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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	Draft Council Directive amending Directive (EU) 2020/262 as regards the general arrangements for excise duty in respect of raw tobacco, manufactured tobacco and tobacco related products - General approach

Delegations will find attached the Presidency compromise text.

2025/0581 (CNS)

Draft

COUNCIL DIRECTIVE

amending Directive (EU) 2020/262 as regards the general arrangements for excise duty and Directive 2006/112/EC on the common system of value added tax in respect of raw tobacco, manufactured tobacco and tobacco related products

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[1],

Having regard to the opinion of the European Economic and Social Committee[2], Acting in accordance with a special legislative procedure,
Whereas:

1 OJ C , , p. .
2 OJ C , , p. .

(1) Council Directive (EU) 2020/262[3] lays down general arrangements for excise duty levied on the consumption of certain excise goods, including manufactured tobacco covered by Council Directive 2011/64/EU[4]. Directive 2011/64/EU, which established the structure and rates of excise duty of manufactured tobacco, is replaced by Council Directive (EU) XX/XXX *[OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive]*[5] with effect from 1 January 2028. Directive (EU) XX/XXX *[OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive]* covers raw tobacco and a number of new products functioning as substitutes for manufactured tobacco and containing tobacco or nicotine. Consequently, the list of excise goods to which Directive (EU) 2020/262 applies should be amended to also cover raw tobacco and all those products.

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3 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, ELI: http://data.europa.eu/eli/dir/2020/262/oj).

4 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).

5 Council Directive XX/XXX [*OP please insert number and year and OJ reference of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive*].

(1a) Council Directive 2006/112/EC[6] which establishes the common system of value added tax (VAT) defines 'products subject to excise duty' for the purposes of that directive as "*... energy products, alcohol and alcoholic beverages and manufactured tobacco, as defined by current Community legislation...*"[7].

(1b) Given that the scope of Council Directive (EU) XX/XXX *[OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive]* is expanded to cover new products containing tobacco or nicotine, as mentioned above, the current definition of 'Products subject to excise duty' in Directive 2006/112/EC should be amended to encompass those new products in addition to manufactured tobacco.

(2) To ensure the detection of irregularities and potential diversions, supply-chain operations for raw tobacco should be subject to the control and movement requirements laid down in Directive (EU) 2020/262. However, given the burden they would represent for small growers and the limited risk of fraud, Member States should exempt tobacco growers, their organisations and their associations from those control and movement requirements, provided they are not involved in the transformation of raw tobacco into manufactured tobacco.

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6 Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax (OJ L 347, 11.12.2006, p. 1, ELI: http://data.europa.eu/eli/dir/2006/112/oj)

7 Article 2(3) of Council Directive 2006/112/EC.

(3) To ensure that the new excise duty categories in the Council Directive (EU) XX/XXX *[OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive]* are properly integrated in Directive (EU) 2020/262, new categories should be added to the guide levels regarding acquisitions by private individuals for their own use.

(4) The current guide levels that Member States may lay down, when determining whether an acquisition is made for the own use of a private individual, have not been changed since they were introduced by Council Directive 92/12/EEC[7]. Tax driven cross-border shopping, whereby private individuals buy tobacco products in another Member State and bring them home for consumption, lowers the effective price at which tobacco is available. This undermines national public health policies affecting efforts to reduce smoking prevalence. There is a broad consensus among stakeholders that the EU tobacco taxation policy should contribute to reducing differences in taxation between Member States. Therefore, in order to support the proper functioning of the internal market and to avoid distortion of competition, the current guide levels for tobacco products should be reduced.

(5) In addition, the enforcement of the concept of own use has proven difficult. To simplify the enforcement of Directive (EU) 2020/262, Member States should be able, upon notification to the Commission, to derogate from the current criteria for determining whether excise goods are intended for the own use of a private individual and instead take account of a sole criterion, namely the quantity of manufactured tobacco and tobacco related products. For this purpose, Member States should be able to lay down fixed quantities of excise goods. This could also contribute to increasing legal certainty in the application of the rules on acquisitions by private individuals for their own use.

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7 Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ 1992 L 76, p. 1, ELI: http://data.europa.eu/eli/dir/1992/12/oj).

(5a) It should be clarified that excise duty on manufactured tobacco and tobacco related products acquired by a private individual for his or her own use can, where the placing on the market of such products is prohibited in the Member State of consumption, be charged in that Member State in accordance with national law. Member States remain free, in accordance with the Treaties, to apply the same principle in relation to products, such as tobacco for oral use as defined in Article 2(8) of Directive 2014/40/EU, which do not fall within the scope of this Directive.

(6) Directive (EU) 2020/262 and Directive 2006/112/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive (EU) 2020/262 is amended as follows:

1. In Article 1(1), point (c) is replaced by the following:

‘(c) raw tobacco, manufactured tobacco and tobacco related products covered by Council Directive

(EU) XX/XXX*’;

* Council Directive XX/XXX [OP please insert number and year, OJ reference and ELI of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive].’.

2. In Article 32(3), point (a) is replaced by the following:

‘(a) for manufactured tobacco and tobacco related products:

— cigarettes: 200 items,

— cigars or cigarillos: 200 items,

— smoking tobacco, other manufactured tobacco: 500 g,

— waterpipe tobacco: 500 g,

— heated tobacco: 400 items or 130 g of other formats,

— liquids for electronic cigarettes: 40 ml,

— nicotine pouches, other nicotine products: 280 g;’.

3. In Article 32, the following paragraphs 3a and 3b are inserted:

‘3a. By way of derogation from paragraph 2, Member States may lay down fixed quantities of manufactured tobacco and tobacco related products to deem the excise goods referred to in paragraph 1 to be intended for the own use of a private individual. Except for in the case of cigarettes, these fixed quantities shall not be lower than the guide quantity amount~~s~~ set out in paragraph (3) point (a). In the case of cigarettes, the fixed quantity shall not be lower than an amount equal to the guide quantity amount set out in paragraph 3 point (a) increased by 50%.

3b. Member States which decide to avail of the derogation in accordance with paragraph 3a shall notify the Commission in advance.

3c. Member States may also provide that excise duty shall become due in the Member State of consumption of manufactured tobacco and tobacco related products already released for consumption in another Member State, if the placing on the market of such products is prohibited in the Member State of consumption.’.

4. The following Article is inserted:

‘Article 50a

Tobacco growers, their organisations and associations

1. Member States shall exclude tobacco growers, their organisations and associations from the requirements of Articles 14 to 21, 24 to 28, 30 to 31, 33 to 42, and 44 to 47 and from the other requirements relating to excise duty chargeability of raw tobacco, provided that they are not involved in the transformation of raw tobacco into manufactured tobacco.

2. Curing or drying raw tobacco is not considered transforming raw tobacco into manufactured tobacco.

3. By way of derogation from paragraph 1, Member States may establish mechanisms to control the movement, holding and storage of raw tobacco which takes place entirely within their territory.'.

Article 1a

Directive 2006/112/EC of 28 November 2006 on the common system of value added tax is amended as follows:

Article 2 paragraph (3) is replaced by the following:

'3. 'Products subject to excise duty' shall mean products within the meaning of Article 1 (1) of Council Directive (EU) 2020/262, but not gas supplied through a natural gas system situated within the territory of the Community or any network connected to such a system or electricity.'.

Article 2

1. Member States shall adopt and publish, by 30 June 2028, the laws, regulations and administrative provisions necessary to comply with this Article 1. They shall immediately communicate the text of those provisions to the Commission.

   They shall apply those measures from 1 July 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. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President