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Proposal for a

COUNCIL DIRECTIVE

on the structure and rates of excise duty applied to tobacco and tobacco related products (recast)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco¹ (hereinafter ‘the Directive’) defines and classifies tobacco products (cigarettes, cigars and cigarillos, smoking tobacco) and lays down applicable minimum excise duty rates. The purpose of the Directive is to ensure the proper functioning of the EU’s internal market and at the same time a high level of health protection.

This initiative stems from the evaluation of the Directive published on 10 February 2020². The evaluation highlights the main limitations of the current regulatory framework and concludes that the Directive no longer fully achieves its objectives. The overall benefits in respect of market functioning have reduced overtime as provisions on minimum excise rates have been moderately effective in raising tax rates and prices in Member States. The current minimum tax rates have lost traction in terms of making an effective contribution to reducing tobacco consumption. Existing differentials across the EU incentivise in some cases high levels of unintended cross-border flows. The loss of tax revenues is significant for some Member States while others register considerable extra revenue compared with local consumption. In addition, the extent to which cross-border flows undermine public health objectives is a concern for some Member States. The current scope of the Directive is not adapted to market developments such as electronic cigarettes (‘e-cigarettes’), heated tobacco products and a new generation of modern products containing nicotine, and this is a source of concern from the internal market perspective. In particular, the current scope of the Directive is not capable of providing for an explicit harmonised taxation regime for new products. As a result, some Member states have established taxation on liquids for electronic cigarettes and heated tobacco but with different structures. The lack of harmonisation for these products restricts the ability of Member States to monitor market development and control movements. Furthermore, illicit trade in tobacco products remains substantial and continues to constitute a source of concern for Member States. The deviation of raw tobacco to illicit manufacturing within the EU is a growing concern for most Member States.

The Directive is part of a broader EU policy framework that includes the common provisions applicable to all products subject to excise duties and the customs union legislation, as well as tobacco control policies and the policies against illicit trade, tax fraud and tax avoidance. This initiative was included in Annex I of the Commission Work Programme for 2021³.

The Directive can support and complement the objectives of Europe’s Beating Cancer Plan by better aligning the taxation of tobacco and tobacco related products with health objectives, adapting to new developments and market trends, introducing harmonised rules for new products and raw tobacco and revising rules for manufactured tobacco (cigars, cigarillos, waterpipe tobacco and heated tobacco products).

¹ [Council Directive 2011/64/EU](#) on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, p. 24–36.

² [Evaluation](#) of the Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, SWD(2020) 33 final.

³ [COM\(2020\) 690 final](#).

On 2 June 2020, the Council adopted conclusions⁴ on the review of the Directive based on the findings from the evaluation. The Council invited the European Commission to submit a legislative proposal for the revision of the Directive on the basis of an impact assessment.

- **Consistency with existing policy provisions in the policy area**

The proposal follows the existing objectives of the Directive to ensure the proper functioning of the internal market and, at the same time a high level of health protection. The Directive also has the overarching objective of ensuring an efficient excise administration in connection, inter alia, with the objectives and provisions of the Council Directive 2020/262/EU laying down the general arrangements for excise duty⁵ that defines the EU system for harmonised excise duties.

- **Consistency with other Union policies**

The revision of the Directive is an integral part of Europe's Beating Cancer Plan. Higher tobacco taxes and prices have been demonstrated to be the single most effective measure to reduce overall tobacco use, induce current smokers to quit, reduce uptake by young people, lower consumption among those who continue to smoke, improve population health, increase tobacco tax revenues, and produce additional public health benefits. This proposal is coherent with other initiatives to review existing acquis in the area of tobacco control, including the Tobacco Products Directive⁶ and the Council Recommendation on Smoke-Free Environments⁷. Taxation in addition to its behavioural impact delivers an overall 'price signal' to society that smoking is indeed harmful for consumers and should be discouraged by all possible means. The revision of the Directive will support Member States in meeting the objectives of the WHO Framework Convention on Tobacco Control⁸, including by adopting tax measures to reduce the demand for tobacco.

The proposal is consistent with the EU Action Plan for fair and simple taxation supporting the recovery strategy⁹, which sets out measures to help Member States enforce tax rules, improve tax compliance and secure reliable tax revenues. It is consistent with the European Parliament resolution¹⁰ to the Commission strategy supporting an ambitious revision of the Directive and of the EU minima rates with the aim of better contributing to health objectives.

The proposed measure for raw tobacco is consistent with the 2nd Action Plan to fight the illicit tobacco trade¹¹, which focuses on limiting some of the key input materials going into the

⁴ [Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco](#)
⁵ [Council Directive \(EU\) 2020/262](#) of 19 December 2019 laying down the general arrangements for excise duty (recast) OJ L 58, 27.2.2020, p. 4–42.

⁶ [Directive 2014/40/EU](#) of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ L 127, 29.4.2014, p. 1–38.

⁷ [Smoke-free environments – updated recommendation \(europa.eu\)](#).

⁸ The WHO Framework Convention on Tobacco Control (FCTC) is a legally binding international treaty that aims to reduce the health and economic impact of tobacco consumption.

⁹ [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL AN ACTION PLAN FOR FAIR AND SIMPLE TAXATION SUPPORTING THE RECOVERY STRATEGY \(COM\(2020\) 312 final\)](#).

¹⁰ [European Parliament resolution of 10 March 2022 with recommendations to the Commission on fair and simple taxation supporting the recovery strategy \(EP follow-up to the July Commission's Action Plan and its 25 initiatives in the area of VAT, business and individual taxation\)](#).

¹¹ [COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE 2nd Action Plan to fight the illicit tobacco trade 2018-2022 \(COM/2018/846 final\)](#).

illicit manufacture of tobacco products, including raw tobacco, and the use of the Excise Monitoring and Control System (EMCS) for risk analysis and control.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU). This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

• Subsidiarity (for non-exclusive competence)

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the Treaty on European Union¹², the objectives of the proposal cannot be sufficiently achieved by Member States and can therefore be better achieved at Union level. By focusing on those areas where cross border issues are at stake, the proposal does not go beyond what is necessary to achieve those objectives.

The shortcomings of the present Directive can only be remedied by means a revision of the Directive. Almost all Member States have fought the erosion of the real value of EU minima by increasing their national excise duty rates. However, given freedom of movement within the EU, the effective price of tobacco products for consumers may be lowered, and health policy undermined, through access to cheaper tobacco products (due to cross border shopping, substitution, and the illicit market). Unclear definitions of certain tobacco products at EU level (in particular, waterpipe tobacco and cigarillos) have resulted in varying national approaches to rates and taxation regimes as well as the adaption of business strategies aimed at circumventing the tax.

The lack of EU level regulation and explicit provisions of new products (such as e-cigarettes, heated tobacco) functioning as substitutes for traditional tobacco has led to different tax regimes for these products, leading to administrative difficulties in movement between Member States. Divergent national approaches distort competition, the proper functioning of internal market and undermine tobacco control policies. There is a large consensus among stakeholders on the need to harmonise new products in the EU excise legislation. The urgent necessity to upgrade the EU regulatory framework, in order to avoid legal uncertainty and regulatory disparities in the EU was highlighted in the Council conclusions on the evaluation of the Directive¹³.

In most Member States, movements of raw tobacco are subject to notification obligations to the competent authorities. At the same time, Member States recognise that the strictly national scope of these regimes is a major limitation to their effectiveness. Cross-border movements of raw tobacco cannot be effectively controlled due to the absence of appropriate control rules at EU level. The latter is reiterated in the Council's conclusions.

The issues outlined damage the interests of Member States and have common roots. It is not possible for Member States to address them in isolation without a proposal to amend the provisions of the Directive. No alternative national, bilateral or other international initiative

¹² Consolidated version of the [Treaty on the Functioning of the European Union](#), OJ C 326, 26.10.2012, p. 47–390.

¹³ [Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco.](#)

would provide the same level of effectiveness in terms of addressing this issue for all stakeholders at EU level.

- **Proportionality**

This proposal complies with the principles of proportionality as set out in Article 5(4) of the Treaty on European Union. The proposed amendments do not go beyond what is necessary to address the issues at stake and, in that way, to achieve the Treaty objectives of ensuring that the internal market functions properly and effectively. In particular the proposed extension of movement and control requirements for new products (liquids for electronic cigarettes and other nicotine products) would remove market barriers resulting from the fragmentation of Member State rules and regimes with limited adverse effects in terms of administrative burden. Furthermore, the application of movement and control requirements to raw tobacco would help monitor this market and ensure more effective tax administration hence curbing tax fraud.

The increase of the EU minima for tobacco products will contribute to the pursuit of health objectives in accordance with Article 168 of the Treaty and goals of Europe's Beating Cancer Plan by reducing smoking prevalence.

- **Choice of the instrument**

A Directive is proposed in order to amend Directive 2011/64/EU. No alternative national, bilateral or other international initiative would provide the same level of effectiveness in terms of the functioning of the internal market and significant added value consequently accrues from establishing common definitions and movement and control requirements of new products – substitutes for traditional manufactured tobacco - and raw tobacco for excise purposes at EU level.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

The Directive has already undergone an evaluation process, which started in 2012 under the Regulatory Fitness and Performance Programme (REFIT). Within this context, an independent evaluation study was completed in 2014 by a consortium led by Ramboll Management Consulting. On this basis, at the end of 2015 the Commission submitted a Report to the Council in 2015¹⁴ and received in March 2016 the mandate to explore possible regulatory revisions¹⁵. Within this framework, an impact assessment study was conducted by Economisti Associati in 2016-2017¹⁶ along with the Commission Report COM(2018)17 final. In the report Commission explained why on certain issues a revision of the Directive was not required or premature at that moment in time.

¹⁴ [REPORT FROM THE COMMISSION TO THE COUNCIL on the REFIT evaluation of Directive 2011/64/EU and on the structure and rates of excise duty applied to manufactured tobacco](#), COM(2015) 621.

¹⁵ [Council conclusions on the structure and rates of excise duty applied to manufactured tobacco](#), 08.03.2016.

¹⁶ Economisti Associati '[Study on Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco](#)', 2017.

The second, more comprehensive assessment of the Directive was conducted in 2018-19 by Economisti Associati¹⁷. The new evaluation focused on excise structure and minimum rates applied to smoking tobacco and reviewed again novel products (namely heated tobacco and e-cigarettes) in the light of their progressive market penetration. The recommendations and findings of the external study were taken into account in the Commission's evaluation report (SWD) submitted to the Council in February 2020¹⁸.

- **Stakeholder consultations**

The consultation strategy sought to gather feedback from stakeholders on the application of the current rules on the structures of excise duty applied to manufactured tobacco products and to get their views on possible changes to such provisions.

The strategy consisted of (i) in-depth interviews with Member States authorities, Commission staff, industry representatives, public health experts and nongovernmental organisations, professionals, research institutions and other stakeholders for a total of 97 interviewees (ii) an internet based public consultation held from 30 March 2021 to 26 June 2021, with 7262 contributions received together with 235 position papers.

The synopsis report of the stakeholder consultation is available in Annex 2 of the impact assessment accompanying this proposal. Stakeholders overwhelmingly recognised taxation as the single most effective tool to curb smoking prevalence, and supported factoring affordability into taxation levels. The public consultation confirmed the importance of tackling the increasing substitution of factory-manufactured cigarettes with existing harmonised products and even more so, with non-harmonised ones. Despite citizens and industry respondents resisting the idea of increased taxation for a number of products, a majority conceded that further action to close excise rate gaps between cigarettes, fine cut tobacco and cigarillos could be justified. Academics, non-governmental organisations, public health experts and other respondent categories almost universally agreed that taxation had to be increased and that existing tax gaps between products ought to be closed. Moreover, public health authorities considered increases in excises as second in importance after national restrictions (bans on sales, etc.) in contributing to decreasing smoking prevalence.

A majority of public consultation respondents see the need to fight illicit tobacco trade and manufacturing as a priority. There is substantial consensus across all categories of stakeholders for further EU collective action in this respect. However, there is a difference of opinion on how to do it. A sizeable share of industry representatives and some academics suggested the problem could be better tackled using an ad hoc administrative mechanism rather than including raw tobacco in the scope of the Directive, which implies the application of movement and control requirements, including the excise movement and control system (EMCS), under the Horizontal Directive¹⁹. Conversely, enforcement practitioners, tax and customs authorities, citizens and tobacco control non-governmental organisations overwhelmingly favoured this as practical and enforceable. However, for the purposes of EU

¹⁷ Economisti Associati, '[Study](#) on Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco', 2019.

¹⁸ [Evaluation](#) of the Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco, SWD(2020) 33 final.

¹⁹ [Council Directive 2008/118/EC](#) of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, OJ L 9, 14.1.2009, p.12-30. Note. This directive will be replaced by [Council Directive \(EU\) 2020/262](#) of 19 December 2019 laying down the general arrangements for excise duty (recast) (national measures transposing that Directive are to apply from 13 February 2023).

harmonisation, the Commission considers that EMCS, which has been in place for excise purposes more than 20 years, is the most efficient and effective tool. Moreover, as it is specified in the impact assessment the introduction of EMCS for excise goods under duty suspension arrangement have saved Member States considerable administrative costs, by allowing the better identification of fiscal risks. Economic operators have also expressed their general satisfaction with these arrangements.²⁰

The stakeholder consultation also confirmed that new products, in particular heated tobacco and liquids for electronic cigarettes, are taking an increasing, albeit gradual, share of the market for traditional tobacco products. A majority of public consultation respondents expressed support for harmonised tax rules and a separate excise category for heated tobacco. Whether liquids for electronic cigarettes should be harmonised at EU level remains deeply controversial among consumers and this question was the focus of a number of very similar replies to the public consultation. As a result, a majority of public consultation respondents, particularly among citizens, appear against the fiscal harmonisation of e-cigarettes in general, and liquids without nicotine in particular. However, the Commission is of the view that it is necessary to include nicotine-free liquids in the scope of the Directive in order to curb tax avoidance through the use of do-it-yourself practices (as it explained in the impact assessment this refers to consumers adding high-strength neutral nicotine solution to nicotine-free liquids).

- **Collection and use of expertise**

This proposal is based on the analysis of the evaluation study carried out in 2018/2019, the Commission's report submitted to the Council in 2020 and the study 'Impact analysis of the review of tobacco excise duty rules' in 2021²¹ contributing to the impact assessment. The latter study gathered and analysed evidence on costs and benefits to determine the scale of the problems identified in the Commission evaluation report. The results of the consultations, carried out in the framework of the study contributing to the impact assessment, were taken up in the to the impact assessment.

- **Impact assessment**

The impact assessment for the proposal was considered by the Regulatory Scrutiny Board on 19 July 2022. The Board gave a positive opinion to the proposal with recommendations that have been taken on board. The opinion of the Board, the recommendations and an explanation of how they were taken into account are included in Annex 1 of the Staff Working Document accompanying this proposal. Namely:

- Evidence from different sources (WHO, World Bank and academic evaluations) supporting the essential role of taxation in reducing tobacco use were introduced. The intervention logic diagram underpinning the revision of the Directive was added.
- The analysis of relevant impacts for economic operators and on employment, taking into account the concentrated nature of the tobacco sector, was expanded. Impact on SMEs was clarified based on the SME test bearing in mind that this is most relevant for the e-liquids sector, which is dominated by SMEs.
- The econometric modelling (methods, key assumptions, and baseline) used was clarified. All relevant impacts were presented in a more structured way.

²⁰ [Proposal for a Council Directive laying down the general arrangements for excise duty \(recast\)](#), SWD (2018) 261 final.

²¹ Economisti Associati 'Impact analysis of the review of tobacco excise duty rules', 2021. Unpublished.

Environmental impacts were presented, bearing in mind that the Directive is not motivated by any environmental rationale.

- The costs and benefits under each policy area were introduced in a more structured way. However, for the sake of clarity, the combined impact analysis is not presented as the three areas of intervention have different objectives (as presented in the overview of the intervention logic), and therefore different costs and benefits impacting a different set of economic operators and markets.
- The main weakness of the current fixed nominal minima, that is their inability to remain relevant in case of changes in the general price level, within each Member State as well as between Member States, was clarified. Also, it was explained that the choice of a new approach would ensure that affordability of tobacco and related products at national level will be better reflected in the rates so as to have a more targeted impact on consumption.
- Views of different stakeholders on the problems, different policy options, as well as on anticipated impacts have been integrated in more transparent manner in the body of the report.

Three main areas of intervention (revision of the EU minima, enlarging the scope of the Directive to new products and raw tobacco) are considered in the impact assessment and further subdivided into specific policy options.

Based on the Council Conclusions of 2 June 2020, each of these options was assessed when expressing EU minima in nominal terms or in partial Purchasing Power Parity (PPP) terms, which better reflects the relative economic situation in Member States. The PPP based approach takes into account the different inflation and economic growth trends for each Member State. This periodic adaptation thus partially removes the obsolescence of the minima ensuring the durability of the policy stance over time.

Revising the EU minima and certain categories for traditional tobacco products

Three increase options from limited to high have been considered. The options to raise minima for fine-cut tobacco, cigars, cigarillos and other smoking tobacco are designed to progressively bridge the gap with the rate for cigarettes, increase convergence between products in the medium term and minimise the risk of cross-product substitution.

All three options would fulfil the objectives of the Directive. They would help reduce the relative price accessibility of tobacco products, to a high or very high extent depending on the option chosen, therefore helping meet the interim target (i.e. estimated smoking prevalence of about 20% by 2025) and the long-term target of Europe's Beating Cancer Plan. The highest scenario is the most effective in curbing tobacco consumption. It would put the EU firmly on the path of reaching the long-term target of Europe's Beating Cancer Plan, i.e. a 'tobacco-free generation' where less than 5% of the population uses tobacco by 2040. This option could lead to significant excise duty increase in nearly half of the Member States, and for some, unprecedented levels of increase, notably for products with historically low tax levels like cigars and cigarillos, which makes it difficult to foresee all market effects (reduced sales, high compliance costs for economic operators). However, the partial PPP approach mitigates the most extreme effects, allowing for higher ambition. This option will generate EUR 9.6 billion of tax revenue for EU-27.

The increase of EU minima would negatively affect consumers' ability to buy the products (and hence lead to reduced sales for economic operators), but would not necessarily entail an increase in administrative costs for business and Member States.

The impact on employment depends on the market segment. Tobacco growing, manufacturing and retail differ considerably in terms of production function, labour intensity and market structure, as such the impacts will be correspondingly diverse. Overall impacts on economy-wide employment would be marginal and concentrated in a handful of Member States²².

Enlarging the scope of the Directive to new products

The harmonisation of new products is proposed with the objective of creating a level playing field. As for traditional tobacco products, various EU minima increase scenarios were considered, from moderate to high, based on national practices in terms of both the rates and the structure, anticipating risks of substitution between products.

The preferred increase scenario brings the rates for new products in line with EU minima for other smoking tobacco. The introduction of EU minima for these products will reduce the tax gap between new products and traditional tobacco products and hence tax substitution. Alongside clearly identified products, the preferred approach is to create a ‘catch all’ category for all other products, so bringing the EU framework up to date with market developments and closing possible loopholes. As price and tax measures are an effective and important means of reducing tobacco and tobacco related products consumption by various segments of the population, in particular young persons, the preferred option, introducing significant EU minima, are proportionate and most coherent with the goals of Europe’s Beating Cancer Plan.

Finally, the application of movement and control requirements provided for in the Horizontal Directive (currently applicable to traditional tobacco products) will ensure efficient and effective excise administration, supporting the collection of revenue not currently collected (especially in the case of liquids for electronic cigarettes). The introduction of excise duty rates for new products will lead to increase of revenue EUR 2 400 million under the preferred option.

The preferred option relies on the extension of already proven IT systems (Excise Movement and Control System and System for Exchange of Excise Data) for handling excise goods. Related administrative obligations follow the ‘digital by default’ principle.

Regarding impact on administrative costs and saving the bulk of additional costs would be incurred by SMEs operating in the e-cigarette liquids segment, especially those based in countries where no national tax regimes are currently in place. However, the proposed excise harmonisation of new products would remove market barriers resulting from the fragmentation of Member State rules and regimes, thus facilitating intra-EU trade and ensuring a level playing field across the single market for economic operators, and especially SMEs.

Enlarging the scope of the Directive of raw tobacco

The creation of a new category for raw tobacco is proposed. This would apply the movement and control provisions of the Horizontal Directive to raw tobacco, which would better control supply chains and help combat instances of diversion to illicit manufacturing. Two options are considered, with either a zero rate or a positive rate based on the rate applicable to other smoking tobacco.

The results of the analysis indicate a reduction in foregone tax revenues of approximately EUR 1.0 billion under option 1 (zero minima rate) and of nearly EUR 2.0 billion under option

²² In relative terms, Bulgaria is the most exposed Member States with a relatively high concentration of tobacco growers and above-average concentration in manufacturing. Significant number of growers is found Greece and Poland as well. In absolute terms, manufacturing is concentrated in Germany.

2 (i.e. the same excise duty rate as for other smoking tobacco). Considering that the total excise duty loss associated with illicit trade is estimated to exceed EUR 10 billion, the impact of the proposed measures, in relative terms, would translate into recovering 10% to 20% of current tax fraud. As the proposed options are not intended to directly generate tax revenue, except revenues that would be generated from reduced fraud, option 1 is the preferred option in accordance with the principle of proportionality.

All the options considered and the baseline scenario ‘do no significant harm’ to the environment. Tobacco is characterised by being a crop with very high water demand, the manufacturing of which can be seen as relatively energy-intensive. Also discarded cigarette butts present a danger to the environment, as filters do not biodegrade and can remain in the environment for very long periods of time in the form of microplastics. Hence any reduction in tobacco consumption triggered by taxation would, in theory, reduce such impact. This in line with the goals of the European Climate Law²³. As regards e-cigarettes, heated tobacco and smokeless tobacco products, there is a notable paucity of information on environmental impacts. However, the environmental costs from manufacturing e-cigarettes may be higher than those of ordinary cigarettes per unit.

The revision of the Directive also supports the achievement of sustainable development goals, in particular concerning health, equality and resource mobilization, on the sustainable use of natural resources and the protection of the environment, and concerning food security and sustainable communities.

- **Regulatory fitness and simplification**

Evidence collected in the evaluation of the Directive led to the conclusion that the lack of excise harmonisation for new products (liquids for electronic cigarettes, other manufactured tobacco and tobacco related products) and clear excise rules for heated tobacco led to legal and administrative uncertainty, causing administrative and transaction costs for market operators in cross-border movements. As a significant number of Member States already tax heated tobacco products and e-cigarette liquids, additional regulatory costs would be negligible. The bulk of additional costs would be borne by small and medium enterprises in the e-cigarette liquids segment, but mainly in those countries where no national tax regime is currently in place.

Bringing raw tobacco within the scope of the Excise Movement and Control System and other control measures established in the Horizontal Directive would lead to additional regulatory costs. However, doing so is expected to facilitate cross-border investigations and the prosecution of frauds. Moreover, harmonised movement control requirements could lead to the abandonment of at least some national control measures (registration, authorization additional control measures), which could mitigate the administrative burden incurred by both economic operators and public authorities.

In the view of Member States authorities, the benefits (albeit hardly quantifiable) of harmonising new products and raw tobacco would be expected to outweigh the costs.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

²³ Set the long-term direction of travel for meeting the 2050 climate neutrality objective through all policies, in a socially fair and cost-efficient manner. [European climate law](#) sets a binding Union climate target of a reduction of net greenhouse gas emissions by at least 55% by 2030 compared to 1990.

4. BUDGETARY IMPLICATIONS

Excise duty is not an own resource. Therefore, the proposal does not entail any implications for the Union budget.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

Tobacco taxation is regularly monitored, at least once a year by collecting information from Member States on the basis of the Commission Implementing Decision of 28 July 2011 concerning the list of statistical data on the structure and rates of excise duty applied on manufactured tobacco to be provided by the Member States pursuant to Council Directives 92/79/EEC and 92/80/EEC²⁴. Moreover, DG TAXUD and Member States update the information database on the applicable tax rates twice a year (Tax in Europe Database). The Commission's traceability and security features system, established by the Tobacco Products Directive, allows for real-time monitoring of the tobacco supply chain²⁵.

The Committee on Excise Duty, an advisory committee on excise issues chaired by the Commission, in which representatives of all Member States participate, will monitor the implementation and functioning of the revised rules. The Committee on Excise Duty will report on implementation issues and the evolution of problems identified in this impact assessment. It will discuss and clarify possible interpretation issues between Member States. In case new legislative developments are required, the Indirect Taxation Expert Group might be further consulted.

Member States and the Commission will evaluate the functioning of the new legislation at the earliest 5 years after the date of application, allowing the markets to adjust and results and impacts to materialise.

- **Detailed explanation of the specific provisions of the proposal**

Commission proposes:

Moving from nominal rates to an approach partially based on purchasing power parities

Under the current Directive, EU minima for each product category are expressed in nominal terms, i.e. as a fixed monetary amount applicable in all Member States. This is in line with the approach traditionally used for harmonising indirect taxes. However, from a tobacco control perspective this approach cannot provide a durable solution, as the combination of inflation and income growth results, over time, in a rapid erosion of the minima. Furthermore, due to the substantial and persistent diversity in economic conditions in Member States (not only in income, but also in general price level), any nominal minimum rate set at EU level is generally too low to have an impact in higher-income countries. To ensure the durability of the policy stance over time, an approach partially based on purchasing power parities (PPP) is proposed, i.e.:

- To replace the current approach whereby the EU minimum rate of excise duty is fully expressed in nominal terms by an approach whereby 2/3 of the tax is expressed

²⁴ [Commission Implementing Decision](#) of 28 July 2011 concerning the list of statistical data on the structure and rates of excise duty applied on manufactured tobacco to be provided by the Member States pursuant to Council Directives 92/79/EEC and 92/80/EEC, OJ L 197, 29.7.2011, p. 17–19.

²⁵ In respect of cigarettes and roll-your-own tobacco since 20 May 2019 and for all other tobacco products from 20 May 2024.

in nominal terms and 1/3 in PPP terms, using the indicator published and updated on an annual basis by Eurostat.

- To account for changes in purchasing power parities over time by automatically updating the EU minima applicable in each Member State every three years. A similar regular update is also proposed to encompass changes in the harmonised index of consumer prices (Article 13).

Revising the EU minima and certain categories for traditional tobacco products

Greater convergence is needed in order to ensure the proper functioning of the internal market. In order to reach this objective, the minimum tax levels need to be increased. Furthermore, the current EU minima laid down in the Directive have lost traction and no longer make an effective contribution to reducing tobacco consumption. Excise levels in Member States are generally much higher than EU minima.

Finally, although smoking prevalence has declined in EU over the past decade (from 28 % to 25% between 2012 and 2020), substantial differences remain between countries and population groups. Without intervention, even at current rates of declining usage, the targets set out in Europe's Beating Cancer Plan, which are to reduce smoking prevalence to less than 5% by 2040, with an interim target of 20% by 2025, will not be achieved.

Separate definitions for cigarillos (Article 4) and waterpipe tobacco (Article 6) are introduced to improve legal certainty and encourage Member States to adopt a more tailored tax regime and, in the case of waterpipe tobacco, to help Member States fight illicit trade.

Article 4(2) introduces of a distinction between cigars and cigarillos, based on the physical characteristics of the products, consistent with existing definitions in EU law²⁶. As regards waterpipe tobacco, Article 6 distinguishes waterpipe tobacco from other smoking tobacco based on its physical characteristics and its intended use by consumers, consistently with existing definitions in EU law²⁷.

Increased EU minima for manufactured tobacco (cigarettes, cigars, cigarillos, fine-cut tobacco for the rolling of cigarettes, waterpipe tobacco and other smoking tobacco) are introduced (Articles 18 and 22).

For cigars, cigarillos, other smoking tobacco, waterpipe tobacco and other manufactured tobacco, a four-year transitional period is foreseen (Article 22).

Enlarging the scope of the Directive to new products

Heated Tobacco Products (HTP), while falling under the other smoking tobacco category, are not explicitly defined in the Directive. This means that Member State authorities cannot distinguish between the regime applied to HTP and to other products in that category, such as pipe tobacco. Nor is it the case that the optimal tax rate for HTP is appropriate for pipe tobacco and vice versa.

²⁶ Council Regulation (EC) No 1186/2009 of 16 November 2009 setting up a Community system of reliefs from customs duty; OJ L 324, 10.12.2009, p. 23–57. Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC; OJ L 127, 29.4.2014, p. 1–38

²⁷ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC; OJ L 127, 29.4.2014, p. 1–38

To reduce tax induced substitution and to ensure legal certainty it is proposed to include new products within the scope of the Directive - liquids for electronic cigarettes, nicotine pouches, other manufactured tobacco and other nicotine products (Article 2).

New definitions are introduced in Articles 7, 8, 9 and 10 and new EU minima are established in Articles 22 and 24.

Finally, following the same approach as for other smoking tobacco, a four-year transitional period is foreseen for nicotine pouches and other nicotine products (Article 24).

Enlarging the scope of the Directive to raw tobacco

As stated in the Commission's evaluation report, the lack of control of raw tobacco is of particular concern with evidence of increasing diversion to the illicit manufacturing of cigarettes inside the EU. In particular, the absence of a harmonised definition of raw tobacco was seen by stakeholders as a major limit to proper cross-border monitoring.

The introduction in the scope of the Directive (Article 1) of raw tobacco with an EU minima rate of zero (Article 25) is proposed. The application of the excise movement and control requirements established in the Horizontal Directive is introduced at the stage of first processor (Article 26) once tobacco has been cured and dried. Movements from field to farm or collection centres of harvested tobacco would not occur under EMCS. Therefore, tobacco growers and their collective organisations are exempted from the application of EMCS, provided that no processing, other than drying or curing, is carried out.

↓ 2011/64/EU
⇒ new

Proposal for a

COUNCIL DIRECTIVE

on the structure and rates of excise duty applied to ~~manufactured~~ tobacco ⇒ and tobacco related products ⇐ (recast)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the European Economic and Social Committee,

Acting in accordance with a special legislative procedure,

Whereas:

↓ new

- (1) A number of amendments are to be made to Council Directive 2011/64/EU¹. In the interests of clarity, that Directive should be recast.
 - (2) Since the adoption of Directive 2011/64/EU, the tobacco market has changed significantly. New products functioning as substitutes for manufactured tobacco, containing tobacco or nicotine, have been placed on the market. In response, Member States have introduced different national measures which distort competition and the proper functioning of internal market. In the interest of uniform and fair taxation they should be included in the scope of Directive 2011/64/EU.
-

↓ 2011/64/EU recital 1 (adapted)

~~Council Directives 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes², 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes³ and 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured~~

¹ Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24).

² ~~OJ L 316, 31.10.1992, p. 8.~~

³ ~~OJ L 316, 31.10.1992, p. 10.~~

~~tobacco⁴ have been substantially amended several times⁵. In the interests of clarity and rationality the said Directives should be codified by assembling them in a single act.~~

↓ 2011/64/EU recital 2 (adapted)
⇒ new

- (3) ~~It is necessary to ensure that the Union's fiscal legislation on tobacco and tobacco related products continues to ensure the proper functioning of the internal market and, at the same time, a high level of health protection, as required by Article 168 of the Treaty on the Functioning of the European Union, bearing in mind that tobacco and tobacco related products can cause serious harm to health, account should be taken of Europe's Beating Cancer Plan⁶ and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC). Account should be taken of the situation prevailing for each of the various types of manufactured tobacco.~~
-

↓ 2011/64/EU recital 3
⇒ new

- (4) One of the objectives of the Treaty on European Union is to maintain an economic union, whose characteristics are similar to those of a domestic market, within which there is healthy competition. As regards manufactured tobacco and tobacco related products, 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.
-

↓ 2011/64/EU recital 4
⇒ new

- (5) The various types of manufactured tobacco and tobacco related products, distinguished by their characteristics and by the way in which they are used, should be defined.
-

↓ 2011/64/EU recital 5
⇒ new

- (6) A distinction needs to be made between fine-cut tobacco for the rolling of cigarettes, waterpipe tobacco, heated tobacco and other smoking tobacco. A distinction also needs to be made between cigars and cigarillos.

⁴ OJ L 291, 6.12.1995, p. 40.

⁵ See Annex I, Part A.

⁶

↓ 2011/64/EU recital 6

- (7) Rolls of tobacco capable of being smoked as they are after simple handling should also be deemed to be cigarettes for the purposes of uniform taxation of these products.
-

↓ 2011/64/EU recital 7
⇒ new

- (8) A manufacturer needs to be defined as a natural or legal person who actually prepares manufactured tobacco ⇒ and tobacco related ⇐ products and sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption.
-

↓ 2011/64/EU recital 8 (adapted)
⇒ new

- (9) In the interests of uniform and fair taxation, a definition of cigarettes, cigars ~~and~~ cigarillos ⇒ , fine-cut tobacco for the rolling of cigarettes, waterpipe tobacco, ⇐ ~~and~~ ~~of~~ other smoking tobacco ⇒ , heated tobacco and other manufactured products ⇐ should be laid down so that, respectively, rolls of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more for excise purposes, a type of cigar ⇒ or cigarillo ⇐ which is similar in many respects to a cigarette is treated as a cigarette for excise purposes, ⇒ a cigar which does not exceed 3 g in weight is treated as a cigarillo for excise purposes, ⇐ smoking tobacco which is similar in many respects to fine-cut tobacco intended for the rolling of cigarettes is treated as fine-cut tobacco for excise purposes, ⇒ tobacco which can be used in a waterpipe is treated as waterpipe tobacco for excise purposes, tobacco which is heated or otherwise activated by chemical reaction is treated as heated tobacco, ⇐ and tobacco refuse is clearly defined. ~~In view of the economic difficulties that immediate implementation could cause for the German and Hungarian operators concerned, Germany and Hungary should be authorised to postpone the application of the definition of cigars and cigarillos until 1 January 2015.~~
-

↓ new

- (10) Tobacco related products substitute for manufactured tobacco products by facilitating the intake of nicotine in the human body. In the interests of uniform and fair taxation, a definition of liquids for electronic cigarettes, nicotine pouches and other nicotine products should be laid down.
- (11) In order to prevent the diversion of raw tobacco to illicit manufacturing and consequential tax evasion, it is necessary to include raw tobacco in the scope of this Directive. Therefore, a definition of raw tobacco should be laid down.

↓ 2011/64/EU recital 9
⇒ new

- (12) As far as excise duties are concerned, harmonisation of structures must, in particular, result in competition in the different categories of manufactured tobacco ⇒ and tobacco related products ⇐ 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.

↓ 2011/64/EU recital 10
⇒ new

- (13) The imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco ⇒ and tobacco related products ⇐ .

↓ 2011/64/EU recital 13
⇒ new

- (14) For the proper functioning of the internal market, it is necessary to establish minimum excise duties for all categories of manufactured tobacco ⇒ and tobacco related products ⇐ .

↓ new

- (15) To ensure a balanced distribution of impacts across Member States when revising the system of excise duty rates, the economic situation of Member States need to be considered. Union minimum rates of excise duty should be adjusted in light of the price levels of each Member State based on an index elaborated by Eurostat.
- (16) To avoid their obsolescence over time, Union minima should be adjusted every 3 years to preserve their real value. This adjustment should be made based on changes in the EU harmonised index of consumer prices as published by Eurostat.

↓ 2011/64/EU recital 11

- (17) The structure of the excise duty on cigarettes must include, in addition to a specific component calculated per unit of the product, a proportional component based on the retail selling price, inclusive of all taxes. The turnover tax on cigarettes has the same effect as an *ad valorem* excise duty and this fact should be taken into account when the ratio between the specific component of the excise duty and the total tax burden is being established.

↓ 2011/64/EU recital 12

- (18) Without prejudice to the mixed tax structure and the maximum percentage of the specific component of the total tax burden, Member States should be given effective means to levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum amount of taxation applies throughout the Union.

↓ 2011/64/EU recital 14

- (19) As regards cigarettes, neutral conditions of competition for manufacturers should be assured, the partitioning of the tobacco markets should be reduced and health objectives should be underscored. Thus, a price related minimum requirement should refer to the weighted average retail selling price, whereas a monetary minimum should be applicable to all cigarettes. For the same reasons, the weighted average retail selling price should also serve as a reference for measuring the importance of specific excise duty within the total tax burden.

↓ 2011/64/EU recital 15

- (20) As regards prices and excise levels, in particular for cigarettes — by far the most important category of tobacco products — as well as for fine cut-tobacco intended for the rolling of cigarettes, there are still considerable differences between Member States which may disturb the operation of the internal market. A certain degree of convergence between the tax levels applied in the Member States would help to reduce fraud and smuggling within the Union.

↓ 2011/64/EU recital 16

- (21) Such convergence would also help ~~to~~ ensure a high level of protection for human health. The level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. Fraud and smuggling undermine tax induced price levels, in particular of cigarettes and fine-cut tobacco intended for the rolling of cigarettes, and thus jeopardise the achievement of tobacco control and health protection objectives.

↓ 2011/64/EU recital 17
⇒ new

- (22) As regards products other than cigarettes, a harmonised incidence of tax should be established for all products belonging to the same group of manufactured tobacco ⇒ and tobacco related products ⇐ . The setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for the functioning of the internal market. ⇒ The increase of Union minima should reduce the tax gap between different products, hence tax induced substitution. ⇐

↓ 2011/64/EU recital 18

- (23) As regards fine-cut tobacco intended for the rolling of cigarettes, a Union price related minimum requirement should be expressed in such a way as to obtain effects similar to those in the field of cigarettes and should take the weighted average retail selling price as the point of reference.

↓ 2011/64/EU recital 19

- (24) It is necessary to bring the minimum levels for fine-cut tobacco intended for the rolling of cigarettes closer to the minimum levels applicable to cigarettes, so as to better take account of the degree of competition existing between the two products, reflected in consumption patterns observed, as well as their equally harmful character.

↓ 2011/64/EU recital 20

- (25) Portugal should be granted the possibility of applying a reduced rate for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira.

↓ new

- (26) As regards waterpipe tobacco, a lower minimum level than other smoking tobacco may be set, so as to take into account the specific characteristics of the waterpipe tobacco market.
- (27) Given the heterogeneity of heated tobacco, the setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for the functioning of the internal market.
- (28) In order to have neutral conditions of competition in the tobacco sector, it is also necessary to set the minimum levels for newly defined manufactured tobacco and tobacco related products which can be seen as substitutes for tobacco products from a fiscal perspective.
- (29) As regards liquids for electronic cigarettes, to prevent tax avoidance through the use of 'do-it-yourself' mixtures all liquids for electronic cigarettes should be subject to a minimum excise duty and a higher minimum level should be set for liquids with a high concentration of nicotine (higher than 15 mg/ml).
- (30) To ensure the detection of irregularities and potential diversions, supply-chain operations for raw tobacco should be subject to the control and movement provisions of Council Directive (EU) 2020/262⁷.
- (31) Setting a zero minimum excise duty rate for raw tobacco is proportionate with the objective of addressing tax evasion and fraud.

⁷ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4).

- (32) Given the burden it would represent for small growers and the limited risk of fraud, Member States should exempt tobacco growers, their organisations and associations from excise movement and control requirements, provided they are not involved in the transformation of cured or dried tobacco into processed tobacco.
-

↓ 2011/64/EU recital 21
⇒ new

- (33) Transitional periods ⇒ of 4 years for cigars, cigarillos, waterpipe tobacco, other smoking tobacco, other manufactured tobacco, nicotine pouches and other nicotine products ⇨ should allow Member States to adapt smoothly to the levels of the overall excise duty, thus limiting possible side effects.
-

↓ new

- (34) As the derogations and transitional periods for certain Member States have expired, it is no longer necessary to include such provisions.
-

↓ 2011/64/EU recital 22
(adapted)

~~In order to prevent damage to Corsica's economic and social equilibrium, it is both essential and justifiable to provide for a derogation, until 31 December 2015, by which France may apply a rate of excise duty that is lower than the national rate to cigarettes and other manufactured tobaccos released for consumption in Corsica. By that date, the tax rules for manufactured tobaccos released for consumption there should be brought fully into line with the rules for mainland France. Nevertheless, too abrupt a change should be avoided and there should therefore be a stepwise increase in the excise duty currently levied on cigarettes and fine-cut tobacco intended for the rolling of cigarettes in Corsica.~~

↓ 2011/64/EU recital 23
(adapted)
⇒ new

- (35) ~~A majority of Member States ⇒ should continue to ⇨ grant exemptions from excise duty or make refunds of excise duty in respect of certain types of manufactured tobacco ⇨ and tobacco related products ⇨ depending on the use which is made of them, and the exemptions or refunds for particular uses need to be specified in this Directive.~~
-

↓ new

- (36) Commission Implementing Decision of 28 July 2011 concerning the list of statistical data on the structure and rates of excise duty applied on manufactured tobacco to be

provided by the Member States⁸ should be updated in order to ensure timely and sufficient information for the report on the application of this Directive.

- (37) Every 5 years and for the first time by [31 December 2030], the Commission should submit reports to the European Parliament and Council on the application of this Directive, examining in particular levels of taxation, impact on the proper functioning of internal market and on public health. In particular, the first report should assess the application and the impact of the new provisions on raw tobacco as regards their impact on tax evasion and fraud.
- (38) The obligation to transpose this Directive into national law should be confined to those provisions which represent a substantive amendment as compared to the earlier Directive. The obligation to transpose the provisions which are unchanged arises under the earlier Directive.

↓ 2011/64/EU recital 24

~~A procedure should be provided for to enable the rates or amounts laid down in this Directive to be reviewed periodically on the basis of a Commission report taking account of all the appropriate factors.~~

↓ 2011/64/EU recital 25
(adapted)

- (39) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex I of Directive 2011/64/EU , ~~Part B,~~

↓ 2011/64/EU
⇒ new

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

SUBJECT MATTER

Article 1

This Directive lays down general principles for the harmonisation of the structure and rates of the excise duty to which the Member States subject ⇒ raw tobacco, ⇐ manufactured tobacco ⇒ and tobacco related products ⇐ .

⁸ Commission Implementing Decision of 28 July 2011 concerning the list of statistical data on the structure and rates of excise duty applied on manufactured tobacco to be provided by the Member States pursuant to Council Directives 92/79/EEC and 92/80/EEC (OJ L 197, 29.7.2011, p. 17).

CHAPTER 2

DEFINITIONS

Article 2

↓ 2011/64/EU (adapted)

1. For the purposes of this Directive manufactured tobacco shall mean:

- (a) cigarettes;
- (b) cigars;
- (c) ~~and~~ cigarillos;
- (~~de~~) smoking tobacco:
 - (i) fine-cut tobacco for the rolling of cigarettes;
 - (ii) other smoking tobacco;

↓ new

- (e) waterpipe tobacco;
- (f) heated tobacco;
- (g) other manufactured tobacco.

2. For the purposes of this Directive tobacco related products shall mean:

- (a) liquid for electronic cigarettes;
- (b) nicotine pouches;
- (c) other nicotine products.

3. For the purposes of this Directive raw tobacco shall mean any form of harvested tobacco that has been cured or dried and is not manufactured tobacco as defined in Articles 3, 4, 5, 6, 7 and 8.

↓ 2011/64/EU (adapted)
⇒ new

~~42. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in Article 3 or Article 5(1) shall be treated as cigarettes and smoking tobacco.~~

~~Notwithstanding the first subparagraph, P~~ products containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco ⇒ or tobacco related products ⇐ .

~~53.~~ Notwithstanding existing Union provisions, the definitions referred to in paragraph ~~42~~ of this Article and Articles 3, ~~4 and 5~~ ⇒ to 11 ⇐ shall be without prejudice to the choice of

system or the level of taxation which shall apply to the different groups of products referred to in these Articles.

Article 3

1. For the purposes of this Directive cigarettes shall mean:

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos within the meaning of Article 4(1);
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes;
- (c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 8 cm but not longer than 11 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 11 cm but not longer than 14 cm, and so on.

☒ 3. Products consisting in whole or in part of substances other than tobacco but otherwise meeting the criteria set out in paragraph 1 shall be treated as cigarettes. ☒

↓ 2011/64/EU ⇒ new

Article 4

1. For the purposes of this Directive the following shall be deemed to be cigars or cigarillos if they can be and, given their properties and normal consumer expectations, are exclusively intended to be smoked as they are:

- (a) rolls of tobacco with an outer wrapper of natural tobacco ⇒ covering the product in full including, where relevant, the filter, but without any further layer partially covering the outer wrapper; regarding tipped cigars, the outer wrapper shall not cover the tip ⇐ ;
- (b) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm.

↓ new

2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as a cigarillo where the unit weight, excluding filter or mouthpiece, does not exceed 3 g. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered a cigar where the unit weight, excluding filter or mouthpiece, exceeds 3 g.

~~By way of derogation from paragraph 1, the following subparagraph may continue to be applied by Germany and Hungary until 31 December 2014:~~

~~The following shall be deemed to be cigars or cigarillos if they can be smoked as they are:~~

- ~~(a) rolls of tobacco made entirely of natural tobacco;~~
- ~~(b) rolls of tobacco with an outer wrapper of natural tobacco;~~
- ~~(c) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, and a binder, both being of reconstituted tobacco, where the unit weight, not including filter or mouthpiece, is not less than 1,2 g and where the wrapper is fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar;~~
- ~~(d) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouth piece, is not less than 2,3 g and the circumference over at least one third of the length is not less than 34 mm.~~

3. Products which consist in part of substances other than tobacco but otherwise fulfil the criteria set out in paragraph 1 shall be treated as cigars ~~and~~ ⇒ or ⇐ cigarillos.

Article 5

1. For the purposes of this Directive smoking tobacco shall mean:

- (a) tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing;
- (b) tobacco refuse put up for retail sale which does not fall under Article 3 and Article 4(1) and which can be smoked. For the purpose of this Article, tobacco refuse shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

2. Smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than 1,5 millimetre shall be deemed to be fine-cut tobacco for the rolling of cigarettes.

Member States may also deem smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of 1,5 millimetre or more and which was sold or intended to be sold for the rolling of cigarettes to be fine-cut tobacco for the rolling of cigarettes.

⊗ 3. Products consisting in whole or in part of substances other than tobacco but otherwise meeting the criteria set out in paragraph 1 shall be treated as smoking tobacco. ⊗

Article 6

1. For the purposes of this Directive, waterpipe tobacco shall mean tobacco which can be used in a waterpipe for the production of emissions which are passed through a liquid before inhalation by the consumer.

2. Subject to paragraphs 3 and 4, products consisting in whole or in part of substances other than tobacco but otherwise meet the criteria set out in paragraph 1 shall be treated as waterpipe tobacco.

3. If a product can be used both via a waterpipe and as smoking tobacco, it shall be treated as smoking tobacco.

4. If a product can be used both via a waterpipe and as heated tobacco, it shall be treated as heated tobacco.

Article 7

1. For the purposes of this Directive, heated tobacco shall mean tobacco from which emissions intended for inhalation are generated by use of a heating device, other than a waterpipe within the meaning of Article 6(1), or otherwise by chemical reaction or some other means.

2. Products consisting in whole or in part of substances other than tobacco but otherwise meeting the criteria set in paragraph 1, except liquids for electronic cigarettes as defined in Article 9, shall be treated as heated tobacco.

3. Products capable meeting the criteria set in both paragraph 1 and Article 3 shall be treated as cigarettes for excise purposes.

4. Products capable meeting the criteria set in both paragraph 1 and Article 4 shall be treated as cigars or cigarillos for excise purposes.

5. Products capable meeting the criteria set in both paragraph 1 and Article 5 shall be treated as smoking tobacco for excise purposes.

Article 8

1. For the purposes of this Directive, other manufactured tobacco shall mean products containing tobacco prepared and intended for human consumption and which are not cigarettes, cigars, cigarillos, smoking tobacco, waterpipe tobacco, or heated tobacco.

2. A product containing tobacco shall be deemed to be prepared and intended for human consumption, if by simple non-industrial handling, it is capable of delivering for intake, or facilitating the intake of, nicotine into the human body.

Article 9

1. For the purposes of this Directive liquids for electronic cigarettes shall mean liquids containing nicotine than can be used in electronic cigarettes or similar vaporising devices or to refill electronic cigarettes or similar vaporising devices and liquids not containing nicotine which are intended to be used in electronic cigarettes or similar vaporising devices or to refill electronic cigarettes or similar vaporising devices.

2. For the purposes of this Directive electronic cigarette shall mean a product that can be used for consumption of vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank and that can be disposable or refillable by means of a refill container or a tank, or rechargeable with single use cartridges.

Article 10

1. For the purposes of this Directive nicotine pouches shall mean products containing nicotine but not tobacco which are mixed with vegetable fibres or equivalent substrate, presented in sachet portions or porous sachets or equivalent format.
 2. For the purposes of this Directive other nicotine products shall mean products for final consumption that contain nicotine but not tobacco and which can be used for the intake of nicotine in the human body, other than nicotine pouches as defined in paragraph 1 and liquids for electronic cigarettes as defined in Article 9.
-

↓ 2011/64/EU
⇒ new

Article ~~11~~

A natural or legal person established in the Union who converts tobacco into manufactured products prepared for retail sale shall be deemed to be a manufacturer.

↓ new

Article 12

‘Price Level Index’ means the index elaborated by Eurostat that express the price level of Member State for actual individual consumption relative to the Union, by dividing the Purchasing Power Parities as defined in article 3 of Regulation 1445/2007/EC by the current nominal exchange rate.

CHAPTER 3

CALCULATION OF THE EXCISE DUTY

Article 13

1. Each Member State shall ensure that excise duty rates set for manufactured tobacco and tobacco related products respect the minimum rates provided for in Chapters 4, 5 and 6. The minimum excise duty rates applicable in Member States for manufactured tobacco and tobacco related products provided for in Chapters 4, 5 and 6 shall be adjusted every three years starting from 2025 in accordance with paragraphs 2 and 3.
2. In order to take into account the changes in the harmonised index of consumer prices the EU rate for a product, as stated in Chapters 4, 5 and 6, shall be adjusted by increasing or decreasing the base amount in euro by the percentage change in the annual EU average value of the harmonised index of consumer prices as published by Eurostat over the preceding three calendar years.
3. In order to take into account changes in price levels, the EU rate for each product covered in Chapters 4, 5 and 6 and adjusted in accordance with paragraph 2 shall be adjusted in accordance with the following formula:

$$\text{Rate}_{\text{MS}}(t) = 2/3 * \text{Rate}_{\text{EU}} + 1/3 * \text{Rate}_{\text{EU}} * \text{PLI}_{\text{MS}(t-1)} / 100$$

where:

$\text{Rate}_{\text{MS}}(t)$ = Adjusted rate applicable in the Member State

Rate_{EU} = EU rate set out in Chapters 4, 5 and 6 adjusted in accordance with paragraph 2

$\text{PLI}_{\text{MS}(t-1)}$ = Price Level Index of the Member State elaborated by Eurostat in the year, one year prior to the year of adjustment.

3. From 2028 the adjusted minimum excise duty rates shall apply with effect from the first day of the year following the year in which adjustment occurs.

↓ 2011/64/EU (adapted)
⇒ new

CHAPTER 43

PROVISIONS APPLICABLE TO CIGARETTES

Article 147

1. Cigarettes manufactured in the Union and those imported from third countries shall be subject to an *ad valorem* excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty calculated per unit of the product.

Notwithstanding the first subparagraph, Member States may exclude customs duties from the basis for calculating the *ad valorem* excise duty on cigarettes.

2. The rate of the *ad valorem* excise duty and the amount of the specific excise duty must be the same for all cigarettes.

3. At the final stage of harmonisation of structures, the same ratio shall be established for cigarettes in all Member States between the specific excise duty and the sum of the *ad valorem* excise duty and the turnover tax, in such a way that the range of retail selling prices reflects fairly the difference in the manufacturers' delivery prices.

4. Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty as laid down in Article 158 is strictly respected.

Article 158

1. The percentage of the specific component of excise duty in the amount of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price.

2. 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.

~~3. Until 31 December 2013, the specific component of the excise duty shall not be less than 5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:~~

~~(a) specific excise duty;~~

~~(b) the *ad valorem* excise duty and the value added tax (VAT) levied on the weighted average retail selling price.~~

34. ~~From 1 January 2014, T~~he specific component of the excise duty on cigarettes shall not be less than 7,5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

(a) specific excise duty;

(b) the *ad valorem* excise duty and the VAT levied on the weighted average retail selling price.

45. ~~By way of derogation from paragraphs 3 and 4, W~~here a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the specific component of the excise duty, expressed as a percentage of the total tax burden, below the percentage of 5 % or 7,5 %, whichever is applicable, or above the percentage of 76,5 % of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until 1 January of the second year following that in which the change occurs.

~~56.~~ Subject to paragraphs ~~3~~ 34 and 45 of this Article and the second subparagraph of Article ~~147~~(1), Member States may levy a minimum excise duty on cigarettes.

Article 169

1. Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Chapter.

2. Paragraph 1 shall apply to the taxes which, pursuant to this Chapter, are levied on cigarettes and which comprise:

(a) a specific excise duty per unit of the product;

(b) an *ad valorem* excise duty calculated on the basis of the maximum retail selling price;

(c) a VAT proportional to the retail selling price.

↓ 2011/64/EU (adapted)
⇒ new

Article 1710

~~1~~ The overall excise duty, ~~⊗~~ being the cumulative value of ~~⊗~~ (specific duty and *ad valorem* duty excluding VAT) on cigarettes shall represent at least ⇒ 63 ⇐ ~~57~~ % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than ~~⊗~~ the EU rate of ~~⊗~~ EUR ⇒ 180 ⇐ ~~64~~ per 1000 cigarettes ⇒ , adjusted according to Article 13, ⇐ irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least ~~⊗~~ the EU rate of ~~⊗~~ EUR ~~⇒ 230 ⇐ 101~~ per 1000 cigarettes ~~⇒~~ , adjusted according to Article 14, ~~⇐~~ on the basis of the weighted average retail selling price need not to comply with the ~~⇒ 63 ⇐ 57~~ % requirement set out in the first subparagraph.

~~2. From 1 January 2014, the overall excise duty on cigarettes shall represent at least 60 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 90 per 1000 cigarettes irrespective of the weighted average retail selling price.~~

~~However, Member States which levy an excise duty of at least EUR 115 per 1000 cigarettes on the basis of the weighted average retail selling price need not to comply with the 60 % requirement set out in the first subparagraph.~~

~~Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland and Romania shall be allowed a transitional period until 31 December 2017 in order to reach the requirements laid down in the first and second subparagraphs.~~

~~3. Member States shall gradually increase excise duties in order to reach the requirements referred to in paragraph 2 on the dates set therein.~~

Article ~~1811~~

1. Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the overall excise duty below the levels specified in the first sentence of paragraph 1 ~~and in the first sentence of paragraph 2~~ of Article ~~1710~~ respectively, the Member State concerned may refrain from adjusting that duty until 1 January of the second year following that in which the change occurs.

2. Where a Member State increases the rate of VAT on cigarettes, it may reduce the overall excise duty up to an amount which, expressed as a percentage of the weighted average retail selling price, is equal to the increase in the rate of VAT, also expressed as a percentage of the weighted average retail selling price, even if such an adjustment has the effect of reducing the overall excise duty to below the levels, expressed as a percentage of the weighted average retail selling price, laid down in the first sentence of paragraph 1 ~~and in the first sentence of paragraph 2~~ of Article ~~1710~~ respectively.

However, the Member State shall raise that duty again so as to reach at least those levels by 1 January of the second year after that in which the reduction took place.

Article ~~1912~~

~~1.~~ Portugal may apply a reduced rate of up to 50 % less than that laid down in Article ~~1710~~ to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

~~2. By way of derogation from Article 10, France may continue to apply for the period from 1 January 2010 to 31 December 2015 a reduced rate of excise duty to cigarettes released for consumption in the departments of Corsica up to an annual quota of 1200 tonnes. The reduced rate shall be:~~

~~(a) until 31 December 2012, at least 44 % of the price for cigarettes in the price category most in demand in those departments;~~

~~(b) from 1 January 2013, at least 50 % of the weighted average retail selling price of cigarettes released for consumption; the excise duty shall not be less than EUR 88 per 1000 cigarettes irrespective of the weighted average retail selling price;~~

~~(c) from 1 January 2015, at least 57 % of the weighted average retail selling price of cigarettes released for consumption; the excise duty shall not be less than EUR 90 per 1000 cigarettes irrespective of the weighted average retail selling price.~~

↓ 2011/64/EU (adapted)

CHAPTER 54

PROVISIONS APPLICABLE TO MANUFACTURED TOBACCO OTHER THAN CIGARETTES

Article 2013

The following groups of manufactured tobacco produced in the Union and imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 2144:

- (a) cigars
- (b) ~~and~~ cigarillos;
- (~~c~~) fine-cut tobacco intended for the rolling of cigarettes;
- (~~d~~) other smoking tobaccos;~~;~~

↓ new

- (e) waterpipe tobacco;
- (f) heated tobacco;
- (g) other manufactured tobacco.

↓ 2011/64/EU (adapted)
⇒ new

Article 2144

1. Member States shall apply an excise duty to manufactured tobacco other than cigarettes which may be:

- (a) either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Union and by importers from third countries in accordance with Article 2615; or
- (b) a specific duty expressed as an amount per kilogram, or in the case of cigars, ~~and~~ cigarillos, and heated tobacco, alternatively for a given number of items; or

(c) a mixture of both, combining an *ad valorem* element and a specific element.

In cases where excise duty is either *ad valorem* or mixed, Member States may establish a minimum amount of excise duty.

2. The overall excise duty , being the cumulative value of (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 ⇒ 40 ⇐ % of the retail selling price inclusive of all taxes or <input checked="" type="checkbox"/> the EU rate of <input checked="" type="checkbox"/> EUR 12 ⇒ 120 ⇐ per 1000 items or per kilogram ⇒ adjusted according to Article 13 ⇐ ;
(b)	<input checked="" type="checkbox"/> cigarillos <input checked="" type="checkbox"/>	<input checked="" type="checkbox"/> :	⇒ 40 % of the retail selling price inclusive of all taxes or the EU rate of EUR 120 per 1000 items or per kilogram, adjusted according to Article 13; ⇐
(c)	fine-cut smoking tobacco intended for the rolling of cigarettes	:	40 ⇒ 62 ⇐ % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or <input checked="" type="checkbox"/> the EU rate of <input checked="" type="checkbox"/> EUR 40 ⇒ 180 ⇐ per kilogram ⇒ , adjusted according to Article 13 ⇐ ;
(d)	other smoking tobaccos	:	20 ⇒ 50 ⇐ % of the retail selling price inclusive of all taxes, or <input checked="" type="checkbox"/> the EU rate of <input checked="" type="checkbox"/> EUR 22 ⇒ 120 ⇐ per kilogram ⇒ , adjusted according to Article 13 ⇐ ;
⇒ (e) ⇐	⇒ waterpipe tobacco ⇐	⇒ :	⇒ 50 % of the retail selling price inclusive of all taxes, or the EU rate of EUR 90 per kilogram, adjusted according to Article 13; ⇐
⇒ (f) ⇐	⇒ heated tobacco ⇐	⇒ :	⇒ 55 % of the retail selling price inclusive of all taxes or the EU rate of EUR 91 per 1 000 items adjusted according to Article 13 or EUR 130 per kilogram, adjusted according to Article 13; ⇐
⇒ (g) ⇐	⇒ other manufactured tobacco ⇐	⇒ :	⇒ 50 % of the retail selling price inclusive of all taxes, or the EU rate of EUR 120 per kilogram, adjusted according to Article 13. ⇐

~~From 1 January 2013, the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 43 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 47 per kilogram.~~

~~From 1 January 2015 the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 46 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 54 per kilogram.~~

~~From 1 January 2018, the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 48 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.~~

~~From 1 January 2020, the overall excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 50 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.~~

The weighted average retail selling price shall be calculated by reference to the total value of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, based on retail selling price including all taxes, divided by the total quantity of fine-cut smoking tobacco intended for the rolling 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.

3. The rates or amounts referred to in paragraphs 1 and 2 shall be effective for all products belonging to the group of manufactured tobaccos concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

↓ new

4. Member States shall be allowed a transitional period until [31 December 2028] in order to reach the overall excise duty rates for cigars, cigarillos, other smoking tobacco, waterpipe tobacco and other manufactured tobacco laid down in the second paragraph.

Member States shall ensure that, until the expiry of the transitional period, excise duty rates are not reduced below EUR 12 per kg or per 1 000 for cigars or cigarillos and EUR 22 per kg for other smoking tobacco and waterpipe tobacco.

↓ 2011/64/EU (adapted)

~~By way of derogation from paragraphs 1 and 2, France may continue to apply, for the period from 1 January 2010 to 31 December 2015, a reduced rate of excise duty to manufactured tobacco other than cigarettes released for consumption in the departments of Corsica. The reduced rate shall be:~~

(a)	for cigars and cigarillos	÷	at least 10 % of the retail selling price, inclusive of all taxes;
(b)	for fine-cut smoking tobacco intended for the rolling of cigarettes	÷	<div style="text-align: center;"> (i) until 31 December 2012, at least 27 % of the retail selling price, inclusive of all taxes; (ii) from 1 January 2013, at least 30 % of the retail selling price, inclusive of all taxes; (iii) from 1 January 2015, at least 35 % of the retail selling price, inclusive of all taxes; </div>

(e)	for other smoking tobacco	÷	at least 22 % of the retail selling price, inclusive of all taxes.
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↓ new

CHAPTER 6

PROVISIONS APPLICABLE TO TOBACCO RELATED PRODUCTS

Article 22

The following groups of tobacco related products produced in the Union and imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 23:

- (a) liquid for electronic cigarettes;
- (b) nicotine pouches;
- (c) other nicotine products;

Article 23

1. Member States shall apply an excise duty to tobacco related products which may be:

- (a) either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Union and by importers from third countries in accordance with Article 27; or
- (b) a specific duty expressed as an amount per kilogram; or
- (c) a mixture of both, combining an *ad valorem* element and a specific element.

Where the excise duty is either *ad valorem* or mixed, Member States may establish a minimum amount of excise duty.

2. The overall excise duty, being the cumulative value of specific duty and/or *ad valorem* duty excluding VAT, on liquid for electronic cigarettes, expressed as a percentage or as an amount per millilitre, shall be at least equivalent to the rates or minimum amounts laid down for:

- (a) liquid containing a maximum of 15 mg of nicotine per millilitre: 20 % of the retail selling price inclusive of all taxes or the EU rate of EUR 0.10 per millilitre, adjusted according to Article 13;
- (b) liquid containing more than 15 mg of nicotine per millilitre: 40 % of the retail selling price inclusive of all taxes or the EU rate of EUR 0.30 per millilitre, adjusted according to Article 13;

3. The overall excise duty, being the cumulative value of specific duty and/or *ad valorem* duty excluding VAT, expressed as a percentage or as an amount per kilogram, shall be at least equivalent to the rates or minimum amounts laid down for:

- (a) nicotine pouches: 50 % of the retail selling price including all taxes or the EU rate of EUR 120 per kilogram, adjusted according to Article 13;

- (b) other nicotine products: 50 % of the retail selling price including all taxes.
4. The rates or amounts referred to in paragraphs 1, 2 and 3 shall be effective for all products belonging to the group of tobacco related products concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.
5. Member States shall be allowed a transitional period until [31 December 2028] in order to reach the overall excise duty rates for nicotine pouches and other nicotine products laid down in the third paragraph.

CHAPTER 7

PROVISIONS APPLICABLE TO RAW TOBACCO

Article 24

Raw tobacco grown in the Union and imported from third countries shall be subject, in each Member State, to a minimum excise duty which shall be EUR 0 per kilogram.

Article 25

Member States shall exclude tobacco growers, their organisations and associations from the control and movement provisions of Directive (EU) 2020/262 laying down the general arrangements for excise duty, provided that they are not involved in the transformation of cured or dried tobacco into processed tobacco.

↓ 2011/64/EU ⇒ new

CHAPTER 85

DETERMINATION OF THE MAXIMUM RETAIL SELLING PRICE OF MANUFACTURED TOBACCO, COLLECTION OF EXCISE DUTY, EXEMPTIONS AND REFUNDS

Article 2615

1. Manufacturers or, where appropriate, their representatives or authorised agents in the Union, and importers of ⇒ manufactured ⇐ tobacco ⇒ and tobacco related products ⇐ from third countries shall be free to determine the maximum retail selling price for each of their products for each Member State for which the products in question are to be released for consumption.

The first subparagraph may not, however, hinder implementation of national systems of legislation regarding the control of price levels or the observance of imposed prices, provided that they are compatible with Union legislation.

2. In order to facilitate the levying of the excise duty, Member States may, for each group of manufactured tobacco ⇒ and tobacco related products ⇐, fix a scale of retail selling

prices on condition that each scale has sufficient scope and variety to correspond in fact with the variety of products originating in the Union.

Each scale shall be valid for all the products belonging to the group of manufactured tobacco ⇨ and tobacco related products ⇩ which it concerns, without distinction on the basis of quality, presentation, the origin of the products or of the materials used, the characteristics of the undertakings or of any other criterion.

Article ~~27~~¹⁶

1. At the final stage of harmonisation of the excise duty, at the latest the rules for collecting the excise duty shall be harmonised. During the preceding stage, the excise duty shall, in principle, be collected by means of tax stamps. If they collect the excise duty by means of tax stamps, Member States shall be obliged to make these stamps available to manufacturers and dealers in other Member States. If they collect the excise duty by other means, Member States shall ensure that no obstacle, either administrative or technical, affects trade between Member States on that account.

2. Importers and Union manufacturers of manufactured tobacco ⇨ and tobacco related products ⇩ shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.

Article ~~28~~¹⁷

↓ new

1. When Member States apply excise duty on raw tobacco, they shall refund an amount of excise duty that has been paid for raw tobacco used to produce manufactured tobacco.

Member States shall determine the conditions and formalities to which the refunds are subject.

↓ 2011/64/EU (adapted)
⇨ new

2. The following may be exempted from excise duty or excise duty already paid on them may be refunded:

- (a) denatured manufactured tobacco used for industrial or horticultural purposes;
- (b) manufactured tobacco ⇨ and tobacco related products ⇩ which ☒ are ~~☒~~ ~~is~~ destroyed under administrative supervision;
- (c) manufactured tobacco ⇨ and tobacco related products ⇩ which ☒ are ~~☒~~ ~~is~~ solely intended for scientific tests and for tests connected with product quality;
- (d) manufactured tobacco ⇨ and tobacco related products ⇩ which ☒ are ~~☒~~ ~~is~~ reworked by the producer.

Member States shall determine the conditions and formalities to which the abovementioned exemptions or refunds are subject.

CHAPTER 96

FINAL PROVISIONS

Article ~~2918~~

1. The Commission shall publish once a year the value of the euro in national currencies to be applied to the amounts of the overall excise duty.

The exchange rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Union* and shall apply from 1 January of the following calendar year.

2. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the excise duties expressed in euro would result in an increase of less than 5 % or less than EUR 5, whichever is the lower amount, in the excise duty expressed in national currency.

Article ~~3019~~

1. Every \Rightarrow five \Leftarrow ~~four~~ years \Rightarrow and for the first time five years from 1 January 2025 \Leftarrow , the Commission shall submit to \Rightarrow the European Parliament and \Leftarrow the Council a report \Rightarrow on the application of \Leftarrow ~~and, where appropriate, a proposal concerning the rates and the structure of excise duty laid down in~~ this Directive.

The report by the Commission shall \Rightarrow examine minimum levels of taxation \Leftarrow \boxtimes taking \boxtimes ~~take~~ into account \Rightarrow impact on \Leftarrow the proper functioning of the internal market \Rightarrow and on public health \Leftarrow , the real value of the rates of excise duty and the wider objectives of the Treaty. \Rightarrow Member States shall, upon request, submit to the Commission available relevant information required to establish the report. \Leftarrow

\Rightarrow The report shall be accompanied by a legislative proposal, if appropriate. \Leftarrow

2. The report referred to in paragraph 1 shall be based in particular on the information provided by the Member States.

3. The Commission shall \Rightarrow adopt implementing acts \Leftarrow , in accordance with the \Rightarrow examination \Leftarrow procedure referred to in Article ~~5243~~ of ~~Council~~ Directive (EU) 2020/262 ~~2008/118/EC~~⁹, \boxtimes determining \boxtimes ~~determine~~ a list of statistical data needed for the report, excluding data relating to individual natural persons or legal entities. Apart from data readily available to Member States, the list shall only contain data the collection and assembly of which does not involve a disproportionate administrative burden on the part of the Member States.

~~4. The Commission shall not publish or otherwise divulge data where it would lead to the disclosure of a commercial, industrial or professional secret.~~

⁹ [OJL 9, 14.1.2009, p. 12](#)

Article ~~3120~~

↓ new

1. Member States shall adopt and publish, by [31 December 2024], the laws, regulations and administrative provisions necessary to comply with Article 1, Article 2(2) points (e) to (g), Article 2(3), Article 2(4), Article 2(5), Article 4(1) point (b), Article 4(2), Articles 6 to 10, Article 12, Article 13, Article 17, Article 20 points (e) to (g), Article 21(1) point b, Article 21(2), Article 21(4), Article 22 to 26, Article 27(2), Article 28(1), Article 28(2) and Article 32. They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from [1 January 2025].

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

↓ 2011/64/EU (adapted)
⇒ new

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article ~~3221~~

Directives 2011/64/EU ~~92/79/EEC, 92/80/EEC and 95/59/EC~~, as amended by the ~~Directives listed in Annex I, Part A~~, are is repealed ⇒ with effect from 1 January 2025 ⇐ , without prejudice to the obligations of the Member States relating to the time-limits for the transposition into national law and the dates of application of the Directives set out in Annex ~~I, Part B~~ of Directive 2011/64/EU .

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in the Annex H.

Article ~~3322~~

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union ~~1 January 2011~~.

↓ new

Article 2(2) points (a) to (d), Article 3(1), Article 3(2), Article 4(1) point (b), Article 5(1), Article 5(2), Article 14, Article 15, Article 16, Article 18, Article 19, Article 20 first subparagraph and points (a) to (d), Article 21 points (a) and (c), Article 21(3), Article 27(1) and Article 29 shall apply from 1 January 2025.

Article 3423

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*