



Council of the European Union  
General Secretariat

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## **WORKING DOCUMENT**

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<b>From:</b>	General Secretariat of the Council
<b>To:</b>	Working Party on Tax Questions (Indirect Taxation – Excise duties/Energy taxation) Fiscal Counsellors / Attachés
<b>Subject:</b>	Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products

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Delegations will find attached a clean text of the above proposal to facilitate the forthcoming work on this file.

Proposal for a

**COUNCIL DIRECTIVE**

**on the structure and rates of excise duty applied to 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/EU<sup>1</sup>. In the interests of clarity, that Directive should be recast.
- (2) Since the adoption of Directive 2011/64/EU, the tobacco market has changed significantly. New products functioning as substitutes for manufactured tobacco 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 duty rates in the Union. This Directive should not harmonise taxation rules on tobacco for oral use, prohibited from being placed on the market in accordance with Article 17 of Directive 2014/40/EU of the European Parliament and of the Council. For clarity, this Directive should not harmonise taxation rules on tobacco for oral use placed on the market of a Member State in accordance with Article 151 of the Act of Accession of Austria, Finland and Sweden.
- (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 Plan<sup>2</sup> 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 this twin objective the EU and the Member States should step up their efforts to fight illicit tobacco trade, notably

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<sup>1</sup> 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>)

<sup>2</sup> [Europe's Beating Cancer Plan](#), COM(2021) 44 final.

illicit imports of tobacco and related products from third countries<sup>3</sup>. New products (liquids for e-cigarettes, other manufactured tobacco, nicotine pouches and other nicotine products) have increasing popularity, especially among young people, and besides the intrinsic public health risk these products represent, they also have the potential of opening the way towards conventional smoking.

- (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 this aim presupposes that the application in the Member States of taxes affecting the consumption of products in the relevant sector does not distort conditions of competition and does not impede their free movement within the Union.
- (5) It is necessary to ensure that tobacco and tobacco related products are 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 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 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, 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, a cigar of a maximum weight of 3 g each is treated as a cigarillo, smoking tobacco which is similar in many respects to fine-cut tobacco for the rolling of cigarettes is treated as fine-cut tobacco, tobacco which can be used in a waterpipe is treated as waterpipe tobacco, tobacco which is heated or otherwise activated by chemical reaction is treated as heated tobacco, other tobacco prepared and intended for human consumption is treated as other manufactured tobacco, and tobacco refuse is clearly defined.
- (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.
- (11) A manufacturer needs to 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. Different

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<sup>3</sup> 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>)

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 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.
- (14) To ensure a balanced distribution of impacts across Member States, the economic situation of Member States needs to be considered by adjusting 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.
- (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 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 given effective means to levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum amount of taxation applies throughout the Union.
- (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 would help 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 granted the possibility of applying a reduced rate for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira.
- (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 and tobacco related products. The setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items, and as an amount per millilitre is the most appropriate for the functioning of the internal market.
- (21) As regards prices and excise levels, in particular for cigarettes — 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 applied in the Member States would help reduce fraud and smuggling within the Union.
- (22) 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.
- (23) It is necessary to bring the minimum levels for fine-cut tobacco for the rolling of cigarettes closer to the minimum levels applicable to cigarettes, so as to better take account of the degree

of competition existing between the two products, reflected in consumption patterns observed, as well as their equally harmful character. Similarly, the increase of EU minima for cigars, cigarillos and other smoking tobacco aims to reduce the gap with the rate for cigarettes to achieve a progressive convergence between products and minimise the risk of cross-product substitution.

- (24) As regards waterpipe tobacco, Member States should be allowed to set a lower minimum tax level than 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, as an amount per kilogram or for a given number of items is the most appropriate for the functioning of the internal market. Thus, the overall minimum excise duty should be expressed as an amount per kilogram or an amount for a given number of items depending on the type of heated tobacco product concerned.
- (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, other manufactured tobacco 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 should be subject to a minimum tax level, with a higher rate for liquids with a concentration of nicotine higher than 15 mg/ml to reflect the variety of products and prevent tax avoidance through ‘do-it-yourself’ mixtures.
- (28) As far as excise duties are concerned, harmonisation of structures must, in particular, result in competition in the different categories of manufactured tobacco and tobacco related products belonging to the same group not being distorted by the effects of the charging of the tax and, consequently, in the opening of the national markets of the Member States.
- (29) Transitional periods of four years for cigars, cigarillos, waterpipe tobacco, heated tobacco, other smoking tobacco, other manufactured tobacco, nicotine pouches and other nicotine products with excise duty increase after two years should be laid down to allow Member States to adapt smoothly to the levels of the overall excise duty, 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 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 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 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-Making<sup>4</sup>. 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.
- (35) 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 Council<sup>5</sup>.
- (36) 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. The Commission should review this directive, taking into account the future revision of Directive 2014/40/EU (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.
- (37) 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.
- (38) 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, 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 placed on the market of a Member State in accordance with Article 151 of the Act of Accession of Austria, Finland and Sweden.

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<sup>4</sup> OJ L 123, 12.5.2016, p. 1, ELI: [http://data.europa.eu/eli/agree\\_interinstit/2016/512/oj](http://data.europa.eu/eli/agree_interinstit/2016/512/oj).

<sup>5</sup> 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>).

## CHAPTER 2

### DEFINITIONS

#### *Article 2*

1. For the purposes of this Directive, 'manufactured tobacco' means:
  - (a) cigarettes;
  - (b) cigars;
  - (c) cigarillos;
  - (d) smoking tobacco:
    - (i) fine-cut tobacco for the rolling of cigarettes;
    - (ii) other smoking tobacco;
  - (e) waterpipe tobacco;
  - (f) heated tobacco;
  - (g) 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 has been cured or dried and 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 3 to 11 shall be without prejudice to the choice of system or the level of taxation which shall apply to the different groups of products referred to in these Articles.

#### *Article 3*

1. For the purposes of this Directive, 'cigarettes' 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;
  - (c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.
2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 8 cm but not longer than

11 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 11 cm but not longer than 14 cm, and so on.

3. Products consisting in whole or in part of substances other than tobacco but otherwise 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' 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.
3. Products which consist in part of substances other than tobacco but otherwise fall within the definition set out in paragraph 1 shall be treated as cigars or 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 Article 3 and Article 4(1) and which can be smoked. For the purpose of this Article, tobacco refuse shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.
2. Smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than 1,5 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. 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.

#### *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.

3. Products which fall within the definitions set out in both paragraphs 1 and 2 of this Article and in Article 5 and can be used both via a waterpipe as waterpipe tobacco and as smoking tobacco shall be treated as smoking tobacco.
4. Products which fall within the definitions set out in both paragraphs 1 and 2 of this Article and in Article 7 and can be used both via a waterpipe as waterpipe tobacco and as heated tobacco shall be treated as heated tobacco.

#### *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 6(1).
2. 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.
3. Products which fall within the definitions set out in both paragraph 1 of this Article and in Article 3 shall be treated as cigarettes.
4. 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.
5. 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 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, cigarillos, smoking tobacco, waterpipe tobacco and heated tobacco.
2. A product containing tobacco shall be deemed to be prepared and intended for human consumption if by simple non-industrial handling it is capable of delivering nicotine for intake into the human body or facilitating such intake.

#### *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 via a mouth piece, 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.

#### *Article 10*

1. For the purposes of this Directive, 'nicotine pouches' means products containing nicotine intended for oral intake which are mixed with 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).

#### *Article 11*

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.

### **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 respect the minimum tax levels laid down in Article 16, Article 20(2) and Article 22(2). The minimum tax levels applicable in Member States for manufactured tobacco and tobacco related products as provided for in Article 16, Article 20(2) and 22(2), (3) and (4) shall be adjusted every 3 years in accordance with paragraphs 2 and 3 of this Article.
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 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 20(4) and (5) and Article 22(3) and (4).

## 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. Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty referred to in Article 14 is strictly 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.
5. Subject to paragraphs 3 and 4 of this Article and Article 13(1), second subparagraph, Member States may levy a minimum excise duty on cigarettes.

#### Article 15

1. Member States shall apply minimum consumption taxes to cigarettes in accordance with the rules provided for in Articles 13 to 18.
2. Paragraph 1 shall apply to the taxes which, pursuant to Articles 13 to 18, are levied on cigarettes and which comprise:
  - (a) a specific excise duty per unit of the product;
  - (b) an *ad valorem* excise duty calculated on the basis of the maximum retail selling price;
  - (c) a VAT proportional to the retail selling price.

#### Article 16

The overall excise duty on cigarettes shall represent at least 63 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than the Union rate of EUR 215 per 1000 cigarettes, adjusted in accordance with Article 12, irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least the Union rate of EUR 274 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.

#### 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, 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, 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 manufactured tobacco 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) fine-cut tobacco for the rolling of cigarettes;
- (d) other smoking tobacco;
- (e) waterpipe tobacco;
- (f) heated tobacco;
- (g) other manufactured tobacco.

#### *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 25; or
  - (b) a specific duty expressed as an amount per kilogram or, in the case of cigars, 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	:	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;
(c)	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 215 per kilogram, adjusted in accordance with Article 12;

(d)	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;
(e)	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 12;
(f)	heated tobacco	:	55 % of the retail selling price inclusive of all taxes or the Union rate of EUR 108 per 1 000 items adjusted in accordance with Article 12; 55 % of the retail selling price inclusive of all taxes or the Union rate of EUR 155 per kilogram, adjusted in accordance with Article 12;
(g)	Other manufactured 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.

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 EUR 12 per 1 000 items or per kilogram or 5% of the retail selling price inclusive of all taxes for cigars or cigarillos, at least EUR 22 per kilogram or 20% of the retail selling price inclusive of all taxes for other smoking tobacco and waterpipe tobacco, at least EUR 88 per 1 000 items or EUR 125 per kilogram or 45% of the retail selling price inclusive of all taxes for heated tobacco, and at least 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 EUR 71,5 per 1 000 items or per kilogram or 20 % of the retail selling price inclusive of all taxes for cigars or cigarillos, at least EUR 71,5 per kilogram or 25% of the retail selling price inclusive of all taxes for other smoking tobacco, at least EUR 54 per kilogram or 25% of the retail selling price inclusive of all taxes for waterpipe tobacco, at least EUR 98 per 1 000 items or EUR 140 per kilogram or 50% of the retail selling price inclusive of all taxes for heated tobacco, and at least EUR 71,5 per kilogram or 25% of the retail selling price inclusive of all taxes for other manufactured tobacco.

## 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 25;
  - (b) a specific duty expressed as an amount per kilogram;
  - (c) a mixture of both, combining an ad valorem element and a specific element.

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

2. The overall excise duty on liquids for electronic cigarettes, expressed as a percentage or as an amount per millilitre, shall be at least equivalent to the rates or minimum amounts laid down for:
  - (a) 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 0,12 per millilitre, adjusted in accordance with Article 12;
  - (b) liquids containing more than 15 mg of nicotine per millilitre: 40 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,36 per millilitre, adjusted in accordance with Article 12.
3. 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 4 of this Article.

From 1 January 2030 the overall excise duty, expressed as a percentage or as an amount per kilogram, shall be at least equivalent to the rates or minimum amounts laid down for:

- (a) nicotine pouches: 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.
4. From 1 January 2032 Member States referred to in the first sentence of paragraph 3 of this Article, shall ensure that the overall excise duty, expressed as a percentage or as an amount per kilogram, shall be at least equivalent to the rates or minimum amounts laid down for:
  - (a) nicotine pouches: 50 % of the retail selling price including all taxes or the Union rate of EUR 143 per kilogram, adjusted in accordance with Article 12;

- (b) other nicotine products: 50 % of the retail selling price including all taxes.
5. The rates or amounts referred to in paragraphs 1 to 4 shall apply for all products belonging to the group of tobacco related products concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

## **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 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 are solely intended for scientific tests and for tests connected with product quality;
  - (c) 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.

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

#### *Article 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 information needed to compare the amount of excise collected and the amount of excise due each year on their territory.

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 29(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. 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. The Commission shall without undue delay review this directive, taking into account the future revision of Directive 2014/40/EU (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.

#### *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*

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.

### *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, points (e), (f) and (g), 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 provisions of national law which they adopt in the field covered by this 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, 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 18, 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.

### *Article 34*

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council*  
*The President*