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NOTE

From: General Secretariat of the Council
To: Delegations
Subject: Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products (recast)
- Presidency compromise text

Following the discussions at the Working Party on Tax Questions meeting on 18 November 2025, delegations will find attached the Presidency compromise text of the aforementioned proposal. This document will be examined at the Working Party on Tax Questions meeting on Thursday, 4 December 2025.

The Presidency's proposed amendments compared to the Commission's proposal are marked in **bold and underlined**, deletions are shown as ~~strikethrough~~.

Proposal for a

COUNCIL DIRECTIVE

amending Directive (EU) 2020/262 as regards the general arrangements for excise duty in respect of 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 Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Council Directive (EU) 2020/262³ lays down general arrangements for excise duty levied on the consumption of certain excise goods, including manufactured tobacco covered by Council Directive 2011/64/EU⁴. Directive 2011/64/EU, which established the structure and rates of excise duty of manufactured tobacco, has been replaced by Council Directive (EU) XX/XXX [*OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and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 a number of new products functioning as substitutes for manufactured tobacco, containing tobacco or nicotine, and raw tobacco. Consequently, the list of excise goods to which **Council** Directive (EU) 2020/262 applies should also cover all those products.
- (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 of Council Directive (EU) 2020/262. 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 the control and movement requirements, provided they are not involved in the transformation of cured or dried tobacco into processed tobacco.

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*].

- (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 Council Directive (EU) 2020/262, new categories are added to the guide levels regarding acquisitions by private individuals for their own consumption. This approach is based on the assumption that the products in the new categories are used as substitutes for the tobacco products that are already covered 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] and can currently be subjected to the guide levels and not used in addition to these products. This approach also aims to discourage tax induced substitution between products.**
- (4) The current guide levels that Member States may lay down, when determining if an acquisition is made for the own use of a private individual or not, have not been changed since they were introduced in Council Directive 92/12/EEC of 25 February 1992. 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 by reducing the effective price at which tobacco is available, hence affecting efforts to reduce smoking prevalence. There is a consensus among all stakeholders that the EU tobacco taxation policy should contribute to reduce 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. As a way to simplify the enforcement of Council Directive (EU) 2020/262, Member States may derogate from the current criteria, and instead lay down fixed quantities. This could also contribute to increasing legal certainty in the application of the rules on acquisitions by a private individual for his or her own use.

Presidency note:

Please see Presidency notes regarding changes to Article 32.

(6) Directive (EU) 2020/262 should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

in Article 1(1) of Directive (EU) 2020/262, point (c) is replaced by the following

‘(c) **raw tobacco, manufactured** tobacco and tobacco related products covered by Council Directive (EU) XX/XXX*’;

Presidency note:

A delegation has mentioned that the subject matter should be defined in the same way in both the TTD and the Horizontal Directive.

The Presidency suggest that “raw tobacco, manufactured” is added to reflect the suggested wording of the title of the TTD and Article 1 in the TTD.

in Article 32(3) of Directive (EU) 2020/262, litra (a) is replaced by the following

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

- cigarettes, **heated tobacco (sticks): 400 items,**
- cigarillos (cigars weighing not more than 3 g each): **200 items,**
- cigars: **100 items,**
- smoking tobacco, **heated tobacco (other formats), other manufactured tobacco: 500 g,**
- **liquids for electronic cigarettes: 40 ml,**
- **nicotine pouches, other nicotine products: 280 g;**

Presidency note:

Based on the discussion at the WPTQ meeting on the 18 November 2025 on the Presidency note on acquisitions by private individuals (WK 15419/2025 INIT) the Presidency noted that a number of delegations supported adding the new categories to the guide levels for acquisitions by private individuals. The Presidency notes that amongst those delegations, most delegations supported the practical approach presented in the Presidency note

As mentioned in the Presidency note, this approach is based on the assumption that the products in the new categories are used as substitutes for the currently taxed products and not used in addition to the currently taxed products. This assumption is aligned with the specific objective to discourage tax induced substitution between products (IA, page 21-22).

In the Presidency note the practical approach involved placing the new categories for manufactured tobacco under the current guide levels. As a delegation mentioned at the meeting on the 18 November 2025, the guide level for other manufactured tobacco e.g. nasal tobacco seemed a bit high, if other manufactured tobacco was added to the current guide level for “smoking tobacco” at 1 kilogram. Following the meeting and preparing the compromise text the Presidency have reviewed the practical approach.

When placing heated tobacco (loose tobacco) under the same guide level for smoking tobacco (1 kilogram), the guide level for heated tobacco (loose tobacco) would equvalate to 3.333 heated tobacco sticks.

As for other manufactured tobacco, according to the Impact Assessment these products are smokeless products as for example chewing tobacco, nasal tobacco and other tobacco for oral use (IA, page 13). These products are more comparable to nicotine pouches as they are smokeless.

The Presidency therefore suggests that ‘heated tobacco (loose tobacco)’, which is a category that is meant to catch potential future heated tobacco products that are not items (which is not e.g. sticks), and ‘other manufactured tobacco’ are added to the guide level for ‘nicotine pouches’ and ‘other nicotine products’. By grouping the categories this suggestion recognises that products from different categories can substitute each other.

The practical approach also involved setting guide level for tobacco related products based on the equivalent guide level for cigarettes. E.g. the current guide level for cigarettes is 40 standard 20-unit packs of cigarettes, which is then equated to 40 single-use e-cigarettes containing 2 ml liquid and 40 standard 20 units containers of nicotine pouches (or other

nicotine product) weighting 14 g each. This would mean guide levels of 80 ml liquid for e-cigarettes and 560 g of nicotine products or other nicotine products combined. See Presidency note, page 4.

During the discussions, the Presidency also noted that many delegations supported halving or otherwise reducing the current guide levels. As explained in the Presidency note, the current guide level for cigarettes (800 items) constitutes 56 days of average use for cigarette consumers in EU. Or almost two months. Based on the discussions at the meeting on 18 November 2025, the Presidency suggests halving the current guide levels. Since the guide levels for tobacco related products in the Presidency note were based on 40 packs of 20 cigarettes, they have also been reduced accordingly.

Article ~~32(2)~~ 32(4) of Directive (EU) 2020/262, point is replaced by the following:

4. By way of derogation from paragraph 2, Member States may lay down fixed quantities of manufactured tobacco and tobacco related products to determine whether the excise goods referred to in paragraph 1 are intended for the own use of a private individual. These fixed quantities may not be lower than the amounts set out in paragraph 3(a).

Presidency note:

Based on the discussion at the WPTQ meeting on 18 November 2025 on the Presidency note on acquisitions by private individuals (WK 15419/2025 INIT), the Presidency noted that many delegations supported changing the guide levels to fixed quantities.

Having fixed quantities would simplify the enforcement of the directive. This could reduce the administrative burden on the competent authorities and could also contribute to an increase in legal certainty for private individuals partaking in cross border shopping, as the evaluation is based on one set of objective criteria, i.e. the quantity of excise goods.

The Presidency suggests adding the option for Member States to lay down fixed quantities equal to the guide levels. If a Member States does not want to lay down fixed quantities for whatever reason, the current scheme would apply.

the following Article is inserted:

‘Article 50a

Tobacco growers, their organisations and associations

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 47 and from the other requirements relating to excise duty chargeability, provided that they are not involved in the transformation of cured or dried tobacco into processed tobacco.’

* 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].’

Article 2

1. Member States shall adopt and publish, by 31 December 2027 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2028.

When Member States adopt those provisions, 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 provisions 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
