and taurine and other additives and stimulant compounds that are associated with the energy and vitality, then additives having colouring properties for emissions, and in tobacco products for smoking additives that facilitate inhalation or uptake of nicotine and additives that have the CMR properties in the unburnt form.

It is prohibited placing on the market those tobacco products containing flavourings in any of their components such as filters, papers, packages, capsules or any technical features allowing modification of the smell or taste of the tobacco products concerned or their smoke intensity. Filters, papers and capsules shall not contain tobacco or nicotine.<sup>36</sup>

Health protection goes in the direction of the visual effect for the consumer when consuming the product, as well. For that reason Council Directive 2014/40/EU enacts that each unit packet and any outside packaging of tobacco products for smoking shall carry health warnings<sup>37</sup> on official language or languages of Member State in which the product is placed on a market. Warnings must cover the entire surface of the unit or the outer packaging that is intended for them and must not in any way comment on, to paraphrase nor shall refer to them.

The labelling of unit packets and any outside packaging and the tobacco product itself shall not include any element or feature that promotes a tobacco product or encourages its consumption by creating an erroneous impression about its characteristics, health effects, risks or emissions, labels shall not include any information about the nicotine, tar or carbon monoxide content of the tobacco product, suggests that a particular tobacco product is less harmful than others or aims to reduce the effect of some harmful components of smoke or has vitalising, energetic, healing, rejuvenating, natural, organic properties or has other health or lifestyle benefit, refers to taste, smell, any flavourings or other additives or the absence thereof, resembles a food or a cosmetic product, suggests that a certain

35 Taken from Article 6 Paragraph 3 and 4 of Directive 2014/40/EU.

36 Taken from Article 7 Paragraph 6 of Directive 2014/40/EU.

37 Each unit packaging and all external packaging of tobacco products for smoking must contain one of the following general warning: "Smoking kills - immediately stop" or "Smoking kills", as well as an informative message "Tobacco smoke contains more than 70 substances that cause cancer". Taken from Article 9 Paragraph 1 and 2 of Directive 2014/40/EU.

tobacco product has improved biodegradability or other environmental advantages. The unit packets and any outside packaging shall not suggest economic advantages by including printed vouchers, offering discounts, free distribution, two-for-one or other similar offers.<sup>38</sup>

### 3.2.3. *The impact of consumption of tobacco products on human health*

It is evident that the efforts of Directive 2014/40/EC aim to protect health and reduce smoking because of which in 2011 in the world, died about 6 million people due to the consequences of diseases caused by smoking<sup>39</sup>, and it is estimated that in Croatia, in the same year, due to the consequences of smoking died around 28% of men and 8% of women.<sup>40</sup>

Measures to prevent the consumption of tobacco products in Croatia are focused primarily on prohibiting the promotion of tobacco products, a steady rise in prices, warning labels on products, education campaigns, and treatments with the aim of stopping smoking and restrictions on smoking in workplaces and public areas. Rules on advertising and prohibition of smoking in all indoor public spaces are tight. Restriction of the use of tobacco products requires that each pack of cigarettes must have a clear warning about the dangers of smoking, prohibits sponsoring the event, activity or individuals with the aim of direct or indirect advertising of tobacco products or tobacco use, obliges institutions that provide care and education to promote the understanding of the harmfulness of the use of tobacco products, all with the aim of preventing their consumption.

**Table 1.** *Population in Croatia, Slovenia, Serbia and Bosnia and Herzegovina which consumed tobacco products during 2013.*

STATE	ADULTS ≥ 15 godina (%)		ADOLESCENTS 13-15 godina (%)	
	MEN	WOMEN	BOYS	GIRLS
Croatia	36	30	23	26
Slovenia	30	22	17	24
Serbia	38	27	11	10
B&H	47	36	16	11

Source: analysis of the author based on the data of the World Health Organization<sup>41</sup>

38 See further in Article 13 of Directive 2014/40/EU.

39 Source: <http://www.tobaccoatlas.org/harm/deaths/text/>, accessed 7 December 2015.

40 Source: [http://www.tobaccoatlas.org/harm/deaths/female\\_deaths/](http://www.tobaccoatlas.org/harm/deaths/female_deaths/), accessed 7 December 2015.

41 See further on [http://www.who.int/gho/publications/world\\_health\\_statistics/EN\\_WHS2013\\_Part3.pdf?ua=1](http://www.who.int/gho/publications/world_health_statistics/EN_WHS2013_Part3.pdf?ua=1), accessed 13 January 2016.

Analysis of the data on consumption of tobacco products includes men, women, boys and girls (adolescents) in Croatia, Slovenia, Serbia and Bosnia and Herzegovina during period of 2013. Although the most consumption of tobacco products is recorded among men and women in Bosnia and Herzegovina, the consumption of tobacco products in adolescents leads in Croatia.

In the consumption of tobacco products in all countries the men stand out, while the percentage of adolescents is disturbingly high, especially in Croatia. Number of adolescents - consumers of tobacco products is the lowest in Serbia, while only in Bosnia and Herzegovina, the percentage of boys who consume tobacco products is more significant than the one registered in girls.

It is interesting to note that some studies suggest that the elasticity of demand for cigarettes among young people does not depend only on their income, but also on the prices of other goods consumed. Analysis of trends in cigarette consumption among young people in the United States at the time of strong growth in prices of automotive fuel indicates a visible link between the fall in consumption of cigarettes and fuel prices. The above shows that young people, in a situation where they are forced to choose between two products in favour of their preferences, as well as luxury goods, before elected expenses in purchase of fuel than buying cigarettes.<sup>42</sup>

**Table 2.** *The average consumption of cigarettes per capita, the price of the selected type of high quality cigarettes and GDP per capita in Croatia, Slovenia, Serbia and Bosnia and Herzegovina during 2013*

STATE	Consumption of cigarettes per capita	Cigarette price (in euros)	GDP per capita (in dollars)
Croatia	1 709	3.9	13 575.0
Slovenia	2 637	3.3	23 144.1
Serbia	1 643	1.91	6 353.8
B&H	2 233	1.87	4 666.2

*Source: analysis of the author based on the Tobaccoatlas*

From the standpoint of the average consumption of cigarettes per capita in Croatia, Slovenia, Serbia and Bosnia and Herzegovina during 2013, the most consumers were recorded in Slovenia, while the least in Serbia. The average consumption of cigarettes in Croatia does not differ too much from those observed in Serbia, while the consumption of cigarettes in Bosnia and Herzegovina is somewhere in the middle of value in the above mentioned countries. Taking into account that the box of one of the selected type of high quality cigarettes is priced highest in Slovenia (3.9 euros), followed by Croatia (3.3 euros), and almost equal

42 See further in Antić, D., *Implications of the taxation of tobacco in the European Union in the period 2005-2014*, Zagreb, Financial Theory & Practice, 2015, p. 4.

in Serbia (1.91 euros) and Bosnia and Herzegovina (1.87 euros), it is interesting to point out that the price of a product has not influenced on the consumption of cigarettes speaking on average *per capita* observed countries of which some have and some have not harmonized its legislation with EU legislation.

In the wake of the conclusion of the weak links between cigarette prices and their consumption in the elderly, but also young population, especially comparing data with the purchasing power of citizens, it can be assumed that the citizens of Croatia (partly due to the specific position and long borders to countries that offer cheaper tobacco products) resort to buying cigarettes in Bosnia and Serbia. The greater the difference between the price of cigarettes in Croatia and neighbouring countries, the higher is the cost-effectiveness of the citizens of Croatia for their purchase on the other side of the state border. When this price difference is added to perennial decline in gross domestic product in Croatia, underemployment and increasing the excise duty, it is expected that the state budget of Croatia will suffer loss in that category, with the primary failure in prevention and health goals.

In favour of the previous statements are actions of Ministry of the Interior, as well. In 2012, police in Croatia seized 2.5 million cigarettes and a slightly less than 11 tons of tobacco, which represents around 1.8% of the illegal market. In order to prevent further smuggling, on 1 September, 2013 was launched operational action to increase seizures of tobacco products. Although the campaign was launched in September and carried out only during the last quarter of 2013, there was an evident increase in the rate of seizures of tobacco products by 1.82% in 2012 to 6.04% in 2013, which is roughly the European average. During 2013, 4.8 million cigarettes and nearly 40 tons of tobacco were seized, with a note that those are only the police results.<sup>43</sup>

#### 3.2.4. *The effectiveness of restrictive measures*

The illegal sale and smuggling of tobacco products violate customs procedures. The customs law treats them as a customs offence, and customs officers address minor offences warrant as an effective and cost-effective solution for minor offence cases. However, when the defendant does not deny committing the offence, but objects to the amount of the imposed, the competent Minor offences court decides on an objection.<sup>44</sup>

The effectiveness of the mentioned ways to combat illegal trade of tobacco products can be proved by comparing two verdicts of the Minor Offences Court in Zagreb with minimal penalties imposed. In both judgments defendants were found guilty of offences under Art. 102, paragraph 1, subparagraph 17 of the Excise Duty Act.<sup>45</sup> For the offence committed the same Act prescribes a fine of 5 000 to 100

43 See further on <http://www.mup.hr/179089/40.aspx>, accessed 5 January 2016.

44 Minor Offences Act, Official Gazette No. 107/07, 39/13., 157/13., 110/15. (*Prekršajni zakon, NN br. 107/07., 39/13., 157/13., 110/15.*)

45 Excise Duty Act, Official Gazette No. 22/13., 32/13., 81/13. (*Zakon o trošarinama, NN br. 22/13., 32/13., 81/13.*)

000 HRK. First verdict<sup>46</sup> confirmed misdemeanour sanction imposed in the issued minor offence warrant in the amount of 2 000 HRK, flat rate expenses in the amount of 100 HRK and seizure of excise objects (cigarettes). Second judgment<sup>47</sup> imposed a misdemeanour sanction in the amount of 4 000 HRK and flat rate expenses in the amount of 100 HRK, and based on mitigating circumstances<sup>48</sup> has reduced the amount on 2 100 HRK with the exemption from flat rate expenses.<sup>49</sup> If to all the foregoing is added the option to pay only two-thirds the fine imposed (if it is paid within 15 days), the penalty may amount to final 1 400 HRK.

It is an undeniable that larger fines and faster processing of these violations affect on reducing the attractiveness of illicit trade of tobacco products. However, the positive development in budget revenues, which should result in a reduction in the scale of loss of tax revenue due to illegal activities, can be achieved by better and more effective control, more effective methods of tax and customs services and involvement in the European system of monitoring traffic and goods that are taxed by excise.<sup>50</sup>

According to estimates made by the Ministry of Interior, the damage to the state budget due to the illegal trade in tobacco products per year is between 800 and 900 million. In addition to the financial damage to the state budget, the losses are suffered by all entities involved in the production, distribution and sale of tobacco products. Also, due to the sale and consumption of tobacco products, which does not comply with regulations and standards, is further emphasized the possibility of harming the human health.<sup>51</sup> The importance and the need to combat illegal trade in tobacco products is also visible within the framework of EU content of the Protocol to the Eliminate of illicit trade in tobacco products within the competence of the World Health Organization Framework Convention on Tobacco Control.<sup>52</sup>

### 3.3. *The alignment with the EU acquis communautaire*

The Excise Duty Act represents a unified system of excise taxation of alcohol and alcoholic beverages, tobacco products and energy generating products and

46 Minor Offences Court in Zagreb, case PpGž-892/14 12 November 2014 from Mataga, D. Minor Offence Proceeding: Objection to the Minor Offences Warrant upon a Decision on Misdemeanour Sanction - fine, Zagreb, Customs Journal No. 4/2015 p.85-57. (*Prekršajni sud u Zagrebu, PpGž-892/14 od 12. studenoga 2014. iz Mataga, D., Prekršajni postupak: prigovor na prekršajni nalog zbog odluke o prekršajnojpravnoj sankciji – novčanoj kazni, Zagreb, Carinski vjesnik br. 4/2015, p. 85-87.*)

47 Minor Offences Court in Zg PpGž-37/15, 11 February 2015., *ibid.*

48 See further in Article 37 Prekršajnog zakona, NN br. 107/07., 39/13., 157/13., 110/15.

49 See further in Mataga, D., *loc. cit.* p. 85-87.

50 Similar in Kuliš, D., *op. cit.*, p. 14.

51 See further: <http://www.mup.hr/179089/40.aspx>, accessed 5 January 2016.

52 World Health Organization Framework Convention on Tobacco Control, Official Gazette IC No. 3/08. (*Okvirna konvencija Svjetske zdravstvene organizacije o nadzoru nad duhanom, NN MU br. 3/08.*)

electricity,<sup>53</sup> according to the postulates of the EU *acquis* in the field of excise policy harmonization. In addition to the excise duty mentioned above, and accordance with the provisions of Directive 2008/118/EC, in the tax system Croatia kept the taxation of coffee, soft drinks,<sup>54</sup> motor vehicles,<sup>55</sup> a specific tax on insurance premiums for automobile liability and Casco insurance of motor vehicles.<sup>56</sup>

When harmonizing excise duty with EU requirements in relation to tobacco products, Croatia has been granted a transitional period until 31 December 2017 for the gradual achievement of the minimum excise duty which is caused by timely proportional harmonizing growth of total excise. This will ensure that the 1 January 2014, it cannot be lower than minimum of 77 euros per 1 000 cigarettes,<sup>57</sup> regardless of the weighted average retail selling price of cigarettes released for sale and timely proportional harmonizing growth of total excise until reaching the minimum share of the total excise duty of 60% weighted average retail selling price of cigarettes released for consumption and the minimum amount of EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price of cigarettes released for consumption on 31 December, 2017.<sup>58</sup> Further increase of the tax burden of other types of tobacco for smoking, which is equally harmful and is currently taxed at a lower tax rate, both in Croatia and in other EU states, is expected.<sup>59</sup>

Paying differences of excise duty on cigarettes released for consumption is prescribed as an obligation to other authorized persons<sup>60</sup> that hold the cigarette in order to sell them to end consumers and excise taxpayers on tobacco products, as one of the fiscal measures applicable from 1 July 2013. In addition to preventing

53 With the Excise Duty Act entering into force next shall be repealed Excise Duty Act on Beer (*Zakon o posebnom porezu na pivo*) Official Gazette No. 136/02., Excise Duty Act on Alcohol (*Zakon o posebnom porezu na alcohol*) Official Gazette No. 136/02., 107/07., Excise duty Act on Tobacco Products (*Zakon o posebnom porezu na duhanske proizvode*) Official Gazette No. 136/02., 95/04., 152/08., 38/09. and Excise Duty Act on Oil Derivatives (*Zakon o posebnom porezu na naftne derivate*), Official Gazette No. 136/02., 123/03., 179/03.

54 Excise Duty Act on Coffee and Soft Drinks, Official Gazette No. 72/13. (*Zakon o posebnom porezu na kavu i bezalkoholna pića, NN br. 72/13.*)

55 Excise Duty Act on Motor Vehicles, Official Gazette No. 15/13., 108/13. (*Zakon o posebnom porezu na motorna vozila, NN br. 15/13., 108/13.*)

56 Tax Act on Insurance Premiums for Automobile Liability and Casco Insurance of Motor Vehicles, Official Gazette No. 150/02. (*Zakon o porezu na premije osiguranja od automobilske odgovornosti i premije kasko osiguranja cestovnih vozila, NN br. 150/02.*)

57 According to "Regulation on the Excise Duty on Cigarettes, Fine Cut Tobacco and Other Smoking Tobacco" (*Uredba o visini trošarine na cigarete, sitno rezani duhan i ostali duhan za pušenje*), Official Gazette No. 43/15., excise duty rate on cigarettes is: a specific duty of 230 per 1 000 pieces of cigarettes proportional excise duty 38% off the retail price.

58 Similar in Marinović, Ž., Calculation of Differences of Excise Duty on Cigarette Stocks (*Obračun razlike trošarine na zalihe cigareta*), Zagreb, Customs Journal, No. 9/2013, p. 53.

59 Taken from Cindori, S., Barišić, M., *op. cit.* p. 241.

60 The person who holds the excise products outside excise suspension system in which the excise duty has not been paid. See more in Article 21 Paragraph 2 Subparagraph 1 of Excise Duty Act (*Zakon o trošarinama*), Official Gazette No. 22/13., 32/13., 81/13., 100/15.

manufacturers in the creation of speculative stocks,<sup>61</sup> it aims to increase budget revenues from excise by stricter control of excise stamps. These payers are required to calculate and pay the difference of excise duty on all cigarettes that are on the stocks traded on the territory of Croatia at the time of increasing the rate of the excise duty and / or increase in retail prices, which have been released for consumption in Croatia.<sup>62</sup> The exception refers to the fine-cut tobacco, other smoking tobacco, cigars and cigarillos.

Stocks of cigarettes that are not affected by obligation to calculate and pay excise tax differences due to the increase in retail prices, are related to cigarettes that the increase in the retail price is reported and minimal excise duty should be already calculated. The exception includes the stocks of cigarettes that were first time placed on the market in Croatia and stocks of cigarettes with already registered brand of cigarettes and change in the number of cigarettes in a packet. If the taxpayer does not have cigarettes in stock, mentioned obligation does not exist.<sup>63</sup>

**Table 3.** *Comparison of the average monthly revenue from excise duties on tobacco products with the rate of excise duty on cigarettes in the period 2010 - 2015.*

Year	Average monthly income of the excise duty on tobacco products (in 000 HRK)	Excise duty rate on cigarettes
2010	274	until October - 30% + 180 HRK/1 000 pieces since October - 33% + 180 HRK/1 000 pieces
2011	289	33% + 180 HRK/1 000 pieces
2012	326	until December - 33% + 180 HRK/1 000 pieces since December - 36% + 180 HRK/ 1 000 pieces
2013	301	36 % + 180 HRK/1 000 pieces
2014	323	until March - 36% + 180 HRK/1 000 pieces since March - 37% + 210 HRK/1 000 pieces
2015	349	since April - 38% + 230 HRK/1 000 pieces

*Source: analysis of the author based on the Ministry of Finance data*

61 Speculative stocks are goods in the warehouse collected with the intent to sell when prices increase significantly, as can be intentionally cause by certain speculative actions. Taken from Šamanović, J., Sales, Distribution, Logistics, Theory and Practice (*Prodaja, distribucija, logistika, teorija i praksa*), Split, Faculty of Economics Split, 2009, p. 208.

62 Similar in Marinović, Ž., Calculation and Payment of Differences of Excise Duty on Cigarettes Released for Consumption (*Obračun i plaćanje razlike trošarine na cigarete puštene u potrošnju*), Zagreb, Customs Journal No. 4/2014, p. 31.

63 See further in Marinović, Ž., Calculation of Differences of Excise Duty on Cigarette Stocks (*Obračun razlike trošarine na zalihe cigareta*), *cit.*, p. 60-62.

Table 3 shows the movement of the average monthly revenue from excise taxes on tobacco products in the period 2010 - 2015 in relation to the legislative changes of proportional and specific excise duties. During the period 2010 - 2014 (March), only proportional excise duty rate on cigarettes was increased from 30% to 36% of the retail price, while in the same period in 2014 (March) - 2015, it was increased by two percentage points. However, in the same period (March 2014 - 2015) the rate of the specific excise duty was increased from 180 HRK to 210 HRK (2014), *apropos* 230 HRK (2015) to 1 000 cigarettes.

The observation period of five years recorded a total increase of the proportional excise duty on cigarettes for eight percentage points (30% - 38%), and the specific excise duty rate for 50 HRK per 1 000 cigarettes. The analysis of average monthly revenue from excise taxes on tobacco products (in the same period) showed evident changes in the movements in budget revenue of this kind. Namely, in the period 2010 - 2012 there was an increase in revenues from excise duty, in accordance with the growth of the proportional excise duty by six percentage points. The jump in revenue growth recorded 2012 is especially high. Although there have not been any legislative changes in 2013, the budget recorded a smaller amount in collected excise duties on tobacco products in comparison to the previous year. In subsequent years (2014 and 2015) the tax rate on behalf of excise duty is growing again. Analysis of the data indicates that the significant increase in revenues from excise taxes on tobacco products in 2012 is the result of the signal tax activity, among other things.<sup>64</sup>

Accession to the EU, constant media pressure and announcements about the price increase of cigarettes and other tobacco products in order to comply with EU legislation, have prompted consumers to buy stocks. Increasing the price of cigarettes in 2013 certainly had an impact on the strengthening the underground economy, illegal purchase, cigarette smuggling across the border with non-EU countries, and in some individuals possibly smoking cessation.

Although the tobacco industry has undertaken a part of the price increase burden and thus tried to depreciate the aforementioned negative effects, the first steps of harmonization of national legislation with the EU *acquis* gave negative results on the revenue side of the budget.

### ***3.4. The impact of taxation of tobacco products on the budget of Croatia***

Taxation of tobacco products is realizing the intention of Wagner principles of buoyancy and directing resources from private hands into state treasury, from which will settle public expenditure. Taxes have multiple macro and micro-economic effects which may result in greater or lesser odds with the aim that wanted to be achieved by introducing them.<sup>65</sup>

64 See further about the term "signal tax activity" in Jelčić, B., Lončarić Horvat, O., Šimović, J., Arbutina, H., *op. cit.*, p. 239.

65 See further in Jelčić, B., Lončarić Horvat, O., Šimović, J., Arbutina, H., *op. cit.*, p. 237.

Contradiction of taxation purposes of tobacco products is reflected in its role of fiscal and non-fiscal instrument at the same time. By increasing the amount of excise duty, a significant share of the state budget in the context of excise taxation is expected, and on the other hand, the effect of this procedure is expected to be decreasing of the customer base which acts as a strong element of health protection. Such an effect interferes the existence of close substitutes, as well as addiction seeking alternative ways of its realization. Various measures have synergistic effects, and rely on the fact that the comprehensive measures, priced and not the priced, are the most effective in order to reduce tobacco consumption.<sup>66</sup> Justification or listed contradictions lies in the fact that a single tax can achieve more objectives and the same objective can be achieved by applying different tax and the same objective can be achieved not only through taxation, but using the other measures which the government has.<sup>67</sup>

*Table 4. Overview of budget revenue from tobacco products, excise duty and the total budget revenues (in HRK) in the period 2010-2015*

YEAR	TOBACCO PRODUCTS	EXCISE DUTY - total	REVENUE - total
2010	3 292 993	11 972 326	110 831 567
2011	3 473 375	11 215 054	110 406 122
2012	3 915 174	11 206 489	112 883 471
2013	3 616 934	11 682 936	112 051 132
2014	3 875 598	12 846 449	114 044 485
2015	4 187 218	13 921 809	107 480 867
<b>TOTAL</b>	<b>22 361 292</b>	<b>72 845 063</b>	<b>667 697 644</b>

*Source: Ministry of Finance*

Table 4 shows the budget revenue from tobacco products, revenue budgets of all excise duties in the excise system of Croatia, comparing them with total revenues of the budget. Tobacco products are involved in budget revenues from excise duties in the observed period (2010 - 2014.) with 30.7%, which is relatively high, given the fact that Croatian excise system has a number of different types of products that are subjected to excise duty. On the other hand, the share of excise duties in total budget revenues is amounted to 10.9% in the same period. Reviewing revenues

66 Similar in Zelenka, I., *Tax Policy Impact on the Tobacco Products Consumption in the Republic of Croatia (Utjecaj porezne politike na potrošnju duhanskih proizvoda u Hrvatskoj)*, Zagreb, *Financial Theory & Practice*, vol. 33, 4/2009., p. 480.

67 See further in Jelčić, B., Lončarić Horvat, O., Šimović, J., Arbutina, H., (2008.), *op. cit.*, p. 205-206.

in particular years, compared to the time before and after the harmonization of Croatian legislation with EU legislation, it is evident that the reduction of the total amount collected from excises on tobacco products, while total revenue from all excise duty is progressing.

Analysis of mentioned data indicated that budget revenues from excise taxes on tobacco products did not increase in accordance with the intensity of increase in excise taxes, and in the year following the period of harmonization with the EU *acquis* (2013) even decreased. Since there is no significant progress in reducing the number of smokers in Croatia, it can be assumed that tax evasion most likely caused the reduction of budget revenues of this type.

#### **4. THE EFFECTS OF TAXATION OF TOBACCO PRODUCTS**

The enforcement of the tax liability in the correlation with the decrease in economic strength of taxpayers which causes resistance to taxation, a taxpayer seeks to eliminate the negative effects of taxation. This is why finding an acceptable response of the object and purpose of paying taxes is partly aimed at changing negative attitudes of citizens towards the ideology of taxation. Depending on the economic environment in which it is situated, the state intervenes with the restrictive measures of tax policy, which can sometimes lead to the opposite effects than expected, according to Laffer's curve.<sup>68</sup>

Compared to the recent development trends of excise duty directly related to the selection of sources and forms of taxation, the tax liability rate and the scope of taxpayers, the intention of avoiding payment of taxes in greater or lesser extent could be expected. A study made by KPMG (2012) to Philip Morris International, the European Commission and 27 EU member states indicates to the tendency of the illegal trade in the EU, which has in the last six years continued to grow and 2012 reached 11.1%, or 65.5 billion cigarettes. In this way the budgets of EU countries were damaged by 12.5 billion euros.<sup>69</sup> One should not ignore the fact that revenues from the illegal trade in tobacco products are one of the sources "of funding much more dangerous activities such as the financing of terrorism and organized crime".<sup>70</sup>

It is evident that the selection of the excise policy depends on the level of taxation of tobacco products *ad valorem*, specific excise duty or mixture of both. High rates of *ad valorem* duties do not encourage manufacturers to invest in

68 Kesner-Škreb, M., Laffer's curve (*Lafferova krivulja*, Zagreb), Financial Practice, vol. 20, 5-6/1996, p. 585-587.

69 Similar in Adamović, Z., Excise Duty on Cigarettes Structure, Affordability and Connection with Illicit Trade of Tobacco Products (*Trošarina na cigarete struktura, prihvatljivost i povezanost s nezakonitom trgovinom duhanskih preradjevina*), Zagreb, Customs Journal, No. 9/2013., p. 32.

70 See further in Javor, I., Suppression of Illicit Tobacco and Tobacco Products Trade (*Suzbijanje nezakonite trgovine duhanom i duhanskim proizvodima*), Zagreb, Customs Journal No. 10/2015, p. 46.

innovation and use of better quality tobacco. Taxation policy by applying *ad valorem* taxes leads to a differentiation of price so increment of the excise duty has no significant effect on reducing consumption, because consumers switch to cheaper cigarettes. The logical consequence of the policy of high rate *ad valorem* excise duty is the lower level of revenues from excise duties.<sup>71</sup>

Cigarette market recorded a continuous decrease caused by lower purchasing power of citizens and increment of taxes on cigarettes. The result is a significant increase in demand for other types of tobacco products such as cut tobacco, which results in disturbances in the tobacco market and strengthening the black market.

Complex measures against smoking focus tobacco industry on alternative ways of compensating the drop in demand for traditional tobacco products. Electronic cigarettes, whose demand is rapidly increasing, encourages the importance of regulation and control of similar products that could be considered substitutes of tobacco products, with an emphasis on the necessity of determining their harmfulness to human health.

#### **4.1. Electronic cigarette**

Electronic cigarettes (hereinafter: e-cigarette) is an electronic device that represents substitute for conventional cigarettes, although is undeniably harmful, as it contains nicotine. In support of the consumption of such products may be mentioned that it is less harmful to health and the possibly intention of giving up smoking, but undeniable is the fact that its consumption still favours continuing the consumption or increasing addiction.

As the tobacco industry, because of the powerful struggle against smoking, is finding alternative ways of compensating the drop in demand for traditional tobacco products, regulation and control of production becomes more important, as well as sales and identification of new tobacco products which, in the near future, could overcome the market.

In terms of regulating the matter of cigarettes and refilling containers, as well as marketing of e-cigarettes and herbal products for smoking, Directive 2014/40/EU is relevant. The information about the products that they intend to put on the market, in order to protect the health, manufacturers and importers of e-cigarettes and refilling containers submit to the competent authorities of the Member States in the form of notification.

The notice contains all the information on the manufacturer; the list of ingredients contained in the product and emissions resulting from use of the product (brand, type and quantity); toxicological data on products regarding the ingredients and emissions that are particularly relevant to effects on health when inhaled, and all the effects of creating addiction; information on the dose and intake of nicotine when consumption under normal or reasonably foreseeable conditions and a

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71 Taken from Antić, D., *op. cit.*, p. 3.

description of the components of products, production processes and a statement that the manufacturer and the importer will be fully responsible for the quantity and product safety when putting on the marketing and using in ordinary circumstances or relatively predictable conditions.<sup>72</sup>

Permanent protection of consumers still refers to the prohibition of commercial communication in the press and other printed publications with the aim of direct or indirect impact on the promotion of e-cigarettes and refill containers, with exception in publications intended exclusively for professionals involved in the trade of e-cigarettes or refill containers and publications printed and published in third countries where such publications are not intended primarily for the EU market.

The ban applies to commercial publications on the radio with the aim of direct or indirect impact on the promotion of e-cigarettes and refilling container, and to any form of public or private contributions to radio programs with the aim of direct or indirect promotion of e-cigarette and refilling container. In the same way is treated any other form of public or private contribution to any event, activity or individual person with the purpose of direct or indirect promotion of e-cigarette and refill container, and audio-visual commercial communication to which the Directive 2010/13/EU applies.<sup>73</sup>

If any of these economic entities considers, whether there is reason to believe, that e-cigarettes or containers for refill (which are in their possession and are intended for placing on the market or are placed on the market) are not sure or are not of good quality or otherwise not in accordance with Directive 2010/13/EU, the economic operator must immediately take corrective measures necessary to bring that product into line with the Directive, that would be withdrawn or revoked, if necessary. In such cases, the economic operator shall immediately inform the authorities responsible for market surveillance of EU Member States in which the product is available or it is intended to make available and provide information, particularly about the risk to the health and safety of people and the corrective measures taken and their results.<sup>74</sup>

## 5. CONCLUSION

Legislative regime and harmonization of excise with EU legislation was carried out in order to achieve a fiscal impact, but also the impact of human health protection. While Croatia aligned with EU legislation in the context of the directives that regulate the area in question, the ultimate impact on its budget revenue from excise duty on tobacco products is not in line with the expectations. The increase in *ad valorem* excise duty and specific excise duty has not resulted in a parallel increase in budget revenues. Regarding the question of the effectiveness of the

72 See further in Article 20 Paragraph 2 of Directive 2014/40/EU.

73 Audiovisual Media Service Directive 2010/13/EU.

74 See further in Article 20 Paragraph 9 of Directive 2014/40/EU.

existing excise system and the effect of the increase in use of fine-cut tobacco or tobacco substitutes such as e-cigarettes and herbal products for smoking the problem of tax evasion is emphasized.

Analysis of cigarette consumption *per capita* in the observed criteria of gender and age of consumers, the average consumption *per capita*, cigarette prices, GDP *per capita*, the average monthly revenue from excise duties on tobacco products, excise duties on cigarettes and budget revenues from tobacco products, excise and total revenue budget, is indicating the obvious discrepancy in objectives and effects of taxation, in particular on perceived tax evasion. Number of consumers in Croatia is significant, the excise duty rate and consequently the price of cigarettes is increased in accordance with international standards, the mortality of smokers is concerning, while the consequently budget revenue from tobacco products is variable, with a slight tendency to increase. In support of an obvious increase in tax evasion contribute more frequent seizures of tobacco products, in particular on the state border with the countries whose excise policy still requires lower excise duty burden.

Frequent use of substitute tobacco products like e-cigarettes cannot be considered as non- fiscal objective and the desired effect of preventive health policy, because the degree of their harmfulness is still the subject of research, and the consequences of their use will be visible over a long time. One of the biggest threats and challenges of health care policy stems from the alarming statistics which show increasing consumption of tobacco products among young people, which has an impact not only on their health and relationship to their own body, but also the awareness of the harmful effects on the passive smokers as well as the environment.

## Summary

### **OBJECTIVES AND EFFECTS DISCREPANCY OF TAX POLICY IN THE TOBACCO PRODUCTS TAXATION**

Determination of the components of calculating excise value for tobacco products may result in mismatch of goals and fiscal policy effects, and in particular contradiction relating to health protection. Although an increase in excise value seeks to raise as much money as possible into national budget, excise value affects the reduction of customer base due to harmful effects of consumption such products. Importance of prevention diseases caused by the consumption of tobacco products and substitutes, as well as herbal products intended for smoking, is highlighted.

Though Republic of Croatia has harmonised legislation within the framework directive of European Union regarding regulating the subject area, non-compliance rates still stand out as a problem. To new European Union member states, including Croatia, transitional period is granted, during which the rates must be brought closer to the assigned ones. The result of the excise policy measures taken so far is reflected in the increased consumption of tobacco products taxed lower rates, but also increase in illegal trade, which raises the need for state intervention strengthening preventive and repressive measures, fiscal, criminal and economic policy.

*Key words:* tax, excise value, tobacco, evasion, smoking.

## Zusammenfassung

### **DIE ZWIELSPALTIGKEIT DER ZIELE UND LEISTUNGEN DER STEUERPOLITIK IM RAHMEN DER VERSTEUERUNG DER TABAKERZEUGNISSE**

Die Bestandteilbestimmung der Verbrauchssteuerberechnung von Tabakerzeugnissen resultiert manchmal mit der Diskrepanz der Ziele und Leistungen der Fiskalisierungspolitik und besonders mit der Kontraindikation im Verhältnis zur Gesundheitsschutzpolitik. Obwohl man mit den Verbrauchssteuern so viel Mitteln wie möglich ins Staatshaushalt einsammeln möchte, beeinflusst die Verbrauchssteuerhöhe die Verringerung der Nutzerbasis wegen der schädlichen Einflüssen der Konsumierung solcher Produkte. Die Wichtigkeit der Prävention der Krankheiten wird besonders betont, die durch die Verwendung der Tabakerzeugnisse, deren Nebenprodukte und pflanzlichen Rauchprodukten entstanden sind.

Obwohl sich Republik Kroatien mit den Gesetzgebungen der Europäischen Union im Rahmen der Direktiven, die den gegenständlichen Bereich regulieren,

abgeglichen hat, wird noch immer die Unstimmigkeit der Steuersätze als ein Problem hervorgehoben.

Den neuen Mitgliedsländern der Europäischen Union, wie auch der Republik Kroatien, wurde eine Übergangsperiode ermöglicht, in der sich die Steuersätze den vorgeschriebenen annähern sollten. Die Auswirkung der bisher initiierten Maßnahmen der Verbrauchssteuerpolitik hat sich durch vergrößerte Konsumation der Tabakerzeugnisse geäußert, die mit niedrigeren Steuersätzen versteuert werden, aber auch durch den Wachstum des illegalen Handelns, was zu Intervenieren des Staates durch verschärfte präventive und repressive Maßnahmen der Fiskalisierung-, Straf- und Wirtschaftspolitik führt.

*Schlüsselwörter:* Steuer, Verbrauchssteuer, Tabak, Steuerevasion, rauchen.

### Riassunto

## **DISCREPANZA DEGLI OBIETTIVI E DEGLI EFFETTI DELLA POLITICA FISCALE NELL'AMBITO DELLA TASSAZIONE DEI PRODOTTI DEL TABACCO**

La determinazione delle componenti per il calcolo delle accise sui prodotti del tabacco alcune volte risulta con il disaccordo degli obiettivi e degli effetti della politica fiscale, ed in particolare con la contraddizione rispetto alla politica di tutela della salute. Sebbene con l'aumento delle accise si cerchi di raccogliere quante più entrate nell'erario, l'importo dell'accisa influisce sulla diminuzione della base di consumatori a causa delle conseguenze dannose del consumo di tali prodotti. In particolare si evidenzia il significato della prevenzione delle malattie cagionate dal consumo dei prodotti del tabacco e dei loro sostituti, come pure dei prodotti vegetali per il fumo.

Sebbene la Repubblica di Croazia si sia conformata alla legislazione dell'Unione europea nell'ambito delle direttive che regolano la materia in oggetto, la difformità delle aliquote continua a rappresentare un problema. Ai nuovi stati membri dell'Unione europea, e dunque anche alla Repubblica di Croazia, è reso possibile un periodo di transizione nell'arco del quale le aliquote debbono avvicinarsi a quelli regolamentati. L'effetto delle misure adottate sino ad ora nel contesto della politica delle accise si riflette in un aumento del consumo dei prodotti del tabacco tassati con aliquote più basse, ma anche nella crescita del mercato illegale, il che solleva il problema dell'intervento dello stato con misure più severe sia preventive, che repressive nell'ambito della politica fiscale, penale ed economica.

*Parole chiave:* tributo, accisa, tabacco, evasione, fumo.