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From: General Secretariat of the Council
To: Delegations

Subject: Draft Council Directive on the structure and rates of excise duty applied to raw tobacco, manufactured tobacco and tobacco related products (recast)
- Presidency compromise text

With a view to the meeting of the Working Party on Tax Questions (Indirect Taxation – Excise duties / Energy taxation) on 25 February 2026, delegations will find in the Annex the compromise text prepared by the Presidency.

2025/0580 (CNS)

Draft

COUNCIL DIRECTIVE

on the structure and rates of excise duty applied to raw tobacco, 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:

(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.

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, (ELI: <http://data.europa.eu/eli/dir/2011/64/oj>))

(4) **(2)** Since the adoption of Directive 2011/64/EU, the tobacco market has changed significantly. New products functioning as substitutes for manufactured tobacco and containing tobacco or nicotine have been placed on the market. In response, Member States have introduced different national measures as regards those substitutes which distort competition and undermine the proper functioning of the internal market. In the interest of uniform and fair taxation those substitutes ~~for manufactured tobacco~~ should be subject to a harmonised excise duty structure and harmonised minimum excise ~~duties~~ rates in the Union. **This Directive is without prejudice to the right for a Member State to prohibit a certain category of tobacco or related products in accordance with Article 24(3) of Directive 2014/40** ~~This Directive and it~~ should not harmonise taxation rules on tobacco for oral use as defined in Article 2(8) ~~of in the~~ Directive (EU) 2014/40 **of the European Parliament and of the Council**², which is prohibited from being placed on the market **pursuant to in accordance with Article 17 of that Directive 2014/40/EU of the European Parliament and of the Council. Article 151 of the Act of Accession of Austria, Finland and Sweden grants Sweden a derogation from the prohibition and provides that Sweden shall take all necessary measures to ensure that tobacco for oral use is not placed on the market of other Member States.**

Presidency Note:

- The insertion of the phrase “*This Directive is without prejudice to the right for a Member State to prohibit a certain category of tobacco or related products in accordance with Article 24(3) of Directive 2014/40*” in Recital (2) is intended to clarify that the present proposal does not affect the competence of Member States to prohibit the placing on the market of specific tobacco or related products within their territory.

Some delegations required from the Commission its guidance on whether they should transpose or not in their national legislation the provisions that are related to certain tobacco products which are prohibited to be placed on their market. With regard to the transposition of provisions relating to such products into national legislation, this appears to depend, inter alia, on the legal basis for penalties imposed in cases of seizure. In particular, where penalties are calculated on the basis of excise duty, it may

² **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, ELI: <http://data.europa.eu/eli/dir/2014/40/oj>).**

be necessary for the relevant excise duty to be formally defined in national law, even if the product itself is prohibited from sale.

It should also be noted that the circulation of prohibited products is not forbidden under the Directive. Therefore, it is important to ensure legal clarity concerning the transit of products that are lawfully marketed in one Member State and destined for another Member State where they are also permitted, when such products pass through the territory of a Member State that prohibits their sale.

- Regarding tobacco for oral use see presidency note in Article 1.

(2) **(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 human 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, that Europe's Beating Cancer Plan³ set the goal of reaching a tobacco-free Europe and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control. To achieve ~~that this~~ twin objective the Union EU and the Member States should step up their efforts to fight illicit tobacco trade, notably illicit imports of tobacco and tobacco related products from third countries⁴. New products (liquids for electronic-cigarettes, other manufactured tobacco, nicotine pouches and other nicotine products) have increased ed in popularity, especially among young people. In addition to and besides the intrinsic public health risk that those these products represent, they can also have the potential of opening the way towards conventional smoking.

(3) **(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, the achievement of that this aim presupposes that the application in the Member States of taxes affecting the

³ [Europe's Beating Cancer Plan](#), COM(2021) 44 final.

⁴ In the case of Cyprus, the "green line" as per Council Regulation (EC) No 866/2004 of 29 April 2004 on a regime under Article 2 of Protocol 10 to the Act of Accession (ELI: <http://data.europa.eu/eli/reg/2004/866/2015-08-31>)

consumption of products in the relevant sector does not distort conditions of competition and does not impede their free movement within the Union.

(4) **(5) Manufactured** ~~It is necessary to ensure that~~ tobacco and tobacco related products are **should be** defined for the purposes of this Directive, without prejudice to the definition of such products for the purposes of regulating their manufacture, presentation, and sale within the **Union**EU.

- (6) 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.
- (7) Rolls of tobacco capable of being smoked as they are after simple handling should be deemed to be cigarettes for the purposes of uniform taxation of those products.
- (8) A distinction ~~needs to~~ **should** be made between fine-cut tobacco for the rolling of cigarettes, other smoking tobacco, waterpipe tobacco and heated tobacco to improve legal certainty and fight against fraud. ~~A distinction also needs to be made between cigars and cigarillos to ensure legal consistency and allow Member States to adapt taxation regimes where necessary to avoid tax induced substitution.~~
- (9) In the interests of uniform and fair taxation, a definition of cigarettes, cigars **and**, cigarillos, fine-cut tobacco for the rolling of cigarettes, ~~other~~ smoking tobacco, waterpipe tobacco, heated tobacco and other manufactured tobacco should be laid down, ~~so that~~ **Rolls** of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more, **Cigars and cigarillos which are similar in many respects to a cigarette are treated as a cigarette for excise purposes.** ~~a cigar of a maximum weight of 3 g each is treated as a cigarillo, s~~Smoking tobacco which is similar in many respects to fine-cut tobacco for the rolling of cigarettes is treated as fine-cut tobacco, ~~;~~ **T**obacco which can be used in a waterpipe is treated as waterpipe tobacco, ~~;~~ **T**obacco which is heated or otherwise activated by chemical reaction is treated as heated tobacco, ~~;~~ **O**ther tobacco prepared and intended for human consumption is treated as other manufactured tobacco, ~~;~~ **Also**, tobacco refuse is **should be** clearly defined.

Presidency Note: See also Article 4.

- (10) Tobacco related products often substitute 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~~ **defined**.
- (11) A manufacturer ~~needs to~~ **should** be defined as a natural or legal person who actually prepares manufactured tobacco and tobacco related products or has such a product designed or manufactured, and markets that product under his name or trademark.
- (12) 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 **should be established**. Different minimum excise duties should be established for each category of tobacco and tobacco related product to reflect differences in product characteristics and how they are used.
- (13) To avoid its obsolescence over time, the ~~minimum~~ Union rate **used to determine the minimum** of excise duty for each product category should be updated every three years on the basis of changes in the Union harmonised index of consumer prices, as published by Eurostat. **In order to avoid excessive rate fluctuations, each of the three year adaptations shall not exceed 6%.**
- (14) To ensure a balanced distribution of **the impacts of the minimum excise duties** across Member States, the economic situation of Member States ~~needs to~~ **should** be **taken into account** ~~considered~~ by adjusting **at national level the Union rates used to determine the minimum excise duty for each category** ~~the minimum Union rates of excise duty~~ by the price levels index of each Member State, as published by Eurostat. Such adjustment should be revised every three years.

Presidency Note: See Presidency Note in Article 12

- (15) The structure of the excise duty on cigarettes should 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 **that** ~~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.

- (16) Without prejudice to the mixed tax structure and the maximum percentage of the specific component of the total tax burden, Member States should be **able** ~~given effective means to~~ levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum **level amount** of taxation applies throughout the Union.
- (17) As regards cigarettes, neutral conditions of competition for manufacturers should be ensured, 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.
- (18) A certain degree of convergence **of level of taxation** would help **to** ensure a high level of protection for human health. The level of taxation is a major factor in the price of tobacco and tobacco related products, which in turn influences consumers' consumption habits. Fraud and smuggling undermine tax induced price levels, in particular of cigarettes and fine-cut tobacco for the rolling of cigarettes, and thus jeopardise the achievement of tobacco control and health protection objectives.
- (19) In view of its specific structural social and economic situation, Portugal should be **able to** ~~granted the possibility of applying~~ a reduced rate **of excise duty** for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira.
- (20) 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 **or and** tobacco related products. The setting of an overall minimum excise duty expressed as a percentage **or**; as an amount per kilogram or for a given number of items **or**; ~~and~~ as an amount per millilitre is the most appropriate for the functioning of the internal market.

(21) To capture the heterogeneity in current formats of heated tobacco, and to anticipate future formats, the setting of an overall minimum excise duty expressed as a percentage, or as an amount per kilogram, or for a given number of items is the most appropriate for the functioning of the internal market.

Presidency Note: Recital 21 was the previous Recital no 25 which was moved up due to the fact that it refers to the same subject as Recital 20.

- (~~22~~1) As regards prices and ~~excise~~ levels **of taxation**, in particular for cigarettes — **which are** by far the biggest category of tobacco products — as well as for fine cut-tobacco 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 **of taxation** applied in the Member States would help **to** reduce fraud and smuggling within the Union.
- (~~23~~2) As regards fine-cut tobacco 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.
- (~~24~~3) ~~It is necessary to bring t~~The minimum **excise duty** levels for fine-cut tobacco for the rolling of cigarettes **should be brought** closer to the minimum levels **excise duty** 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. Similarly, **minimum excise duties** ~~the increase of EU minima~~ for cigars **and**, cigarillos and other smoking tobacco **should be increased** ~~aims~~ to reduce the gap with the rate **of excise duty** for cigarettes to achieve a progressive convergence between products and minimise the risk of cross-product substitution.
- (~~25~~4) As regards waterpipe tobacco, Member States should be allowed to set a lower minimum ~~tax~~ level **excise duty** than **for** other smoking tobacco, so as to take into account the specific characteristics of the waterpipe tobacco market.

- (25) ~~To capture the heterogeneity in current formats of heated tobacco, and to anticipate future formats, the setting of an overall minimum excise duty expressed as a percentage, or as an amount per kilogram, is the most appropriate for the functioning of the internal market.~~
- (26) In order to have neutral conditions of competition in the tobacco sector, it is also necessary to set the minimum tax levels for waterpipe tobacco, heated tobacco and, other manufactured tobacco. **For the same reason, minimum tax levels also should be set for** ~~and~~ tobacco related products which can be seen as substitutes for tobacco products from a fiscal perspective.
- (27) ~~As regards~~ Liquids for electronic cigarettes, ~~all those liquids~~ whether they contain nicotine or not, should be subject to a minimum ~~tax level~~ **excise duty**, in order to avoid any additional administrative burden and to prevent tax avoidance through ‘do-it-yourself’ mixtures.
- (28) ~~As far as excise duties are concerned, h~~Harmonisation of structures **of excise duties** must, in particular, result in competition ~~in~~ **between** 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.
- (29) In view of the different rates of excise **duty** applicable in Member States, transitional periods should be laid down to allow Member States to adapt smoothly to the levels of the overall excise duty, taking into account national specificities, thus limiting possible side effects.
- (30) In order to prevent the diversion of raw tobacco to illicit manufacturing and consequential tax evasion, raw tobacco should be subject to **a minimum** excise duty. It is therefore necessary to define raw tobacco. Setting a zero minimum excise duty rate for raw tobacco is proportionate with the objective of addressing tax evasion and fraud and avoids double taxation.

- (31) The imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco and tobacco related products. Therefore, manufacturers, their representatives or **their** authorised agents in the Union should be allowed freely to determine the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption.
- (32) Member States should be allowed 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.
- (33) In order to assess the functioning of this Directive, the Commission should submit reports on a regular basis to the European Parliament and Council on the application of this Directive, examining in particular levels of taxation taking into account proper functioning of the internal market, public health, the real value of the rates of excise duty, and the difference between excise revenues due and collected.
- ~~(34) For reasons of legal clarity and transparency, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the minimum Union rates set by this Directive to reflect only changes in harmonised index of consumer prices. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making⁵. In particular, to ensure equal participation in the preparation of delegated acts, the Council receives all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.~~

Presidency Note: Due to the insertion of formula for calculating the HICP in new Article 12a and the deletion of the relevant provision which empowered the Commission to adopt Delegated Acts, the above recital should be deleted.

⁵ OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj.

(345) In order to ensure uniform conditions for the implementation of the obligation of the Member States to submit information, implementing powers should be conferred on the Commission to determine a list of statistical data to be provided by Member States needed for the Commission report on the application of this Directive. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council⁶.

Presidency Note: As it concerns statistical data see Presidency note in Article 28.

(356) The Commission should review this ~~D~~irective, taking into account the future revision of Directive 2014/40/EU (Tobacco Products Directive).

Presidency Note:

At the previous meeting some Member States asked for the reasoning behind deleting the first sentence of this recital (~~“Minimum levels for new tobacco and nicotine products should be set with the objective of reducing existing tax differentials while taking into account current and future market developments”~~) and the two clauses after the words ~~“(Tobacco Products Directive)”~~ (~~“and consider the possible equalisation of the taxation levels for different product categories, increasing the minimum levels of taxation for heated tobacco and tobacco related products referred to in Articles 20(2)(f) and 22 accordingly.”~~)

The first sentence of the recital stated the main general objective of the recital which was the reduction of the existing tax differentials while taking into account current and future market developments while at the end it concluded to the last two clauses which were referred to the possibility of equalization of taxation levels for different product categories, increasing the minimum levels of taxation for heated tobacco and tobacco related products.

The two final clauses following the reference to the Tobacco Products Directive are deleted to avoid creating legal uncertainty and unnecessarily constraining future policy

⁶ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>).

choices. Furthermore, the explicit reference to the possible equalisation of taxation levels and the increase of minimum levels for specific product categories risks prejudging policy outcomes and limiting regulatory flexibility. Their removal preserves neutrality, safeguards the discretion of the legislator in future reviews, and avoids embedding prescriptive conclusions before a comprehensive assessment has been conducted.

- (367) 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 Directives. The obligation to transpose the provisions which are unchanged arises under the earlier Directives.
- (378) 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, Part B, to Directive 2011/64/EU,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER 1

SUBJECT MATTER

Article 1

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.

2. This Directive does not apply to tobacco for oral use, except those intended to be inhaled or chewed, made wholly or partly of tobacco, in powder or in particulate form or in any combination of these forms, particularly those presented in sachet portions or porous sachets.

Presidency Note: The provisions which were previously deleted are fully reinstated since some delegations did not support the deletion. The proposed changes will have no substantive implications whatsoever. See also insertions in Recital 2.

CHAPTER 2

DEFINITIONS

Article 2

1. For the purposes of this Directive, ‘manufactured tobacco’ means:

(a) cigarettes;

(b) cigars **and cigarillos**;

~~(c) cigarillos;~~

~~(d)~~ smoking tobacco:

(i) fine-cut tobacco for the rolling of cigarettes;

~~(ii) waterpipe tobacco;~~

iii) other smoking tobacco;

(d) waterpipe tobacco

(e) heated tobacco;

(f) other manufactured tobacco.

2. For the purposes of this Directive, ‘tobacco related products’ means:

(a) liquids for electronic cigarettes;

(b) nicotine pouches;

(c) other nicotine products.

3. For the purposes of this Directive, ‘raw tobacco’ means any form of harvested tobacco that is not manufactured tobacco ~~as defined in Articles 3 to 8.~~

4. For the purposes of this Directive, ‘nicotine’ means all forms of nicotine including synthetic nicotine and its analogues.
5. Products containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco or tobacco related products.
6. Notwithstanding existing Union provisions, the definitions referred to in **Articles** 3 to 10 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 **this Directive** ~~these Articles~~.

Presidency note:

1. In order to be able to tax accordingly products which are used in waterpipe and consist in whole or in part of substances other than tobacco, it is necessary that waterpipe tobacco has its own separate category outside the scope of smoking tobacco.
2. No amendment has been made as regards products containing nicotine which are used for medical purposes, since it has been discussed and clarified by the Commission that products containing nicotine and used for medical purposes fall under paragraph 5 of this Article. So there is no need for adding another provision.

Article 3

1. For the purposes of this Directive, ‘cigarettes’ means:
 - (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; **or**
 - (c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

2. **For the purpose of this Directive, a ‘roll of tobacco’ means** ~~referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, **the roll of tobacco** 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 falling within the definition set out in paragraph 1 shall be treated as cigarettes.

Article 4

1. For the purposes of this Directive, ~~the following shall be deemed to be ‘cigars’ or ‘cigarillos’~~ **means the following**, 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.
- ~~2. Cigarillos are cigars of a maximum weight of 3 g each.~~
- ~~23.~~ **Products which consist**ing in part of substances other than tobacco but otherwise falling within the definitions set out in paragraph 1 ~~and 2~~ shall be treated as cigars or cigarillos.

Presidency note: Given the overlap between cigars and cigarillos across a number of characteristics the Presidency proposes to revert to a single category of “cigars and cigarillos”.

Article 5

1. For the purposes of this Directive, ‘smoking tobacco’ means:
 - (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 Articles 3(1), **Article** 4(1) ~~and (2)~~, **Article** 6(1) and **Article** 7 and which can be smoked.

1.a For the purposes of this ~~Article~~ **Directive**, ‘tobacco refuse’ **means** ~~shall be deemed to be~~ remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

2. **For the purposes of this Directive, ‘fine cut tobacco for the rolling of cigarettes’ means** ~~Smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than 1,5 mm 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 mm 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. Smoking tobacco which is sold or intended to be sold for use in a waterpipe for the production of emissions which are passed through a liquid before inhalation by the users shall be deemed to be ‘waterpipe tobacco’.~~

- ~~34. Products consisting in whole or in part of substances other than tobacco but otherwise falling within the definition set out in paragraph 1 shall be treated as smoking tobacco. Products consisting in whole or in part of substances other than tobacco but otherwise falling within the definition set out in paragraph 3 shall be treated as waterpipe tobacco.~~

Presidency Note: The above provisions referring to waterpipe tobacco were deleted due to the reinsertion of part of the initial Article 6. See also Presidency note on Article 6.

Article 6

1. For the purposes of this Directive, ‘waterpipe tobacco’ means tobacco which can be used in a waterpipe for the production of emissions which are passed through a liquid before inhalation by the users.

2. Products consisting in whole or in part of substances other than tobacco but otherwise falling within the definition set out in paragraph 1 shall be treated as waterpipe tobacco.

Presidency Note: As Presidency Note in Article 2 stated that, in order to be able to tax accordingly products which are used in waterpipe and consist in whole or in part of substances other than tobacco, it is necessary for waterpipe tobacco to have its own separate category outside the scope of smoking tobacco. Products such as gels or pebbles are not burnt but are heated instead. So there was a necessity for the reinsertion of Article 6. Paragraphs 3 and 4 of the initial text of Article 6 are not reinstated since they created unclear separation between waterpipe tobacco, smoking tobacco and heated products.

~~[Article 6 is deleted]~~

Article 7

1. For the purposes of this Directive, ‘heated tobacco’ means tobacco that is heated or otherwise activated by chemical reaction or some other means to produce an emission containing nicotine or other chemicals, intended for inhalation by users, other than via a waterpipe, ~~as referred to in Article 5(3).~~
2. **Where** ~~if~~ heated tobacco is taxed per item in accordance with Article 20(1) **point** (b), an item of heated tobacco ~~referred to in paragraph 1~~ shall, for excise duty purposes, be considered as two items where the tobacco content is higher than 0,45 grams but not higher than 0,75 grams, as three items where the tobacco content is higher than 0,75 grams but not higher than 1,05 grams, and so on.
3. Products consisting in whole or in part of substances other than tobacco but otherwise falling within the definition set out in paragraph 1, except liquids for electronic cigarettes ~~as defined in Article 9(1)~~, shall be treated as heated tobacco.

4. ~~Products which fall within the definitions set out in both paragraph 1 of this Article and in Article 3 shall be treated as cigarettes.~~
5. ~~Products which fall within the definitions set out in both paragraph 1 of this Article and in Article 4 shall be treated as cigars or cigarillos.~~
6. ~~Products which fall within the definitions set out in both paragraph 1 of this Article and in Article 5 shall be treated as smoking tobacco.~~

Article 7a

- 1. Products which fall within the definitions of both smoking tobacco and heated tobacco shall be treated as heated tobacco.**
- 2. Products which fall within the definitions of both cigarettes and heated tobacco shall be treated as cigarettes.**
- 3. Products which fall within the definitions of both cigars and cigarillos and heated tobacco shall be treated as cigars or cigarillos.**

Presidency Note:

The Presidency, after consultation with the Commission, has inserted a separate Article 7a for clarity purposes. The purpose of this Article 7a is to capture borderline products that fall under two categories and determine their tax treatment. Since borderline products are those produced by the manufacturers in order to be able to benefit from the lower tax rate of another category it should be considered that in any such case the product will be taxed according to the highest rate of excise duty.

There is no provision for products which might fall under the definitions of both waterpipe and heated tobacco since the definition of heated tobacco clearly states that is tobacco which is heated or otherwise activated by chemical reaction or some other means to produce an emission containing nicotine or other chemicals, intended for inhalation by users, other than via a waterpipe as referred to in Article 6.

Article 8

1. For the purposes of this Directive, ‘other manufactured tobacco’ means products containing tobacco, prepared and intended for human consumption except for cigarettes, cigars ~~and~~ cigarillos, smoking tobacco, **waterpipe tobacco** and heated tobacco.
2. **For the purposes of this Directive, ‘products containing tobacco prepared and intended for human consumption’ means products containing tobacco which** ~~product containing tobacco shall be deemed to be prepared and intended for human consumption if by simple non-industrial handling~~ **are** ~~it is~~ capable of delivering nicotine for intake into the human body or facilitating such intake.

Presidency Note: Insertion of waterpipe tobacco in paragraph 1 is due to the reinsertion of Article 6. Modifications in paragraph 2 are under the scope of legal – linguistic modifications.

Article 9

1. For the purposes of this Directive, ‘liquids for electronic cigarettes’ means any of the following:
 - (a) liquids containing nicotine that can be used in electronic cigarettes or similar vaporising devices or to refill electronic cigarettes;
 - (b) liquids not containing nicotine which are intended to be used in electronic cigarettes or similar vaporising devices or to refill electronic cigarettes.
2. For the purposes of this Directive, ‘electronic cigarette’ means a product that can be used for consumption of vapour, or any component of that product, ~~including a cartridge, a tank and a 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.~~

Presidency Note: Some Member States requested for broader definition for electronic cigarettes because of the rapid technological developments and the likelihood of the development of new electronic cigarettes which are not compatible with the definition proposed by the Commission as was set out in Article 9(2).

Article 10

1. For the purposes of this Directive, ‘nicotine pouches’ means products containing nicotine intended for oral intake and **plant** ~~vegetable~~ fibres or equivalent substrate, which are presented in sachet portions or porous sachets or in an equivalent format and which do not contain tobacco.
2. For the purposes of this Directive, ‘other nicotine products’ means products for human consumption containing nicotine and not containing tobacco which can be used for the intake of nicotine in the human body, other than nicotine pouches ~~as defined in paragraph 1 of this Article~~ and liquids for electronic cigarettes ~~as defined in Article 9(1)~~.

Presidency Note: The word “vegetable” referring to fibres was changed to “plant” in order to be broader.

Article 11

For the purpose of this Directive, ‘manufacturer’ means a ~~A~~ natural or legal person established in the Union who manufactures a product or has such a product designed or manufactured and markets that product under his name or trademark ~~shall be deemed to be a manufacturer.~~

Presidency Note: The Commission suggested that the definition of the term “manufacturer” is restricted to the Tobacco Taxation Directive to ensure that no confusion arises in relation to provisions concerning “production” in the Horizontal Directive (note: the term “manufacturer” is not used in the Horizontal Directive).

CHAPTER 3

CALCULATION OF THE EXCISE DUTY ON MANUFACTURED TOBACCO AND TOBACCO RELATED PRODUCTS

Article 12

- 1.—Each Member State shall ensure that the cumulative value of specific duty or ad valorem duty or both excluding VAT (‘overall excise duty’) on manufactured tobacco and tobacco related products respects ~~the minimum~~ **excise duties** ~~tax levels~~ laid down in Article 16, Article 20(2) and Article 22(2). The minimum **excise duties** ~~tax levels~~ applicable in Member States for manufactured tobacco and tobacco related products **laid down** ~~as provided for~~ in Article 16, Article 20(2) and ~~Article 22(2), (3) and (4)~~ **(6)** shall be adjusted every ~~three~~ **3** years in accordance with ~~paragraphs 2 and 3 of this Article~~ **Articles 12a and 12b**.
- 2.—~~The Union rate used to determine the minimum tax level of a product, as provided for in Article 16, Article 20(2) and Article 22(2) shall be adjusted by increasing or decreasing the base amount in euro by the percentage change over the preceding 3 calendar years in the all-items annual Union average value of the harmonised index of consumer prices as published by Eurostat.~~
- 3.—~~The part of minimum rate expressed as an amount either per kilogram, per millilitre, or per a given number of items applicable in a Member State shall be the sum of one third of the Union rate for the corresponding category multiplied by the price level index divided by one hundred plus two thirds of the Union rate for the corresponding category. Price level index means the index published by Eurostat expressing the price level of a given Member State for actual individual consumption relative to the weighted Union average. Member States shall use the price level index of the year prior to the year of adjustment.~~

~~4. From 1 January 2028 each Member State shall ensure that the overall excise duty on manufactured tobacco and tobacco related products respect the minimum tax levels specified in Article 16, Article 20(2) and Article 22(2) and are adjusted in accordance with paragraph 3 of this Article.~~

~~From 1 January 2031 each Member State shall ensure that the overall excise duty on manufactured tobacco and tobacco related products respect the minimum tax levels specified in Article 16, Article 20(2) and Article 22(2) and adjusted in accordance with paragraphs 2 and 3 of this Article from the first day of the year following the year in which the adjustment occurs.~~

~~5. The Commission is empowered to adopt delegated acts in accordance with Article 30 to amend the minimum Union rates laid down in Article 16, Article 20(2) and Article 22(2) in such a manner that they reflect the adjustment made in accordance with paragraph 2 of this Article.~~

~~6. Paragraphs 1-5 of this article shall not apply to the transitional periods established in Article 16(3) to (6), Article 20(4) and (5) and Article 22(3) and (4).~~

Article 12a

1. From 1 January 2035 Member States shall adjust the Union rate used to determine the minimum excise duty of a product, as provided for in Article 16, Article 20(2) and Article 22(2) and (6) by increasing or decreasing the base amount in euro by the percentage change in the all-items annual Union average value of the harmonised index of consumer prices as published by Eurostat as measured over the three calendar years immediately prior to the preceding year. Each of every three-year adjustment of the HICP shall not exceed 6%.

2. For calculating the adjustment required by paragraph 1 Member States shall apply the following formula, assuming that v is the first year the adjusted rate shall apply:

$$\frac{\text{HICP}_{y-2} - \text{HICP}_{y-5}}{\text{HICP}_{y-2}} * 100\%$$

Article 12b

1. From 1 January 2028 the part of minimum rate expressed as an amount either per kilogram, per millilitre, or per a given number of items applicable in a Member State shall be the sum of one third of the Union rate for the corresponding category multiplied by the price level index divided by one hundred plus two thirds of the Union rate for the corresponding category. Price level index means the index published by Eurostat expressing the price level of a given Member State for actual individual consumption relative to the weighted Union average. Member States shall use the price level index of the year immediately prior to the preceding year.
2. For calculating the adjustment required by paragraph 1 Member States shall apply the following formula, assuming that y is the first year the adjusted rate shall apply:

$$MS\ Rate = \left(\frac{1}{3} * Union\ Rate * \frac{MS\ PLI_{y-2}}{100} \right) + \left(\frac{2}{3} * Union\ Rate \right)$$

3. By way of derogation from Article 12, during transitional periods set out in Article 16(3) to (6), Article 20(4) and (5) and Article 22(3) to (5), the minimum excise duties applicable in Member States for manufactured tobacco and tobacco related products shall be adjusted every two years in accordance with paragraph 2 of this Article.

Article 12c

1. From 1 January 2028 each Member State shall ensure that the overall excise duty on manufactured tobacco and tobacco related products respect the minimum tax levels specified in Article 16, Article 20(2) and Article 22(2), (5) and (6) as adjusted in accordance with Article 12b.
2. From 1 January 2035, and every three years thereafter, each Member State shall ensure that the overall excise duty on manufactured tobacco and tobacco related products respect the minimum tax levels specified in Article 16, Article 20(2) and Article 22(2), (5) and (6) as adjusted, firstly in accordance with Article 12a and then Article 12b.

Presidency Note:

- The Presidency has divided the previous Article 12 to new Articles 12 and 12a to 12c for clarity reasons so as each article focuses in a specific subject.
- Many Member States have serious objections regarding the powers given to the Commission to adopt Delegated Acts. As an alternative the Presidency suggests the deletion of paragraph 5 of the initial Article 12, Article 30 and Recital 34. Thus, the Presidency suggests the insertion of a fixed formula as proposed in new Article 12a for purposes of calculating the three-year adjustment of the Union excise duty rate based on HICP. The Presidency has examined the HICP of previous years and concluded that a cap should be inserted to avoid sharp increases in periods for which external factors create shocks in the pricing. Such phenomenon appeared in 2022 and 2023 where a 10% and 8% increase occurred respectively. It is also noted that, following discussions with the Commission, it was clarified that an error had occurred in the calculation data sheet presented at the meeting in October 2025, whereby only two calendar years were taken into account for the purposes of calculating the HICP. Consequently, the Presidency revised the Commission's worksheet in order to accurately reflect the actual situation in line with the initial proposal and to prevent any potential misunderstandings. See pdf file (1. CY Presidency_Modification of Commission's Simulation of Cigarette Rates)
- The Presidency has also prepared separate worksheets for cigarettes and fine cut tobacco to demonstrate how the minimum excise duty rates are impacted taking into consideration the adjustment of the rates according only by the PLI during proposed transitional periods from January 2028 to December 2029 and from January 2030 to December 2031, as well as the minimum excise duty rates which will be applied from January 2032 adjusted only by the PLI. Since the first three year adjustment would take part during the second transitional period, the original text would create confusion on how to apply the minimum rates between 2028 and 2032. For simplicity and clarity the Presidency proposes that the PLI adjustments coincide with the transitional periods. In regards to the minimum excise rate adjustment in accordance with the HICP, Presidency proposes to be applied from 2035 to ensure a more harmonious adjustment, while in 2032 after the end of transitional periods, Member States are obliged to reach the minimum excise duty rates set out in Article 16, Article 20(2) and Article 22(2) and (6). See also pdf files (2. CY Presidency_Working sheets on the taxation of cigarettes, 3. CY Presidency_Working sheets on taxation of fine cut tobacco).

- Since the rates were lowered and transitional periods were given for all manufactured tobacco products and tobacco related products, the adjustment based on the PLI considered as necessary for the beginning in order for the excise duty rate to be adjusted accordingly.

CHAPTER 4

PROVISIONS APPLICABLE TO CIGARETTES

Article 13

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.

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 shall 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. Member States may levy a minimum excise duty on cigarettes, provided that the mixed structure of taxation and the band of the specific component of the excise duty referred to in Article 14 is respected.

Article 14

1. The percentage of the specific component of the 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. The 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.
4. Where 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 7,5 % 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.

Article 15

1. Member States shall apply minimum **excise duty** ~~consumption taxes~~ to cigarettes in accordance with the rules provided for in Articles 13 to 17.
2. Paragraph 1 shall apply to the taxes which, pursuant to Articles 13 to 17, 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;
and
 - (c) a VAT proportional to the retail selling price.

Article 16

1. The overall excise duty on cigarettes shall represent at least 63% of the weighted average retail selling price of cigarettes released for consumption. That **overall** excise duty shall not be less than the Union rate of EUR 200 per 1000 cigarettes, adjusted in accordance with Article 12, irrespective of the weighted average retail selling price.
2. However, Member States which levy an excise duty of at least the Union rate of EUR 260 per 1000 cigarettes, adjusted in accordance with Article 12, on the basis of the weighted average retail selling price need not to comply with the requirement of an overall excise duty of 63% of the weighted average retail selling price of cigarettes released for consumption set out in the first subparagraph of this Article.
3. By way of derogation from paragraph 1, from 1 January 2028 until 31 December 2029 Member States shall ensure that excise duty rates are at least EUR 140 per 1 000 items inclusive of all taxes for cigarettes. **The overall excise duty on cigarettes shall represent at least 60% of the weighted average retail selling price of cigarettes released for consumption.**
4. By way of derogation from paragraph 2, from 1 January 2028 until 31 December 2029 Member States which levy an excise duty of at least the Union rate of EUR 180 per 1000 cigarettes, on the basis of the weighted average retail selling price need not to comply with the requirement of an overall excise duty of ~~60~~3% of the weighted average retail selling price of cigarettes released for consumption set out in the first subparagraph of this Article.
5. By way of derogation from paragraph 1, from 1 January 2030 until 31 December 2031 Member States shall ensure that excise duty rates are at least EUR 170 per 1 000 items inclusive of all taxes for cigarettes. **The overall excise duty on cigarettes shall represent at least 61% of the weighted average retail selling price of cigarettes released for consumption.**
6. By way of derogation from paragraph 2, from 1 January 2030 until 31 December 2031 Member States which levy an excise duty of at least the Union rate of EUR 220 per 1000 cigarettes, on the basis of the weighted average retail selling price need not to comply with the requirement of an overall excise duty of ~~61~~3% of the weighted average retail selling price of cigarettes released for consumption set out in the first subparagraph of this Article.

Presidency Note: Several Member States have expressed their opposition to setting the overall excise duty on the Weighted Average Price (WAP) at 63%, citing various concerns. Consequently, the Presidency has revised the percentage of the overall excise duty applied to the weighted average retail selling price of cigarettes during the transitional periods, in order to provide those Member States with sufficient time to gradually and effectively comply with the 63% requirement.

Article 17

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 Article 16, ~~first~~ paragraph 1, first sentence, 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 Article 16, ~~first~~ paragraph 1, first sentence.

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 18

Portugal may apply a reduced rate of up to 50 % less than that laid down in Article 16 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.

CHAPTER 5

PROVISIONS APPLICABLE TO MANUFACTURED TOBACCO OTHER THAN CIGARETTES

Article 19

The following groups of ~~m~~**M**anufactured tobacco **other than cigarettes** produced in the Union or imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 20~~;~~:

- ~~(a) cigars;~~
- ~~(b) cigarillos;~~
- ~~(c) smoking tobacco~~
 - ~~(i) fine cut tobacco for the rolling of cigarettes;~~
 - ~~(ii) waterpipe tobacco;~~
 - ~~(iii) other smoking tobacco;~~
- ~~(d) heated tobacco;~~
- ~~(e) other manufactured tobacco.~~

Presidency Note: There is no need to list the product categories again due to the fact that Article 19 refers to Article 20.

Article 20

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 ~~24~~**5**; 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.

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

2. The overall excise duty, 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 and cigarillos	:	40 % of the retail selling price inclusive of all taxes or the Union rate of EUR 143 per 1000 items or per kilogram, adjusted in accordance with Article 12;
(b)	cigarillos	÷	40 % of the retail selling price inclusive of all taxes or the Union rate of EUR 143 per 1000 items or per kilogram, adjusted in accordance with Article 12;
(be)	smoking tobacco		
(i)	fine-cut tobacco for the rolling of cigarettes	:	62 % of the weighted average retail selling price of fine-cut tobacco for the rolling of cigarettes released for consumption, or the Union rate of EUR 200 per kilogram, adjusted in accordance with Article 12;
(ii)	waterpipe tobacco	÷	50 % of the retail selling price inclusive of all taxes, or the Union rate of EUR 107 per kilogram, adjusted in accordance with Article 11;
(iii)	other smoking tobacco	:	50 % of the retail selling price inclusive of all taxes, or the Union rate of EUR 143 per kilogram, adjusted in accordance with Article 12;
(c)	<u>waterpipe tobacco</u>	:	<u>50 % of the retail selling price inclusive of all taxes, or the Union rate of EUR 107 per kilogram, adjusted in accordance with Article 12;</u>

(d)	heated tobacco	:	<p>55 % of the retail selling price inclusive of all taxes or the Union rate of EUR 300 per kilogram, <u>or the Union rate of EUR 100 per 1000 items</u>, adjusted in accordance with Article 12;</p> <p>55 % of the retail selling price inclusive of all taxes or the Union rate of EUR 100 per 1000 items, adjusted in accordance with Article 12;</p>
(e)	other manufactured tobacco	:	<p>50 % of the retail selling price inclusive of all taxes, or the Union rate of EUR 143 per kilogram, adjusted in accordance with Article 12.</p>

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

4. By way of derogation from paragraph 2, from 1 January 2028 until 31 December 2029 Member States shall ensure that excise duty rates are **at least:**

(i) EUR 12 per 1 000 items or per kilogram or 5% of the retail selling price inclusive of all taxes for cigars ~~or~~ **and** cigarillos;

(ii) EUR 120 per kilogram or 50% of the retail selling price inclusive of all taxes for fine-cut tobacco **for the rolling of cigarettes;**

(iii) EUR 22 per kilogram or 20% of the retail selling price inclusive of all taxes for other smoking tobacco; ~~and~~

(iv) **EUR 22 per kilogram or 20% of the retail selling price inclusive of all taxes for** waterpipe tobacco;

(v) EUR 60 per 1 000 items or EUR 200 per kilogram or 45% of the retail selling price inclusive of all taxes for heated tobacco; and

(vi) EUR 0 per kilogram or 0% of the retail selling price inclusive of all taxes for other manufactured tobacco.

5. By way of derogation from paragraph 2, from 1 January 2030 until 31 December 2031 Member States shall ensure that excise duty rates are **at least:**

(i) EUR 71,5 per 1 000 items or per kilogram or 20 % of the retail selling price inclusive of all taxes for cigars ~~or~~ **and** cigarillos;

(ii) EUR 160 per kilogram or 55% of the retail selling price inclusive of all taxes for fine-cut tobacco **for the rolling of cigarettes;**

(iii) EUR 71,5 per kilogram or 25% of the retail selling price inclusive of all taxes for other smoking tobacco;

(iv) EUR 54 per kilogram or 25% of the retail selling price inclusive of all taxes for waterpipe tobacco;

(v) EUR 80 per 1 000 items or EUR 250 per kilogram or 50% of the retail selling price inclusive of all taxes for heated tobacco, and

(vi) EUR 71,5 per kilogram or 25% of the retail selling price inclusive of all taxes for other manufactured tobacco.

Presidency note: The Presidency changed the formatting of paragraphs 4 and 5 for ease of reading.

CHAPTER 6

PROVISIONS APPLICABLE TO TOBACCO RELATED PRODUCTS

Article 21

The following groups of tobacco related products produced in the Union or imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 22:

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

Article 22

1. Member States shall apply an excise duty to tobacco related products which may be one of the following:
 - (a) 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 ~~24~~⁵;
 - (b) in the case of liquids for electronic cigarettes a specific duty expressed as an amount per millilitre;
 - (c) in the case of nicotine pouches and other nicotine products a specific duty expressed as an amount per kilogram, or alternatively for a given number of items;
 - (d) a mixture of **points** (a) and (b), or **points** (a) and (c) accordingly, 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 on liquids for electronic cigarettes whether they contain nicotine or not, shall be at least ~~20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,20 per millilitre, adjusted in accordance with Article 12;~~ **equivalent to the rates or minimum amounts laid down for:**
 - (a) **liquids containing from 0 mg of nicotine per millilitre to a maximum of 15 mg of nicotine per millilitre: 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,30 per millilitre, adjusted in accordance with Article 12;**
 - (b) **liquids containing more than 15 mg of nicotine per millilitre: 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,30 per millilitre, adjusted in accordance with Article 12;**
3. By way of derogation from paragraph ~~2~~¹, from 1 January 2028 until 31 December 2029 Member States shall ensure that excise duty rates are at least 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,~~20~~¹² per millilitre.
4. By way of derogation from paragraph ~~2~~¹, from 1 January 2030 until 31 December 2031 Member States shall ensure that excise duty rates are at least 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,~~25~~¹⁶ per millilitre.
5. Member States shall be allowed a transitional period until 31 December 2031 in order to reach the rates or minimum amounts laid down in paragraph 6 of this Article.

From 1 January 2030 the overall excise duty, 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) nicotine pouches: 25 % of the retail selling price including all taxes or the Union rate of EUR 71,5 per kilogram;
- (b) other nicotine products: 25 % of the retail selling price including all taxes.

6. From 1 January 2032 Member States referred to in the first sentence of paragraph 5 of this Article, shall ensure that the overall excise duty, 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) nicotine pouches: 50 % of the retail selling price including all taxes or the Union rate of EUR ~~107~~¹⁴³ per kilogram, adjusted in accordance with Article 12;
 - (b) other nicotine products: 50 % of the retail selling price including all taxes.
7. The rates or amounts referred to in paragraphs 1 to 6 shall apply for all products belonging to the group of tobacco related products concerned, without distinction within each group as to **the** quality, presentation, origin of the products, ~~the~~ materials used, ~~the~~ characteristics of the firms involved or any other criterion.

Presidency Note:

Article 22 paragraph 2

- Despite the fact that the proposal for using a single rate of liquids for electronic cigarettes, irrespectively of nicotine content, was welcomed by most Member States, some Member States expressed their desire to be able to tax liquids for electronic cigarettes based in their nicotine content, whilst respecting the minimum excise duty rates set in the Directive. Thus, the Presidency has modified the text in this paragraph by reverting the two categories of liquids for electronic cigarettes but setting the same minimum excise duty rate so as to make it achievable for those Member States who wish to impose excise duty based on their nicotine content, but also maintain the ability for all other Member States to only impose a single minimum flat rate to all liquids for electronic cigarettes.
- Many Member States also commented that the proposed rate of €0,20 euro per millilitre was low. The Presidency recognizes that the previous proposed rate was equal to the rate already applicable in the majority of the Member States, and hence may not be ambitious enough for the EU Directive going forward, especially taking into consideration the rapid popularity that these products gain (see Impact Assessment Figure A12-1). The Presidency hence proposes an increase to 0.30 euros per ml, a competitive enough which will impose a rate increase for the majority of the Member States.

Article 22 paragraph 5 and 6

- The Presidency has examined the existing trends within the Member States and concluded that the taxation on nicotine pouches varies widely. Out of the 14 Member States that currently tax nicotine pouches, 6 Member States tax 50 euros per kilogram or below, 4 Member States tax 120 euros or more and 5 Member States vary in between. It is evident, however, that the proposed rate of 143 euros per kilogram is higher than most of the currently applied rates per kilogram in Member States. Since the Presidency has also received a number of comments from Member States regarding the rate being too high, the Presidency proposes a lower rate of 107 euros per kilogram, in accordance with the set rate of Option 2 of the Impact Assessment. The proposed rate of 107 euros per kilogram will provide an excise duty increase for 10 of these Member States, whilst the transitional period rate of 71,5 euros per kilogram will provide an excise duty increase for 6 of these Member States

CHAPTER 7

PROVISIONS APPLICABLE TO RAW TOBACCO

Article 23

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

CHAPTER 8

DETERMINATION OF THE MAXIMUM RETAIL SELLING PRICE OF MANUFACTURED TOBACCO AND TOBACCO RELATED PRODUCTS

Article 24

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.

CHAPTER 9

COLLECTION OF EXCISE DUTY, EXEMPTIONS AND REFUNDS

Article 25

1. Where they collect the excise duty by means of tax stamps, Member States shall be obliged to make ~~these~~ **those** stamps available to manufacturers and dealers in other Member States. Where 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 26

1. Where 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.

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 is destroyed under administrative supervision;
 - (c) manufactured tobacco and tobacco related products which are solely intended for scientific tests and for tests connected with product quality;
 - (d) manufactured tobacco and tobacco related products which are reworked by the producer.

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

CHAPTER 10

FINAL PROVISIONS

Article 27

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.~~

The exchange rates to be applied shall be calculated as the average exchange rate of the business days between 1 January and 30 June. Those averages exchange rates shall be published by the European Commission in the *Official Journal of the European Union* and shall have effect 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.

Presidency note: Some Member States requested to maintain the text as in the last compromise text of ETD (Article 13 - WK 15154/2025) in order to better react on the changes of exchange rates.

Article 28

1. By 31 December 2032 and every 5 years thereafter, the Commission shall submit to the European Parliament and the Council a report on the application of this Directive.

The report by the Commission shall examine ~~minimum~~ levels of taxation taking into account the proper functioning of the internal market, public health, the real value of the rates of excise duty, and the wider objectives of the Treaty on the Functioning of the European Union. The report shall assess the application and the impact of the provisions regarding raw tobacco as regards tax evasion and fraud.

Member States shall, upon request, submit to the Commission available information needed to prepare the report, including the statistical data needed to support an assessment of the magnitude of lost excise revenue each year on their territory due to non-compliance.

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 adopt implementing acts, in accordance with the examination procedure referred to in Article 28(2) determining a list of statistical data to be provided by Member States 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 without undue delay review this directive, taking into account the future revision of Directive 2014/40/EU (Tobacco Products Directive).

Presidency Note:

Following many Member States' request, Presidency asked the Commission to specify the statistical data required to prepare the report. The Commission's position was the following:

“A similar provision exists in Article 19 of Directive 2011/64/EU. There are no details on the exact nature of the data provided by Member States in the Directive. Such information is however available in 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/EEC. In particular, Article 1 provides that the statistical data shall include all releases for consumption of manufactured tobacco made in the preceding calendar year. In the Annex, the precise data points to be provided for each category of products are specified, in a tabular form.

After the adoption of the Directive, it will be necessary to update this Implementing Decision, for two reasons:

- The inclusion of new products in the scope of the Directive;
- The increased attention to the magnitude of lost excise revenue each year due to non-compliance (“the excise gap”).

In practice, this second reason entails collecting data from Member States on the revenue actually collected, releases for consumption and consumption levels, as well as any other readily available or easy to collect and assembly data on tax evasion and fraud.

The Committee on Excise Duty will be consulted on the revision of the Implementing Decision. The Commission is limited in terms of the data request it can propose to include, due to the following safeguard clause: “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.”

Article 29

1. The Commission shall be assisted by the Committee on Excise Duty established by Article 52(1) of Directive (EU) 2020/262. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

[Article 30 is deleted]

Article 30

- ~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~
- ~~2. The power to adopt the delegated acts referred to in Article 12(5) shall be conferred on the Commission for an indeterminate period of time.~~
- ~~3. The delegation of power referred to in Article 12(5) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.~~
- ~~4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law Making.~~
- ~~5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.~~

~~6. A delegated act adopted pursuant to Article 12(5) shall enter into force only if no objection has been expressed by the Council within a period of 2 months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by 2 months at the initiative of the Council.~~

~~7. The Commission shall inform the European Parliament of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.~~

Presidency note: The relevant Article 12(5) and Recital 34 were deleted thus Article 30 should be deleted as well. See also Presidency Note after Article 12c.

Article 31

1. Member States shall adopt and publish, by 31 December 2027, the laws, regulations and administrative provisions necessary to comply with Article 1, Article 2(1), points (e), (f) and (g), Article 2(2) to (5), Article 4(1), point (a), Article 4(2), Articles 6 to 12, Articles 16 and 17, Article 19, point (e), Article 20(1), point (b), Article 20(2), (4) and (5), Articles 21 to 24, Article 25(2), Article 26 and Article 28(1). They shall immediately communicate the text of those measures to the Commission.

They shall apply those measures from [1 January 2028].

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.

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

Presidency note: No amendments have been made in Article 31. The necessary modifications will be made after finalizing the text of the Directive.

Article 32

Directive 2011/64/EU is repealed with effect from 1 January 2028, 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, ~~to 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.

Article 33

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

Article 2(1), points (a) to (d), Article 3, Article 4(1), point (b), Article 4(3), Article 5, Articles 13, 14, 15 and 17, Article 19, points (a) to (d), Article 20(1), points (a) and (c), Article 20(3), Article 25(1), Article 27 and Article 28(2) shall apply from 1 January 2028.

Presidency Note: No amendments have been made in Article 33. The necessary modifications will be made after finalizing the text of the Directive.

Article 34

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President
