

## To Combat Borderline Tobacco Products: 60.8% of Health and Tobacco Policy Experts support the Additional Prevention Tax (APT)

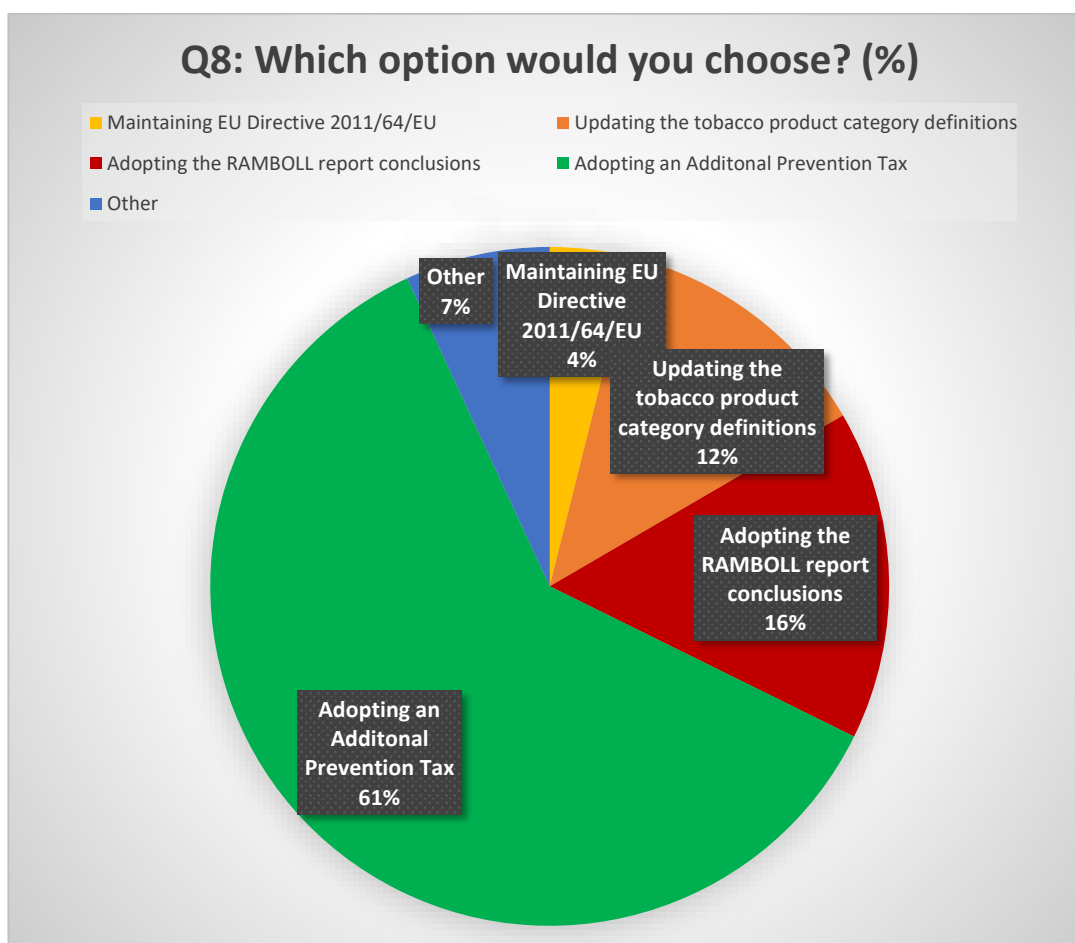


Figure 1: Question 8 of Elite Opinion Poll among 102 top experts on Health and Tobacco Policy, p. 8.

**Brussels, June 2017**

## Health and tobacco policy experts: 81.4% against borderline tobacco products

In accordance with Council [Directive 2011/64/EU](#), the European Commission is reviewing the tobacco excise duty rates and structure. It is currently conducting studies to prepare a possible legislative proposal to revise the Directive. The revision may include addressing cheap cigarette-like cigarillos, known as ‘borderline products’ or ‘low-cost cigarillos’. These tobacco products are taxed at the lower cigars/cigarillos rate but are dangerously sold and consumed as cheaper substitutes for substantially higher taxed cigarettes. In several Member States (MS), they constitute the cheapest tobacco product on the market, thereby lowering the threshold against smoking. An expert polled from the Tobacco-Related Disease Research Program of the University of California described these borderline products as *“a tobacco industry strategy to addict younger smokers to nicotine. It is a nicotine manipulation strategy to drive consumption toward the cigarillo market [borderline products] and take advantage of a relaxed tax structure.”*

On 29 June 2014, consultancy [RAMBOLL](#) recommended the European Commission to align the Minimum Excise Duty (MED) on cigar/cigarillos with the MED on cigarettes. Experts fear that this leads to a consumption shift from cigar/cigarillos towards more frequently smoked cigarettes. This is reflected in an Elite Opinion Poll among 102 top experts on tobacco policy held between 24 January and 15 April 2017: **less than 16% preferred the RAMBOLL option. 76.8% considered protecting public health to be the most important objective of updating the Directive**, while the RAMBOLL solution is focused on obtaining tax revenues for MS. Members of the European Parliament indeed objected to this ignoring of public health.

A second Commission authorised study by the Italian Consultancy *Economisti Associati* understated the health threat of borderline products by concluding that current measures tackling the issue were sufficient. “Only 3.7 billion pieces are currently sold”, it stated, without referring to planned major product launches by the cigarette industry which will considerably add to this number. Health experts state that borderline products represent a significant health threat which equates to quantifiable diseases. They target those with low incomes, especially youth. Indeed, **81.4% of polled experts thought that the emergence of borderline products and their lower taxation was a threat to public health**. As a researcher at the Schroeder Institute for Tobacco Research and Policy Studies responded, *“The market has evolved in response to the tax Directive. The Directive should be revised so that it can continue to meet its goals in the context of the new market environment.”*



If RAMBOLL and inaction are considered undesirable, then what? The Poll *introduced a new option developed by legal and political experts: **The Additional Prevention Tax (APT)***. The APT will only be activated when borderline products occur in a Member State market. Thereby, the APT also stops the evasion of tobacco excise on these products. A strong majority of **over 60% of all experts are in favour of the APT over the other options on the table**, with nearly **80% considering the APT effective or very effective**. The APT is understood as an effective deterrent against borderline tobacco products.

## APT: the only effective option

The main outcome of this Elite Opinion Poll, conducted among key experts from a multi-stakeholder group, can be summarised as follows:

- **76.8%** listed the protection of public health as the main objective of tobacco taxation;
- **81.4%** described the production and consumption of borderline products as a potential threat to public health;
- **82.4%** support that the Commission should consider increasing the excise duty levied on borderline products to the level of cigarettes;
- After presenting respondents with four options to eliminate the tax incentive for borderline products, **60.8% of the respondents preferred the Additional Prevention Tax (APT) above all other solutions.**

In other words:

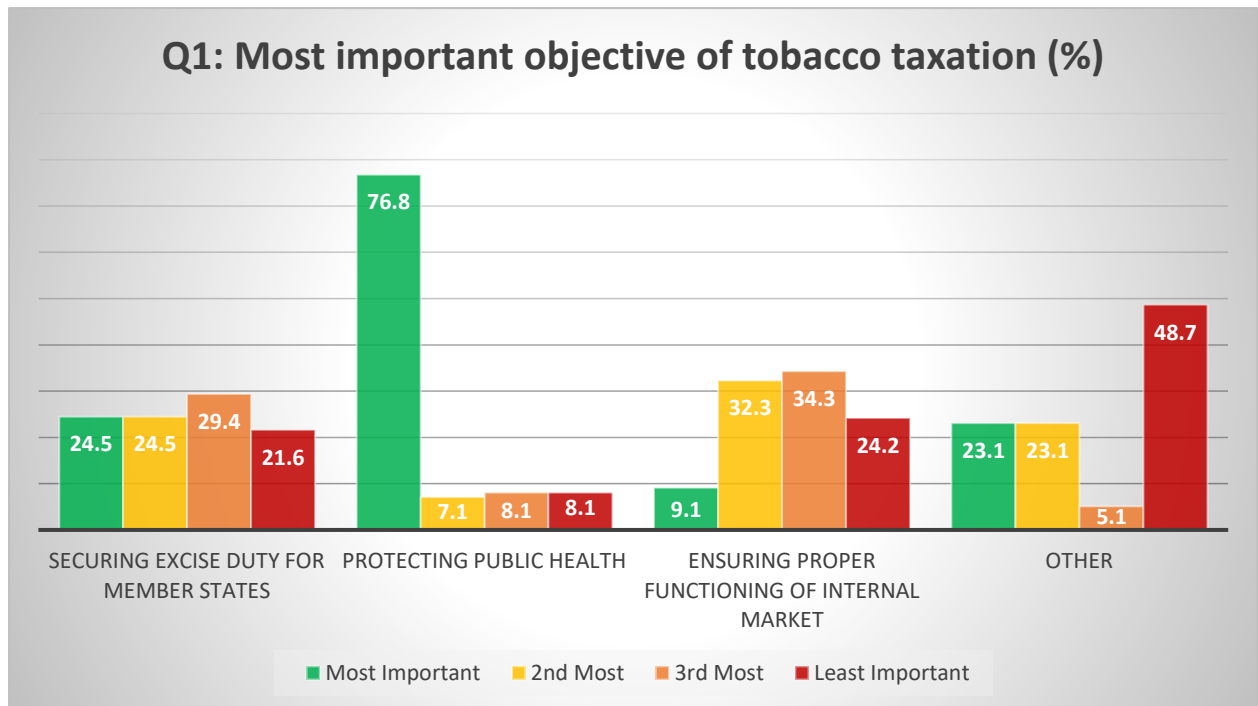
- a) The *communis opinio* among the polled experts is that the European Commission should first of all act to protect its citizens from these borderline products.
- b) The results of the Elite Opinion Poll also indicate the way in which the European Commission should act. An overwhelming majority supports raising the excise duty on borderline products to the level of cigarettes.
- c) However, from a legal and regulatory perspective, it is difficult to distinguish the more expensive, traditional cigarillos from the borderline products. Raising the excise duty for these borderline products only, is complicated. The only option that addresses the problem effectively is to deter producers to market borderline products by immediately raising the excise duty on them: that is what the Additional Prevention Tax (APT) does. As big tobacco companies seek to gain market share in the Directive-enabled borderline product market, the Additional Prevention Tax would work to remove this rather perverse tax incentive and protect European citizens.

# Complete Elite Poll Results

**Question 1:** What should be the main objective of tobacco taxation in the European Union?

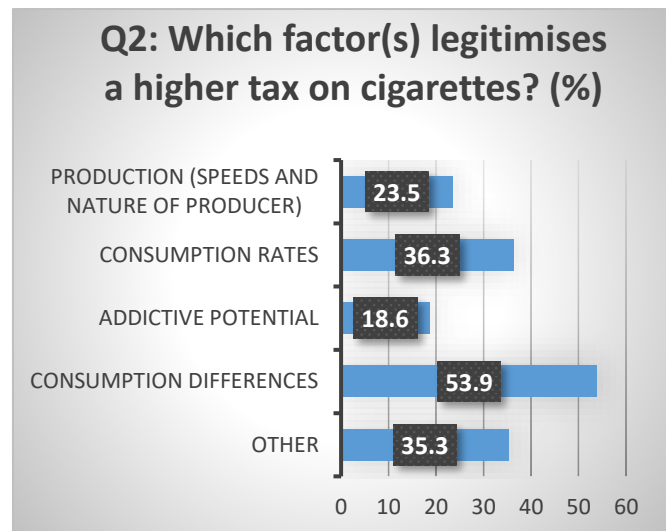
A majority of 76.8% thought that the most important objective of tobacco taxation and Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco should be to ensure the best protection of public health (i.e. to discourage smoking). Less than one-quarter (24.5%) of respondents considered securing excise duty revenues for the MS to be the most important objective, while an even smaller minority (9.1%) considered ensuring the proper functioning of the internal market to be the main objective of Directive 2011/64/EU.

Many respondents added to this question that the tobacco revenues should be earmarked for health purposes (notably to pay for smoking inflicted diseases) and to support cessation programmes. The responses to this question demonstrate that the suggestions of the 2015 RAMBOLL study are insufficient, focusing on revenue and finances and totally neglecting what is widely seen to be the most important reason for tobacco taxation: the public health aspect.



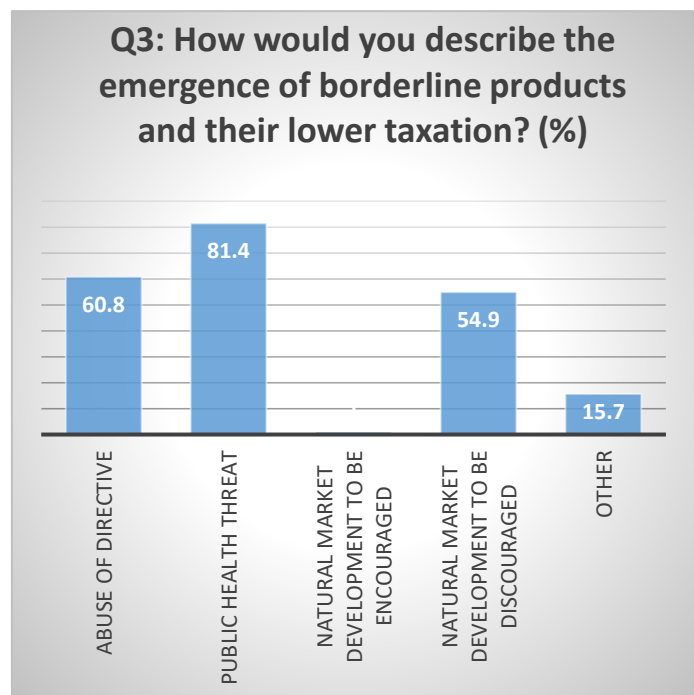
**Question 2:** Which of the following arguments further legitimises the current higher taxes on cigarettes?

When asked about the reason for the distinction in taxation between cigars/cigarillos on the one hand and cigarettes on the other, with cigarettes being taxed higher than cigars, opinions varied. Respondents were invited to identify one or more factors that legitimise a higher cigarette tax. Just over half of all respondents (53.9%) agreed that a difference in consumption between cigars and cigarettes is one reason for the difference in treatment for tax purposes. Indeed, according to the 2015 Eurobarometer report ‘attitudes towards tobacco’ and the Action against Smoking and Health (ASH) UK, cigars and cigarillos are usually not inhaled, are smoked much less often than cigarettes, and are less attractive to youngsters and women. Less than 20% of participants were convinced that one reason for the difference is tied to the lower addictive potential of cigars/cigarillos due to the above-mentioned difference in consumption. A slightly larger minority (36.3%) attributed the higher taxes on cigarettes to the fact that consumption levels of cigarettes are much higher than those of cigars, while a similar amount of respondents (35.3%) pointed to the much higher production speeds (up to **20,000 per minute**) of cigarettes and the fact that they are typically produced by MNEs, compared to cigars which are usually produced by SMEs at a speed between **20 and 50 pieces per minute**.



**Question 3:** What is your opinion on the emergence of “borderline products” on the European market and the rapid growth in their market size due to their lower taxation?

This questions asked respondents to consider the implications of the market distortions caused by the emergence of “borderline products” that look like traditional cigars/cigarillos and are therefore taxed lower but are smoked like cigarettes. Almost all participants judged the growth in the market size of borderline products to be an overwhelmingly negative development, with only 1% describing it as a natural development in the market that must be encouraged, compared to a clear majority (54.9%) describing it as a natural development in the market that must be discouraged. An even larger majority of **60.8%** perceived the lower taxation of borderline products to be an abuse of the existing tax Directive.

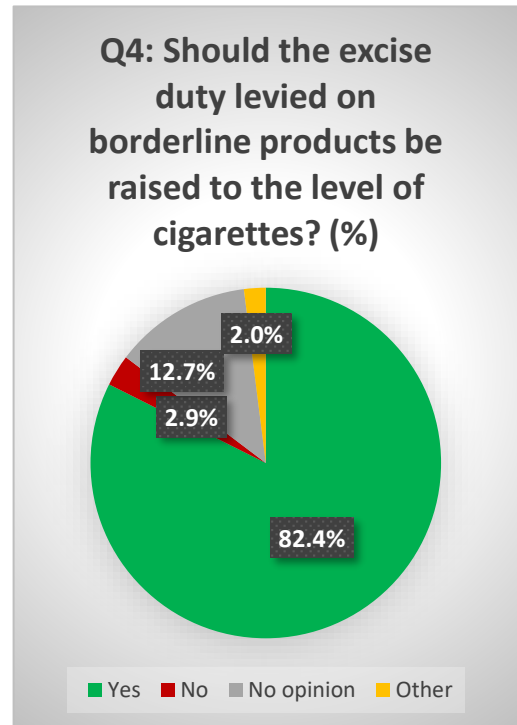


However, the most ubiquitous opinion on the emergence of borderline products on the European market concerns the drastically detrimental impact of their emergence on public health, with 81.4% describing this as a threat to public health. A senior civil servant in the Lithuanian Ministry of Finance

outlined that “Lithuania has a problem with borderline cigarillos. The tax dispute is in the process at the moment, but the economic operator continues to sell these products (and it even asked the manufacturer to make some adjustments in the production in order to comply with legislation). The price of those borderline cigarillos is lower than the cheapest cigarettes.”

**Question 4:** Should the European Commission consider raising the excise duty levied on borderline products to the level of cigarettes?

Respondents were almost unanimous in Question 3 that the emergence of borderline products represents a potential threat to public health. In this light, Question 4 noted that the European Commission and the MS use excise duties on cigarettes to discourage consumption of products that are considered harmful for public health and asked whether the excise duty levied on borderline products should be raised accordingly to the level of cigarettes. An overwhelming majority of **82.4%** of respondents stated that such an increase in excise duty was indeed necessary and should be introduced, while only **2.9%** stated that such an increase should not be imposed. 12.7% of participants had no opinion on the matter. According to the response of a professor at the University of Manchester, borderline products “*should be [p]unished as fraud*”.

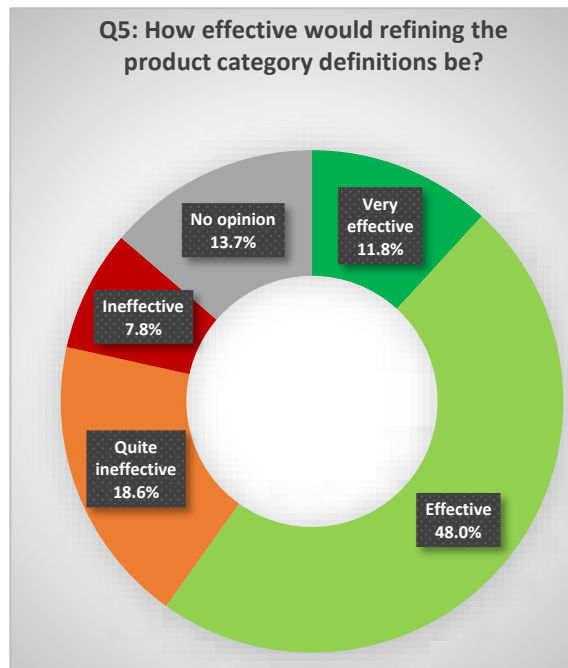


**Questions 5, 6, and 7:** Opinion on the proposed options (refining definitions of tobacco production categories, adopting the conclusions of the RAMBOLL report, or an Additional Prevention Tax)

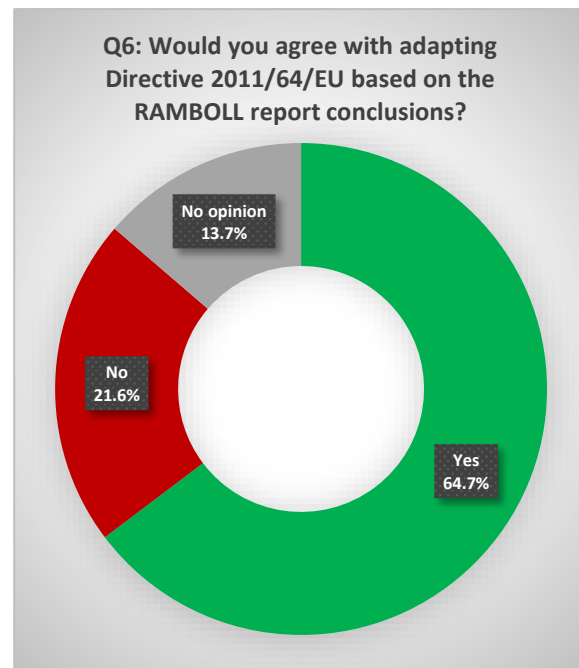
Respondents were asked to consider a range of options concerning strategies the European Commission could use to combat borderline products. Respondents indicated that all options possessed some merit, but that only one – the **Additional Prevention Tax** – was optimally effective.

The first option involves the European Commission sharpening the definitions of cigarettes and cigar/cigarillos to ensure that low-cost borderline products fall into the higher taxed cigarette category rather than in the cigar/cigarillo category. Historically, abuse of the categories of tobacco products has triggered numerous refinements in the existing definitions of cigars, cigarillos, pipe tobacco, roll-your-own tobacco and cigarettes. Of the respondents surveyed, 48% thought that a further sharpening of the definitions of cigar/cigarillos and cigarettes would be effective in eliminating borderline products in the longer-term, while 11.8% thought doing so would be very effective. In contrast, 18.6% and 7.8% respectively thought doing so would be quite ineffective or ineffective. 13.7% had no opinion. It should be noted that certain tobacco manufacturers have always found loopholes to circumvent these definitions and that it is extremely hard to distinguish borderline products from the traditional cigarillos making any definitional change problematic. It is also worth noting that of the 60% who stated that refining the product category definitions would be effective or very effective, a clear majority (59%) of them still believe APT would be more effective, choosing it as the optimal option in Question 8.

The second option is adopting the recommendations of the 2015 RAMBOLL report that the European Commission should align the excise duties on all cigars/cigarillos (not just borderline products) with those of cigarettes by adapting Directive 2011/64/EU. The majority of respondents (64.7%) stated that they would agree with this process, while 21.6% stated they would not. 13.7% had no opinion. The



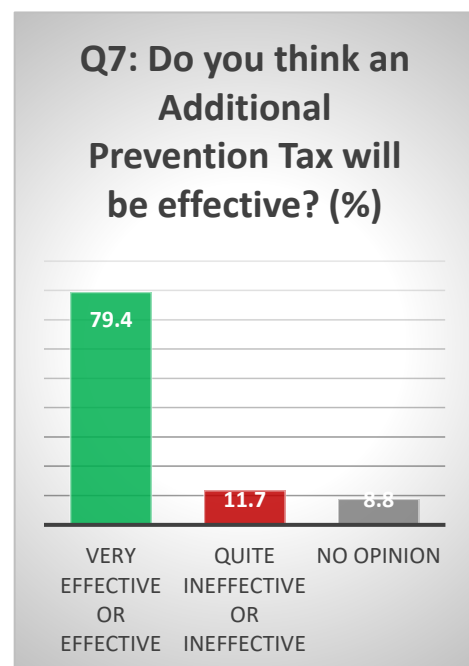
Of those who stated that refining the product category definitions would be effective or very effective, a clear majority (59%) nonetheless chose APT as the optimal option in Question 8.



Of those who agreed with the RAMBOLL report, a clear majority (58%) nonetheless chose APT as the optimal option in Question 8.

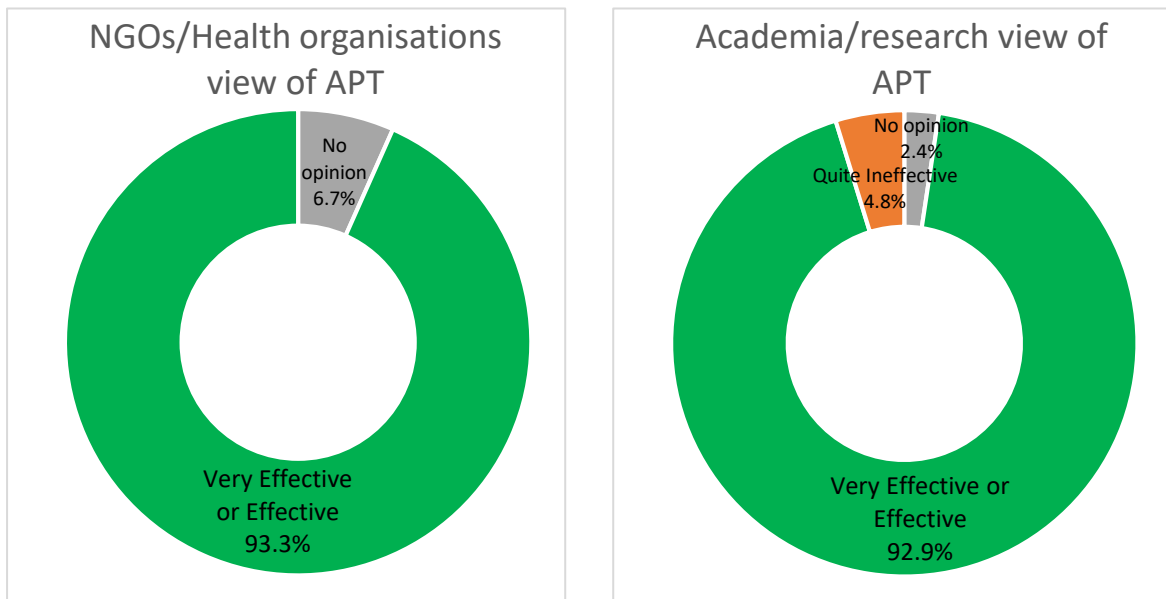
RAMBOLL option would substantially increase the retail selling price of cigars/cigarillos, which may then shift part of the tobacco consumption to the then relatively cheaper cigarettes which are more harmful for public health. Consumers of cigars/cigarillos would end up buying more cigarettes instead, if their product of choice becomes more expensive. That change would be counterproductive to the health promotion objective of the excise duties. Substitution from traditional cigars/cigarillos (typically only 1% of smokers consume these daily, according the Eurobarometer 2016) to cigarettes, with their much higher risk for addiction, would not fit the objective of reducing smoking. It would also probably take traditional cigars - produced mostly by SMEs - out of the market. Note the 64.7% who agreed with the RAMBOLL report, a clear majority (58%) of them still prefer APT, selecting it as the optimal option in Question 8.

The third option involves charging an Additional Prevention Tax raising the retail selling price of borderline products to the level of cigarettes. Support for this method among the respondents was significantly higher than support for all other methods, with an overwhelming majority (79.4%) stating that an Additional Prevention Tax would be effective or very effective. In comparison, a significantly smaller majority of 64.7% stated that they would agree with the



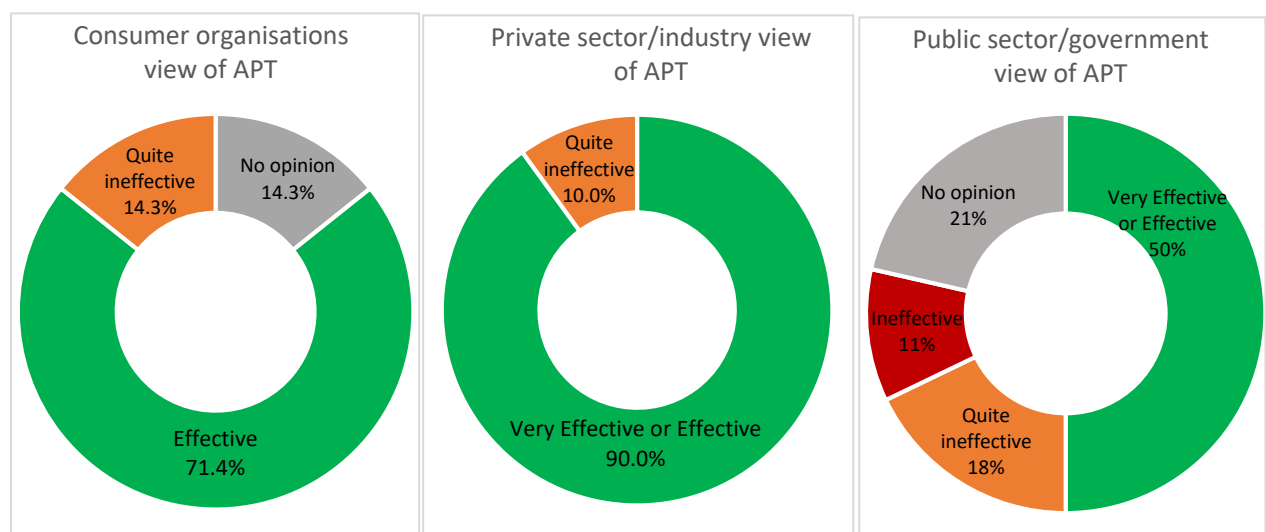


RAMBOLL report recommendations and an even small majority of 59.8% stated that the definitional refinement option would be effective or very effective.



This identification of the APT as the most effective option was consistent among participants from all sectors, although support for the APT was particularly unanimous across four groups (NGOs and health organisations; academics and researchers; consumer organisations; and private sector and industry), with 93% of those belonging to NGOs and health organisations predicting that the APT would be very effective or effective, alongside 93% of academics and researchers, 72% of members of consumer organisations, and 90% of members of the private sector and industry. No respondents belonging to these groups determined that the APT would be ineffective. Public sector and government officials were more divided over the APT, with 50% saying it would be an effective or very effective intervention. However, this figure still vastly outnumbers the proportion of public sector and government officials who predict APT would be ineffective (11%).

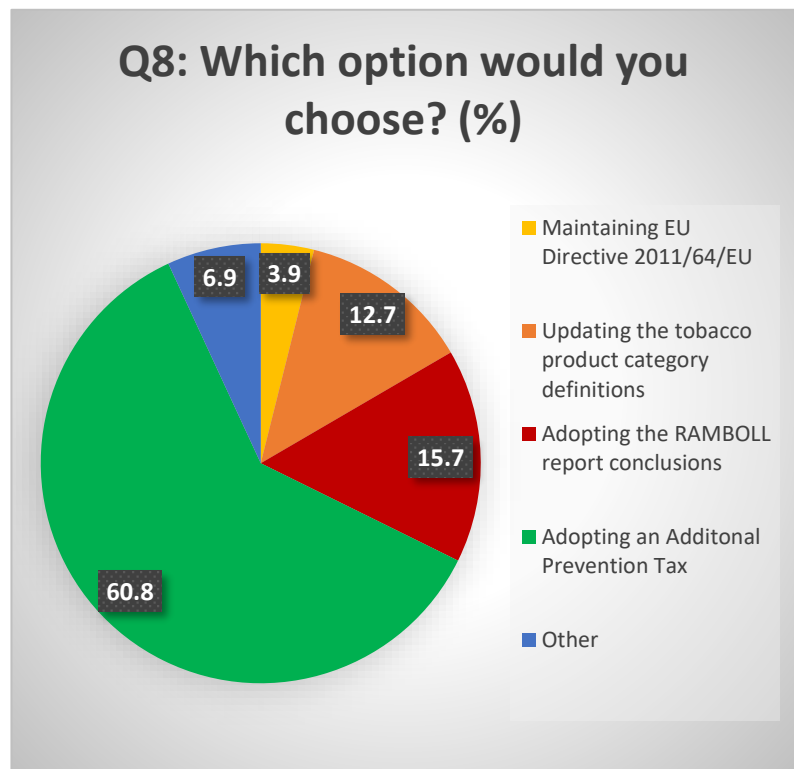
Moreover, a substantial amount of those surveyed expressed concern over the RAMBOLL report recommendations (21.6% would not agree with adapting the Directive in that way) and the definitional refinement option (26.6% stated it would be either quite ineffective or ineffective). In contrast, only 2.9% of participants thought that the Additional Prevention Tax would be ineffective.



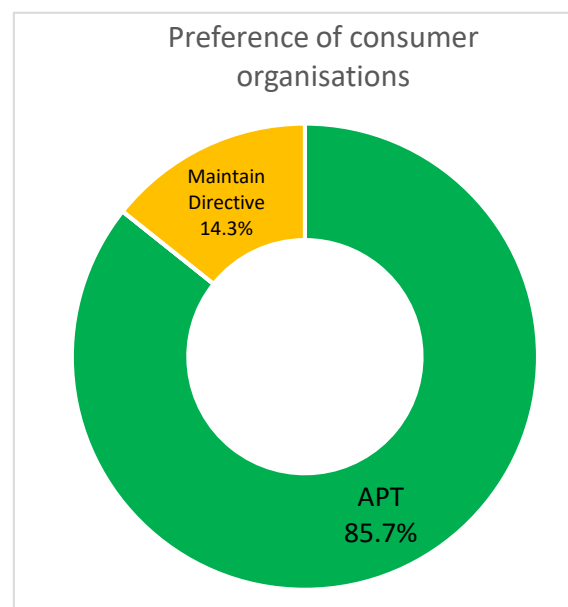
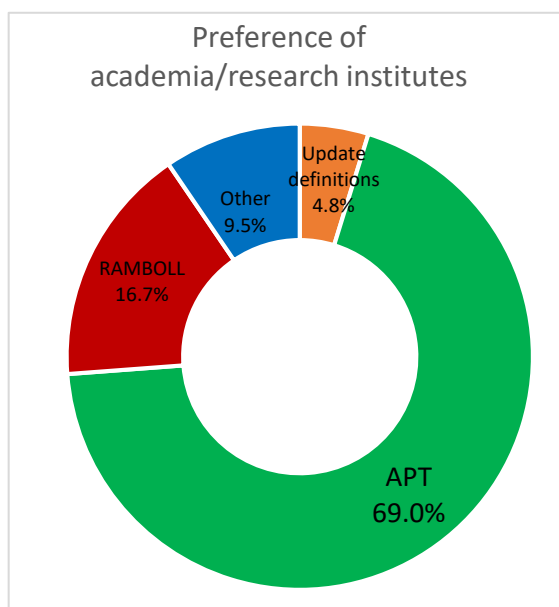


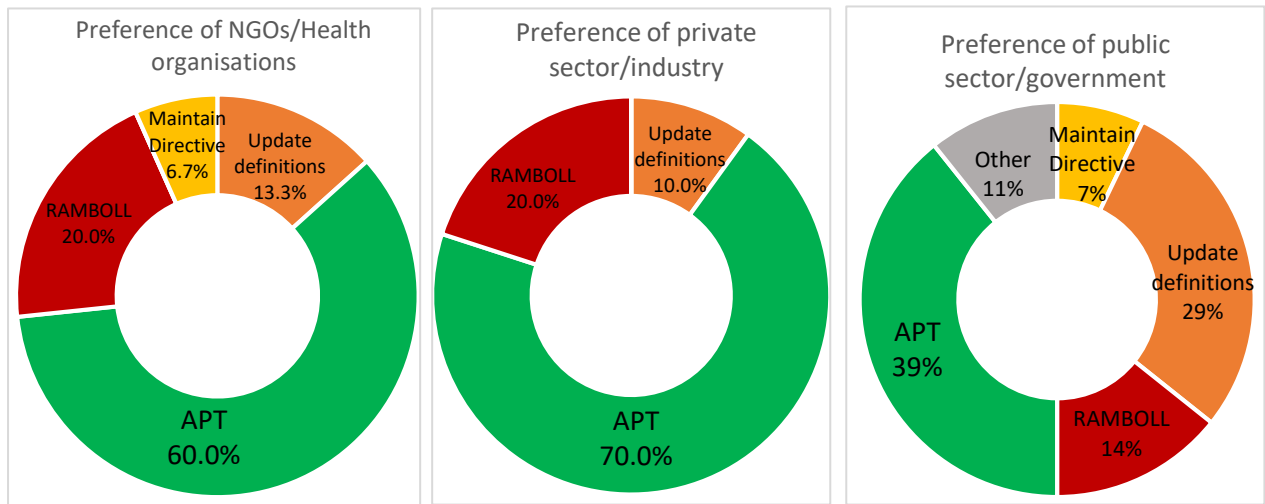
### Question 8: Which of the options would you choose?

The final question of the poll invited participants to directly compare these options (including the option to maintain Directive 2011/64/EU as it is). This question reveals most clearly the widespread opinion among the stakeholders and experts that the Additional Prevention Tax would be the most effective solution to the issue of borderline products, with an overwhelming majority of 60.8% stating that that is the option they would choose. In contrast, a much smaller number (15.7%) said they would adopt the conclusions of the RAMBOLL report, and an even smaller number (12.7%) said they would choose to update the existing definitions of the tobacco product categories. Only 3.9% stated that the Directive should be retained as it is.



Just as in Question 7 the majority participants across all sectors deemed the APT to be an effective response to the issue, the identification of the APT as the most optimal of all the proposed responses in Question 8 was consistent across participants from all sectors. As with the assessment of efficacy, respondents from NGOs and health organisations, academia and research institutes, consumer organisations, and private sector and industry were most unanimous in determining the APT to be the best option. 60% of members of NGOs and health organisations, 69% of academics and researchers, 86% of members of consumer organisations, and 70% of members of the private sector and industry chose the APT as the best option. A lesser proportion (39%) of public sector and government officials identified APT as the superior option, however this group (like all others) preferred the APT to all other options, with only 14% of them identifying an adoption of the RAMBOLL conclusions as the best option.





## Brief Outline of the Additional Prevention Tax

The APT represents an additional – very targeted – excise duty to be levied by the European Member States on borderline products only. Member States shall, in addition to the excise duty applicable to cigars and cigarillos, impose an APT on borderline products that are considered cigars or cigarillos within the meaning of Directive 2011/64/EU, but that have a retail selling price lower than the one of the cheapest cigarettes representing 1% market share in a Member State. This APT may be either an ad valorem duty, a specific duty or mixture of both. The excise duty for cigars and cigarillos and this APT together should have the same level as the total of excise duty levied on the cheapest 1% market share of cigarettes in the Member State. Such a measure should be mandatory for the Member State not only to eliminate current and potential borderline products from the MS markets but also to prevent distortion in the local markets and future launches of products aiming to circumvent tax revenue interests of MS.

## Annex: Current options on the table to combat borderline tobacco products

### I. A refinement of the existing definitions of the cigar/cigarillo category and cigarettes

In theory, the European Commission could consider sharpening the definitions of cigarettes and cigar/cigarillos to ensure that low-cost borderline products fall into the higher taxed cigarette category rather than in the cigar/cigarillo category. In practice, it is extremely hard to distinguish low-cost cigarillos from the traditional cigarillos. In the past, several refinements of the definitions have not fundamentally solved the problem.

### II. The recommendation of the RAMBOLL-report

The RAMBOLL study advises policy makers to consider aligning the excise duty on cigars/cigarillos with those of cigarettes. While this would immediately eliminate the current tax incentive for borderline products and effectively stop their production in the EU, particularly Members of the European Parliament feel it may not be the best solution to address health impacts. The philosophy behind the RAMBOLL suggestion is based on revenue and finances only, with the public health aspect completely lacking. The European Public Health Alliance (EPHA) expressed its disappointment with the report in which “the consideration of the health consequences of tobacco, and the contribution that taxation can make to reducing death and disease from tobacco use is completely missing”. Indeed, neither the RAMBOLL study nor any of the other assessments by the Commission have researched the effects that an alignment of overall cigar/cigarillo taxation rate may have on the behaviour of smokers. It is not unthinkable that a (much higher) retail selling price of cigars/cigarillos may shift part of the tobacco consumption to the then relatively cheaper cigarettes.

### III. The Additional Prevention Tax (APT)

The Additional Prevention Tax specifically targets borderline products to discourage their production and consumption, thereby maintaining the price barrier against smoking and protecting public health. The APT was developed by legal and political experts and is designed as a special excise duty imposed on top of the excise duty for cigars/cigarillos to increase the price of borderline products and bring them in line with the price of cigarettes. Such an APT could be the most effective instrument for MS to eliminate current borderline products from their markets and to deter new ones from being developed, while securing tax revenues of the MS. It could also prevent distortion in the local markets. Applying the APT will help recover MS revenue currently lost from consumers substituting lower taxed borderline products for cigarettes. Most importantly though, the simple existence of the APT should dissuade tobacco manufacturers from developing and marketing borderline products. Where these products are already available in a MS or outside the EU, the manufacturers would be deprived of any economic interest to introduce such a product in additional EU countries, knowing the APT would be applied.

### IV. Maintaining Directive 2011/64/EU as is

It has been argued that the existing Directive already offers enough instruments for the European MS to address borderline products. Indeed, through a modest rise of the minimum excise duty on all cigars and cigarillos, Germany seems to have halted the increase in market share of borderline products (marketed there as eco-cigarillos). Though the problem does persist and data suggests that the market share of these products is growing or remains high in other MS. Recent launches of cheap borderline products by some of the big cigarette manufacturers suggest that as long as the loophole exists, the threat of economic operators massively abusing this loophole throughout the EU continues. This also suggests that the current rather stable market share of borderline products in the EU is more thanks to initial reluctance in the industry itself than a result of clever legislation.