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Proposal for a

COUNCIL DIRECTIVE

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

{SWD(2025) 560-561} - {SEC(2025) 560}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco[1] (hereinafter 'the Directive') defines and classifies tobacco products (cigarettes, cigars and cigarillos, smoking tobacco) and lays down applicable minimum excise duty rates. The purpose of the Directive is to ensure the proper functioning of the EU's internal market and at the same time a high level of human health protection.

However, the Directive has been found to no longer fully achieve those objectives, as indicated in the evaluation of the Directive published on 10 February 2020[2]. The evaluation highlighted the main limitations of the current regulatory framework. In particular, the overall benefits for market functioning have lessened over time as provisions on minimum excise rates have been moderately effective in raising tax rates and prices in Member States. The evaluation showed that the current provisions of the Directive have become less effective in deterring consumption. The minimum rates laid down in the Directive have not or limitedly changed over recent years and have therefore lost their traction on the fiscal policies of most Member States.

The high number of smokers in the EU is still a matter of significant concern with 21% of young people smoking[3]. The launch of Europe's Beating Cancer Plan highlights the pivotal role of taxation in reducing tobacco consumption and in deterring young people from smoking. Existing differentials across the EU incentivise in some cases high levels of unintended cross-border flows, resulting in a significant loss of tax revenues for some Member States and considerable extra revenue for others. The extent to which cross-border flows undermine public health policy is also a concern for some Member States. The evaluation also highlighted how the emergence of new products, such as electronic cigarettes ('e-cigarettes'), heated tobacco products and a new generation of modern products containing nicotine reveal the limits of the current legal framework as the Directive is not capable of providing for a harmonised taxation regime for new products. This poses a challenge to the smooth functioning of the internal market. As a result, many Member States introduced excise duties on liquids for e-cigarettes and heated tobacco which differ between Member States. The lack of harmonisation for these products restricts the ability of Member States to monitor market developments and control movements.

Finally, illicit trade in tobacco products remains substantial and continues to be a source of concern across the EU. The diversion of raw tobacco to illicit manufacturing within the EU is a growing concern for most Member States. The evaluation concluded that a more comprehensive approach, taking on board all aspects of tobacco control including public health, taxation, the fight against illicit trade and environmental concerns, is needed.

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

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

3 EU smoking demographics and statistics: Tobacco consumption statistics - Statistics Explained - Eurostat

In view of those findings and given the lack of effectiveness, relevance and coherence of the Directive, there is a need to reform the current rules aiming to:

– ensure the proper functioning of the internal market;

– ensure a high level of human health protection and contribute to achieving the objectives of Europe's Beating Cancer Plan;

– strengthen the fight against fraud and tax evasion and safeguard Member States' revenue.

Those objectives will be mainly achieved by revising the structure of minimum rates and certain definitions of traditional products and enlarging the scope of the Directive to new products and raw tobacco.

The Directive is part of a broader EU policy framework that sets the common provisions for all products subject to excise duties and the Customs Union legislation, as well as tobacco control policies and the policies against illicit trade, tax fraud and tax avoidance.

This review is part of Europe's Beating Cancer Plan[4], as tobacco taxation is one of the most effective instruments both to curb smoking prevalence and to deter young people from taking up smoking. This initiative supports the objective of the Plan by better aligning the taxation of tobacco and tobacco related products with health objectives, adapting to new developments and market trends, introducing harmonised rules for new products and raw tobacco and revising rules for manufactured tobacco (cigars, cigarillos, waterpipe tobacco and heated tobacco products).

This initiative is presented together with an amendment to Council Directive (EU) 2020/262[5], setting out general arrangements for goods subject to excise duty. This technical amendment will bring legal certainty and ensure that general arrangements for excise duty will be applicable to the newly defined tobacco and tobacco related products and to raw tobacco[6].

On 2 June 2020, the Council adopted conclusions[7] on the review of the Directive based on the evaluation's findings, stressing the view that amendments to the Directive are needed for the proper functioning of the internal market and a high level of human health protection across the EU. The Council invited the European Commission to submit a legislative proposal for the revision of the Directive on the basis of an impact assessment. The European Parliament has also supported an ambitious revision of the Directive and the EU minimum rates with the aim of better contributing to the achievement of health objectives[8].

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

The proposal carries forward the objectives of the Directive to ensure the proper functioning of the internal market, and a high level of human health protection as well as the overarching objective of ensuring efficient excise administration that achieves the objectives of, and is in line with, Council Directive 2020/262/EU laying down the general arrangements for excise

4 Europe's Beating Cancer Plan, SWD (2021) 44 final.

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

6 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, COM(2025) 581.

7 Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco

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

duty[9]. Council Directive 2020/262/EU establishes harmonised conditions of chargeability of excise duty and movement and control requirements for all excisable goods (alcohol, tobacco and energy products) while ensuring that the correct tax debt is ultimately collected by the Member States.

- **Consistency with other Union policies**

The revision of the Directive is an integral part of Europe's Beating Cancer Plan. Higher tobacco taxes and prices have been demonstrated to be one of the most effective measure to reduce overall tobacco use, incentivise current smokers to quit, reduce uptake by young people, lower consumption among those who continue to smoke, improve population health and increase tobacco tax revenues. This proposal is consistent with the Council Recommendation of 3 December 2024 on smoke-and aerosol-free environments[10] and other future initiatives under Europe's Beating Cancer Plan to review existing legislation in the area of tobacco control, including the Tobacco Products Directive[11]. Tobacco control policy and tobacco taxation act in synergy and the credibility and effectiveness of the former are greatly enhanced by consistency with the latter. In addition to its behavioural impact, taxation delivers an overall 'price signal' to society that smoking is indeed harmful for consumers and should be discouraged by all possible means. The revision of the Directive will support Member States in meeting the objectives of the WHO Framework Convention on Tobacco Control[12], including by adopting tax measures to reduce the demand for tobacco.

The proposal is consistent with the EU action plan for fair and simple taxation supporting the recovery strategy[13], which sets out measures to help Member States enforce tax rules, improve tax compliance and secure reliable tax revenues. It is also consistent with the European Parliament resolution[14], in response to the EU action plan for fair and simple taxation supporting the recovery strategy, which calls for an ambitious revision of the Directive and of EU minimum tax rates with the aim of better contributing to health objectives.

The proposed application of the Excise Movement and Control System (EMCS) to raw tobacco is consistent with the second action plan to fight illicit tobacco trade[15], which proposes the development of operational tools to better monitor and control cross-border movements of raw and cut tobacco within and into the EU.

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

10 Council Recommendation on smoke-and aerosol-free environments replacing Council Recommendation 2009/C 296/02

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

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

13 COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL An action plan for fair and simple taxation supporting the recovery strategy (COM(2020) 312 final).

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

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

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 113 of the Treaty on the Functioning of the European Union (TFEU)[16]. This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, to adopt provisions for the harmonisation of Member States' indirect taxation rules.

• Subsidiarity (for non-exclusive competence)

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

The shortcomings of the current Directive can only be remedied by means of a revision. Almost all Member States have fought the erosion of the real value of EU minimum taxation by increasing their national excise duty rates. However, consumers may have access to cheaper tobacco products due to cross border shopping, substitution, and the illicit market, all of which undermines public health policy. Moreover, unclear definitions of certain tobacco products at EU level (in particular, waterpipe tobacco and cigarillos) have resulted in varying national approaches to rates and taxation regimes and have led to tax avoidance practises.

The lack of EU-level regulation and explicit provisions for new products (such as e-cigarettes and heated tobacco) functioning as substitutes for traditional tobacco has led to different tax regimes in Member States, leading in turn to administrative difficulties. Divergent national approaches distort competition, prevent the proper functioning of the internal market and undermine tobacco control policies. There is a large consensus among stakeholders on the need to harmonise new products in EU excise legislation. The urgent need to upgrade the EU regulatory framework to avoid legal uncertainty and regulatory disparities in the EU was highlighted in the Council conclusions on the evaluation of the Directive[17]. In addition, it should be specified that Member States are responsible for implementing concrete action to prevent the circulation and entry into the EU Customs Union of illicit and counterfeit products.

In most Member States, movements of raw tobacco must be notified to the competent authorities. But Member States also recognise that the strictly national scope of these regimes makes them considerably less effective. As highlighted in the Council conclusions, cross-border movements of raw tobacco cannot be effectively controlled due to the absence of appropriate EU control rules.

The issues that undermine the interests of the Member States have common roots and they cannot be addressed by individual Member State alone. A proposal to amend the provisions of the Directive is therefore necessary. No alternative national, bilateral or other international initiative would provide the same level of effectiveness in terms of addressing this issue for all stakeholders at EU level.

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16 Consolidated version of the Treaty on the Functioning of the European Union, OJ C 326, 26.10.2012, p. 47.

17 Council conclusions concerning the structure and rates of excise duty applied to manufactured tobacco

- **Proportionality**

This proposal complies with the principles of proportionality as set out in Article 5(4) of the TFEU. The proposed amendments do not go beyond what is necessary to address the shortcomings listed above, and to fulfil the Treaty objectives of ensuring that the internal market functions properly and effectively. In particular, the proposed extension of movement and control requirements to cover new products (liquids for e-cigarettes and other nicotine products) would remove market barriers caused by the fragmentation of Member State rules and regimes while minimising any additional administrative burden. Applying movement and control requirements to raw tobacco would also help monitor this market and ensure more effective tax administration, thereby curbing tax fraud.

Increasing minimum EU excise duty rates for tobacco products will contribute to achieving the EU's health objectives as set out in Article 168 TFEU and the goals of Europe's Beating Cancer Plan by reducing smoking prevalence.

- **Choice of the instrument**

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

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

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

The Directive has already undergone an evaluation process, which started in 2012 under the regulatory fitness and performance programme (REFIT). An independent evaluation study was completed in 2014 by a consortium led by Ramboll Management Consulting. On the basis of this evaluation, the Commission submitted a report to the Council at the end of 2015[18] and received in March 2016 the mandate to explore possible regulatory revisions[19]. An impact assessment study was subsequently conducted by Economisti Associati in 2016-2017[20] and on that basis, the Commission submitted a final report to the Council in 2018[21] explaining why on certain issues a revision of Council Directive 2011/64/EU was not required or premature at that moment in time.

A second assessment of the Directive was conducted in 2018-2019 by Economisti Associati[22]. The new evaluation focused on excise structure and minimum rates applied to smoking

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

[19] Council conclusions on the structure and rates of excise duty applied to manufactured tobacco, 08.03.2016.

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

[21] REPORT FROM THE COMMISSION TO THE COUNCIL on Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, COM(2018) 17 final.

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

tobacco and reviewed new products (namely heated tobacco and e-cigarettes) in the light of their progressive market penetration. The recommendations and findings of the external study were taken into account in the Commission's evaluation report submitted to the Council in February 2020[23].

- **Stakeholder consultations**

The consultation strategy sought to gather feedback from stakeholders how the current rules on excise duty structures were being applied to manufactured tobacco products and to get their views on possible changes.

The strategy consisted of (i) in-depth interviews with Member States authorities, Commission staff, industry representatives, public health experts, non-governmental organisations (NGOs), professionals, research institutions and other stakeholders (105 interviews in total); (ii) the publication of the inception impact assessment for feedback and an online public consultation from 30 March 2021 to 26 June 2021, which received 7262 contributions together with 235 position papers; (iii) targeted surveys of Member States public authorities and a Fiscalis workshop on the taxation of new products gathering experts from EU countries, held on 3 October 2024; (iv) a virtual event on tobacco taxation on 18 May 2022, open to all stakeholders.

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

Most respondents to the public consultation consider fighting illicit tobacco trade and manufacturing a priority. Although there is a broad consensus across all categories of stakeholders on the need for further collective EU action in this area. opinions differ on how to do it. Many industry representatives and some academics suggest using an ad hoc administrative mechanism to fight illicit activities rather than including raw tobacco in the scope of the Directive, which implies the application of movement and control requirements, including the EMCS, under the Horizontal Directive[24]. Conversely, enforcement practitioners, tax and customs authorities, citizens and tobacco control NGOs overwhelmingly favour the EMCS, arguing that it would be practical and enforceable. Despite the differences in opinion, for the purposes of EU harmonisation, the Commission considers that the EMCS, in place for excise purposes for more than 20 years, is the most efficient and effective tool. Moreover, the introduction of EMCS for excise goods under duty suspension arrangement have saved

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

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

Member States considerable administrative costs, enabling them to better identify fiscal risks. Economic operators have also expressed their general satisfaction with these arrangements[25].

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

- **Collection and use of expertise**

This proposal is based on (i) the analysis of the evaluation study carried out in 2018-2019; (ii) the Commission's report submitted to the Council in 2020 and (iii) the 2021 study titled 'Impact analysis of the review of tobacco excise duty rules'[26], updated with recent market and regulatory developments in 2025[27].The study, which gathered and analysed evidence of costs and benefits to determine the scale of the problems identified in the Commission evaluation report, as well as the results of the consultations contributed to the impact assessment accompanying this proposal.

- **Impact assessment**

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

- Introduction of evidence to support the essential role of taxation in reducing tobacco use from different sources including the WHO, World Bank and academic evaluations. Addition of an intervention logic diagram underpinning the revision of the Directive.
- Expansion of the analysis of relevant impacts for economic operators and on employment, taking into account the concentrated nature of the tobacco sector. Clarification of impact on SMEs based on the SME test bearing in mind that this is most relevant for the e-cigarette liquids sector, which is dominated by SMEs.
- Clarification of econometric modelling (methods, key assumptions, and baseline). A more structured presentation of all relevant impacts. The presentation of environmental impacts, bearing in mind that the Directive is not motivated by any environmental rationale.

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25 Proposal for a Council Directive laying down the general arrangements for excise duty (recast), SWD (2018) 261 final.

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

27 Economisti Associati 'Specific Assignment: Study on the impact analysis of a review of tobacco taxation rules: update with recent market and regulatory developments', 2025, Unpublished.

- A more structured presentation of costs and benefits for each policy area. However, for the sake of clarity, the combined impact analysis is not presented as the three intervention areas have different objectives (as presented in the overview of the intervention logic), and therefore different costs and benefits affecting a different set of economic operators and markets.
- Clarification of the main weakness of the current fixed nominal minimum tax rates, (i.e., their inability to remain relevant if the general price level changes, within each Member State as well as between Member States). Explanation added that the choice of a new approach would ensure that the affordability of tobacco and related products at national level will be better reflected in the rates in order to have a more targeted impact on consumption.
- A more transparent integration into the body of the report of the views of different stakeholders on the problems, policy options, and anticipated impacts.

As the impact assessment was not followed by a legislative proposal at that time, a study was commissioned in 2024 to provide for an update of market and regulatory developments and related analysis. The study confirms that the options envisaged remain the most relevant and their estimated impacts remain accurate. The impact assessment has been updated to the extent necessary to incorporate such recent analysis and to reflect in the proposed EU harmonised minimum rates the inflation that occurred since 2022. It has also been complemented with the competitiveness check and SME check - both available in the respective annexes of the impact assessment, according to new Better Regulation requirements.

The impact assessment considers three main areas of intervention (revision of EU minimum excise duty rates, extending the scope of the Directive to new products and raw tobacco) subdividing them further into specific policy options.

Each of these options was assessed when expressing minimum EU tax rates in nominal terms or in partial purchasing power parity (PPP) terms.

Options for calculating EU minimum rates

In its conclusions of 2 June 2020, the Council insisted that any future revision should take into account the ‘specific economic situations’ of Member States. As a result, the impact assessment considers options for revised and new EU minimum rates adjusted for each Member State depending on the purchasing power of its residents, alongside EU minimum rates expressed in nominal terms. In practice, when strong economic growth boosts the purchasing power in a given Member State, the minimum excise duty for that Member State would be increased (or cut, should purchasing power decrease). The PPP-based approach also corrects divergent inflation trends, as price increases are fully accounted for in the adjustment.

A changeover to a full PPP adjustment was not recommended in the impact assessment, as it would generate large price swings on being introduced and therefore destabilise the market, given that purchasing power differs significantly across Member States. Instead, the proposal is that two thirds of the minimum rate for each Member State would be expressed in nominal terms and that one third would be adjusted to purchasing power based on each Member State’ Price Level Index. These proportions of nominal and purchasing power components are conventional. They strike a balance between increasing convergence in price levels (also preventing revised EU minimum rates from going below current levels in certain Member States) and distributing the impact across Member States, mitigating the burden for countries where, in real terms, excise duties are already above the EU average.

Revising minimum EU excise duty rates and certain categories of traditional tobacco products

Three options from limited increases to high increases in excise duty rates have been considered. The options of raising minimum tax rates for fine-cut tobacco, cigars, cigarillos and other smoking tobacco are designed to progressively reduce the gap between them and the rate set for cigarettes, increase convergence between products in the medium term and minimise the risk of cross-product substitution. Also, all three options include the introduction of separate categories for cigarillos and waterpipe tobacco to allow Member States to adopt a more tailored taxation regime according to consumption patterns and risk analysis for these specific products. A separate category for waterpipe tobacco with a modest increase of the minimum tax rate would improve legal certainty and help Member States fight illicit trade (around 60% of the waterpipe tobacco consumed in the EU is estimated to come from illicit sources), allowing tax authorities to monitor the waterpipe tobacco market more effectively. All three options considered would achieve the Directive's objectives. They would help make tobacco products less affordable, to a great or very great extent depending on the option chosen, thereby helping to meet the long-term target of Europe's Beating Cancer Plan (a 'tobacco-free generation' where less than 5% of the population uses tobacco by 2040). The highest increase would be the most effective in curbing tobacco use. It would put the EU firmly on the path of reaching the long-term target of Europe's Beating Cancer Plan. This option could also lead to a significant increase in excise duty in nearly half of the Member States, and for some, an unprecedented increase, notably for products with historically low tax levels like cigars and cigarillos, which makes it difficult to envisage all market effects (reduced sales, high compliance costs for economic operators). However, the partial PPP-based approach mitigates the most extreme effects, allowing for higher ambition. This option will generate EUR 13.9 billion in tax revenue for the EU-27.

The increase in EU minimum tax rates would make the products in question less affordable for consumers, resulting in reduced sales for economic operators. However, they would not necessarily entail an increase in administrative costs for businesses and Member States.

The impact on employment depends on the market segment. Tobacco growing, manufacturing and retail vary considerably in terms of production function, labour intensity and market structure. So will the impacts. Overall impacts on economy-wide employment would be marginal and concentrated in a handful of Member States[28].

Extending the scope of the Directive to new products

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 ways towards conventional smoking. The harmonisation of new products that have appeared on EU markets since the Directive was last revised is proposed, to create a level playing field for both traditional tobacco products and new substitute products. Various scenarios for increasing EU minimum tax rates for traditional tobacco products were considered, from moderate to high, based on national practices in terms of both the rates and the structure, anticipating risks of substitution between products.

[28] In relative terms, Bulgaria is the most exposed Member State, with a relatively high concentration of tobacco growers and above-average concentration in manufacturing. Greece and Poland also have many tobacco growers. In absolute terms, manufacturing is concentrated in Germany.

The preferred scenario brings the rates for new products closer to the EU minimum rates for other smoking tobacco. The proposed excise harmonisation of new products would remove the market barriers caused by the fragmentation of Member State rules and regimes, improving the overall coherence of the regulatory framework, thereby facilitating intra-EU trade and ensuring a level playing field across the internal market for economic operators, especially SMEs. Alongside clearly identified products, the preferred approach is to create a 'catch all' category for all other products containing nicotine, so to bring the EU framework up to date with market developments and close possible loopholes. As price and tax measures are an effective way of reducing the consumption of tobacco and tobacco related products by various segments of the population, in particular young people, the preferred option – introducing high EU minimum tax rates – is proportionate and the most consistent with the long-term goals of Europe's Beating Cancer Plan.

Finally, the application of the Horizontal Directive's movement and control requirements (currently applicable to manufactured tobacco products under the current Directive only) will ensure efficient and effective excise administration, supporting the collection of revenue not currently collected (especially in the case of liquids for e-cigarettes). The introduction of excise duty rates for new products will increase revenue by an estimated EUR 900 to 1 700 million under the preferred option.

The preferred option is based on the extension of proven IT systems (EMCS and the System for the Exchange of Excise Data) for handling excise goods. Related administrative obligations follow the 'digital by default' principle.

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

Extending the scope of the Directive to raw tobacco

It is proposed to include raw tobacco as a new category, to which the movement and control provisions of the Horizontal Directive would apply. This would enable Member States to better control supply chains and help them fight against the diversion of raw tobacco to illicit manufacturing. Two options are considered: minimum EU tax rate of zero (Option 1) or the same minimum EU tax rate as for other smoking tobacco (Option 2). The results of the analysis indicate a reduction in foregone tax revenues of approximately EUR 1.3 billion under option 1 and of EUR 2.6 billion under option 2. Given the total excise duty loss associated with illicit trade of tobacco and tobacco related products is estimated to approximately EUR 13 billion, the impact of the proposed measures, in relative terms, would translate into recovering 10% to 20% of current tax fraud. As the proposed options are not intended to directly generate tax revenue, except revenues generated from reduced fraud, option 1 is the preferred option as it respects the proportionality principle.

All options were considered as well as the baseline scenario 'do no significant harm' to the environment. Tobacco is a crop that needs a considerable amount of water and the manufacturing of it is relatively energy-intensive. Discarded cigarette butts also harm the environment, as filters are not biodegradable and can remain in the environment for very long periods of time in the form of microplastics. Any reduction in tobacco consumption triggered by taxation would, in theory, therefore, reduce this impact. This is in line with the goals of

European Climate Law[29]. For e-cigarettes and smokeless tobacco (including smokeless heated tobacco products), there is a notable scarcity of information on their environmental impacts. However, the environmental costs per unit of manufacturing e-cigarettes may be higher than those of manufacturing ordinary cigarettes per unit.

The revision of the Directive also contributes to the achievement of the Sustainable Development Goals, particularly those related to health, equality, resource mobilization, the sustainable use of natural resources, environmental protection, food security and sustainable communities.

- **Regulatory fitness and simplification**

The administrative and adjustment costs and savings related to the revision of the Directive is different for each area of intervention. The increase in excise duty for traditional tobacco will affect demand and thus lead to reduced sales but will not increase administrative costs for economic operators and public authorities.

Evidence collected in the evaluation of the Directive led to the conclusion that the lack of excise duty harmonisation for new products (liquids for e-cigarettes, other manufactured tobacco and tobacco related products) and clear tax rules for heated tobacco led to legal and administrative uncertainty, giving rise to administrative and transaction costs for market operators in cross-border movements. As a significant number of Member States already tax heated tobacco products and e-cigarette liquids, additional regulatory costs would be negligible. 26 European countries have a tax on heated tobacco and 23 on liquids for e-cigarettes. The bulk of additional costs (estimated for the whole *new-product* sector of EUR 9.6 million of one-off costs and EUR 6.3 million of recurrent costs in each subsequent year) would be incurred by SMEs operating in the e-cigarette liquids segment, especially those based in countries where no national tax regimes are currently in place. Operators in the HTP and other manufactured tobacco sector (especially the nicotine pouch segment) are considered already compliant with the majority of obligations as both segments are largely controlled by transnational tobacco companies. Regulatory costs incurred by Member States would amount to EUR 10 million of one -off and around EUR 0.5 million for each subsequent year.

Including raw tobacco in the scope of the EMCS and making it subject to other control measures set out in the Horizontal Directive would lead to additional regulatory costs. Compliance costs for economic operators would amount to EUR 0.1 million for one off costs and EUR 2 million for annual recurrent costs while for public authorities it would amount to EUR 9.7 million of one -off and around EUR 0.7 million for each subsequent year. However, doing so is expected to facilitate cross-border investigations and the prosecution of cases of fraud. Moreover, harmonised movement and control requirements could lead to the abandonment of at least some national control measures (registration, authorisation and additional control measures). This could in turn mitigate the administrative burden for both economic operators (as presented in the impact assessment on ‘one in, one out’ approach) and public authorities.

Member States authorities consider that the benefits of harmonising new products and raw tobacco and application of movement and control requirements for these products would be expected to outweigh the costs.

[29] Setting out the long-term direction for achieving the 2050 climate neutrality objective in all policies, in a socially fair and cost-efficient manner. The European climate law sets a binding Union climate target of a reduction of net greenhouse gas emissions by at least 55% by 2030 compared to 1990.

- **Fundamental rights**

The measure has no bearing on fundamental rights.

4. BUDGETARY IMPLICATIONS

Excise duty is revenue to the national budget of Member States. The Own Resources Decision presented in parallel to this proposal, foresees a new own resource calling a share of the minimum rate for tobacco and tobacco related products. While not legally linked to the proposed Directive revision, it builds on the policy choices as set in the Directive (and its revisions). It reinforces the commitment towards safeguarding and improving the overall health of citizens, as well as mitigating distortions caused by cross-border trading of products in the scope of the Directive.

5. OTHER ELEMENTS

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

Tobacco taxation is regularly monitored, by collecting information from Member States on the basis of the Commission Implementing Decision[30]. Moreover, the Commission's Directorate-General (Department) for Taxation and Customs Union (TAXUD) and Member States update the database on the applicable tax rates ('Taxes in Europe' database). The Commission's traceability and security features system, established in accordance with the Tobacco Products Directive, enables real-time monitoring of the tobacco supply chain[31].

The Committee on Excise Duty, an advisory committee on excise matters chaired by the Commission, in which representatives of all Member States participate, will monitor the implementation and functioning of the revised rules. The Committee will report on implementation matters and on how the problems identified in the impact assessment are being addressed. It will discuss and clarify possible differences in interpretation between Member States. If new legislative developments are required, the Indirect Taxation Expert Group may also be consulted.

Member States and the Commission will assess how the new legislation is working and produce an evaluation report 5 years after the date of its application at the earliest, allowing the markets to adjust and results and impacts to materialise.

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

Moving from nominal rates to an approach partially based on purchasing power parity (PPP): Article 12

Under the current Directive, the minimum EU rates of excise for each product category are expressed in nominal terms, i.e. as a fixed monetary amount applicable in all Member States. This is in line with the approach traditionally used for harmonising indirect taxes. However, from a tobacco control perspective this approach cannot provide a durable solution, as the combination of inflation and income growth results, over time, in a rapid erosion of the minimum rates. Furthermore, due to the substantial and persistent diversity in economic

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

[31] In the case of cigarettes and roll-your-own tobacco since 20 May 2019 and for all other tobacco products since 20 May 2024.

conditions in Member States (not only in income, but also in general price level), any nominal minimum rate set at EU level is generally too low to have an impact in higher-income countries. To ensure a fair distribution of impacts, the following approach partially based on PPP is proposed:

- To replace the current approach whereby the minimum rate of excise duty is fully expressed in nominal terms by an approach whereby 2/3 of the tax is expressed in nominal terms and 1/3 in PPP terms, i.e., adjusting levels by means of the Member State's Price Level Index (PLI). PLI allows for comparison between countries by dividing the purchasing power parities by the respective nominal exchange rates. It is defined in Article 12(3) as the index expressing the price level of a given Member State for actual individual consumption relative to the weighted EU average. This indicator is published and updated annually by Eurostat (dataset PRC_PPP_IND). Member States should use the latest PLI available[32] (Article 12(3)).
- To account for changes in the PLI over time by updating the minimum rate of excise duty applicable in each Member State every three years. The choice of a three-year period makes sufficient allowance for regular updates to ensure relevance, while avoiding the disproportionate administrative burden and uncertainty arising from an annual update. It is also common practice for some Member States to set their taxation policies for a three-year period.
- At the same time, to ensure the durability of the policy stance over time, it is proposed to update the minimum rate of excise duty in light of EU average inflation trends, based on the Harmonised Index of Consumer Prices (HICP) (Article 12(2)). The HICP measures changes over time in the prices of consumer goods and services acquired by households to give a comparable measure of inflation. It is available monthly and annually, broken down by detailed consumption categories. To determine the percentage change in the HICP over the preceding 3 calendar years, Member States should use the latest available all-items annual EU average value of the indices Eurostat provides[33]. To be consistent with the PLI adjustment, this update is proposed to take place every 3 years and to be reflected in the calculation of the minimum rate of excise duty applicable in each Member State.

Revising minimum EU tax rates for certain categories of traditional tobacco products: Articles 4, 6, 16, 20

Following the same approach as in the current Directive it is proposed to retain the current excise duty structure (*ad valorem* or specific or a combination of both) and different minimum excise duty rates for certain tobacco products. A specific tax ensures a minimum level of taxation across products and reduces the incentive for tax-induced substitution, while a proportionate tax automatically adjusts for price increases. A mixed structure combines aspects of both.

The *ad valorem* component helps prevent EU levels from becoming obsolete too quickly and helps to keep them relevant in moderately wealthier EU economies. The specific component helps avoid the development of the low-price segment. The current minimum EU rates for excise are becoming increasingly less effective in reducing tobacco consumption. Minimum tax levels need to be revised to achieve a balance between greater convergence, the proper

[32] For example in 2025, the national accounts indicator 'Price level indices (EU27_2020=100)'.

[33] For example for the rates applicable from 2031, the percentage change between the 2027 and 2029 EU average HICP.

functioning of the internal market and the avoidance of unintended consequences (such as substitution, illegal consumption, tax evasion).

Finally, although smoking prevalence has declined in the EU over the past decade (from 28 % to 24% between 2012 and 2023), significant differences remain between countries and population groups. Without intervention, even at the current rates of declining usage, the long-term target in Europe's Beating Cancer Plan will not be achieved.

Separate definitions of cigarillos (Article 4) and waterpipe tobacco (Article 6) are introduced to improve legal certainty and enable Member States to adopt a more tailored tax regime according to the consumption patterns and risk analysis for these specific products and, in the case of waterpipe tobacco, to help Member States fight illicit trade by allowing tax authorities to monitor the waterpipe tobacco market more effectively.

The distinction between cigars and cigarillos in Article 4(2) is based on the physical characteristics of the products, consistent with existing definitions in EU law[34]. Article 6 distinguishes waterpipe tobacco from other smoking tobacco based on its physical characteristics and its intended use by consumers, in line with existing definitions in EU law[35].

Higher minimum EU tax rates for manufactured tobacco (cigarettes, cigars, cigarillos, fine-cut tobacco for the rolling of cigarettes, waterpipe tobacco, heated tobacco and other smoking tobacco) are introduced (Articles 16 and 20).

For cigars, cigarillos, other smoking tobacco, waterpipe tobacco, heated tobacco and other manufactured tobacco gradual increases of EU minima are proposed to reduce the gap between them and the rate set for cigarettes with a view to achieve a progressive convergence between products and minimise the risk of cross-product substitution (Article 20(2)). A four-year transitional period is envisaged, with an excise duty increase after 2 years (Article 20(4) and (5)).

Extending the scope of the Directive to new products: Articles 1, 2, 7, 8, 9, 10, 20, 21, 22, 28

To reduce tax-induced substitution and ensure legal certainty it is proposed to include new products within the scope of the Directive – liquids for e-cigarettes, other manufactured tobacco (chewing, nasal tobacco), nicotine pouches and other nicotine products (Article 2) based on Member States' current practises and expectations. Today the majority of Member States apply excise duty to heated tobacco products and liquids for e-cigarettes.

New definitions are introduced in Articles 7, 8, 9 and 10 and new minimum EU tax rates are set out in Articles 20 and 22. Article 28 foresees for the Commission to review minimum excise duty rates for heated tobacco, liquids for electronic cigarettes, nicotine pouches and other nicotine products taking into account regulatory and market developments. Finally, following the same approach as for other smoking tobacco, for nicotine pouches and other

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34 Article 8 of Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries, OJ L 346, 29.12.2007, p. 6 and Article 32 of Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (recast), OJ L 58, 27.2.2020, p. 4.

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

nicotine products, a four-year transitional period is envisaged with an excise duty increase after 2 years corresponding to 50% of the minimum excise duty rates (Article 22 (3) and (4)).

Article 151 of the Act of Accession of Austria, Finland and Sweden grants Sweden a derogation, on condition that Sweden shall take all measures necessary to ensure that such products are not placed on the market in the Member States for which the prohibition is fully applicable. Therefore, as tobacco for oral use cannot be commercialised legally in any Member State other than Sweden[36] it is not required, within the meaning of Article 113 TFEU, to harmonise indirect taxes on such products.

Extending the scope of the Directive to include raw tobacco: Articles 1, 23

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

It is proposed to extend the scope of the Directive to cover raw tobacco (Article 1) and to introduce a minimum EU rate of excise of zero (Article 23). This would make it possible to apply the Horizontal Directive's excise movement and control requirements. At the same time, it will give Member States flexibility in setting positive rates according to the level of tax evasion they face. It is proposed to apply movement and control requirements at the stage of first processing, once tobacco has been cured and dried . Movements from field to farm or to collection centres for harvested tobacco would not occur under EMCS. This means that tobacco growers and their collective organisations are exempted from applying the EMCS, provided no processing, other than drying or curing, is carried out.

Alignment with Council Directive (EU) 2020/262, setting out general arrangements for goods subject to excise duty: Article 26

Article 17(1)(b) of the Directive provides an optional exemption for manufactured tobacco destroyed under administrative supervision. However, Articles 6 and 45 of Council Directive (EU) 2020/262, contains an obligation that the total destruction or irretrievable loss, total or partial, of excise goods as a consequence of an authorisation to destroy them by the competent authorities of the Member State concerned, shall not be considered a release for consumption (i.e., there is no excise duty liability).

Elimination of outdated provisions: Articles 14, 16, 18, 20

The derogations for certain Member States and the mentions of transition periods will be removed from Articles 14, 16, 18 and 20 of the Directive because they have expired and are therefore no longer required.

[36] Article 17 of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, *OJ L 127, 29.4.2014, p. 1*.

↓ 2011/64/EU
⇨ new

2025/580 (CNS)

Proposal for a

COUNCIL DIRECTIVE

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

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament,

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

Acting in accordance with a special legislative procedure,

Whereas:

⇩ new

(1) A number of amendments are to be made to Council Directive 2011/64/EU[1]. 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

[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).

market of a Member State in accordance with Article 151 of the Act of Accession of Austria, Finland and Sweden.

↓ 2011/64/EU recital 1 (adapted)

~~Council Directives 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes, 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes and 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco have been substantially amended several times . In the interests of clarity and rationality the said Directives should be codified by assembling them in a single act.~~

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

(3) ⌦ It is necessary to ensure that ⌫ ~~T~~the Union's fiscal legislation on tobacco ⇨ and tobacco related ⇦ products ⌦ continues ⌫ ~~needs~~ 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[2] 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 ~~(FCTC)~~. ~~Account should be taken of the situation prevailing for each of the various types of manufactured tobacco.~~ ⇨ To achieve this twin objective the EU and the Member States should step up their efforts to fight illicit tobacco trade, notably illicit imports of tobacco and related products from third countries[3]. 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. ⇦

↓ 2011/64/EU recital 3 (adapted)
⇨ new

(4) One of the objectives of the Treaty on European Union is to maintain an economic union, whose characteristics are similar to those of a domestic market, within which there is healthy competition. As regards manufactured tobacco ⇨ and tobacco related products ⇦ , ⌦ the ⌫ achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in ~~this~~ ⌦ the relevant ⌫ sector does not distort conditions of competition and does not impede their free movement within the Union.

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

[3] 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)

⇩ new

(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.

🡻 2011/64/EU recital 4
⇨ new

(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.

🡻 2011/64/EU recital 6 (adapted)

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

🡻 2011/64/EU recital 5 (adapted)
⇨ new

(8) A distinction needs to be made between fine-cut tobacco for the rolling of cigarettes, ~~and~~ 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 ⇦ .

🡻 2011/64/EU recital 8 (adapted)
⇨ new

(9) In the interests of uniform and fair taxation, a definition of cigarettes, cigars, ~~and~~ cigarillos ⇨ , fine-cut tobacco for the rolling of cigarettes, ⇦ ~~and of~~ other smoking tobacco ⇨ , waterpipe tobacco, heated tobacco and other manufactured tobacco ⇦ should be laid down so that~~, respectively,~~ rolls of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more ~~for excise purposes~~, ~~a type of cigar which is similar in many respects to a cigarette is treated as a cigarette for excise purposes,~~ ⇨ 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 ~~intended~~ for the rolling of cigarettes is treated as fine-cut tobacco ~~for excise purposes~~, ⇨ tobacco which can be used in a waterpipe is treated as waterpipe tobacco, 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. ~~In view of the economic difficulties that immediate implementation could cause for the German and Hungarian operators concerned, Germany and Hungary should be authorised to postpone the application of the definition of cigars and cigarillos until 1 January 2015.~~

⇩ new

(10) Tobacco related products 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.

🡻 2011/64/EU recital 7
⇨ new

(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 ⇦. ~~and sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption~~.

🡻 2011/64/EU recital 13
⇨ new

(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 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⇦ .

⇩ new

(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.

↓ 2011/64/EU recital 11 (adapted)

(15) The structure of the excise duty on cigarettes ~~must~~ ⌦ 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.

↓ 2011/64/EU recital 12

(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.

↓ 2011/64/EU recital 14 (adapted)

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

↓ 2011/64/EU recital 16 (adapted)
⇨ new

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

↓ 2011/64/EU recital 20
⇨ new

(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.

↓ 2011/64/EU recital 22 (adapted)

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

↓ 2011/64/EU recital 17
⇨ new

(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.

↓ 2011/64/EU recital 15 (adapted)
⇨ new

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

↓ 2011/64/EU recital 18 (adapted)

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

↓ 2011/64/EU recital 19 (adapted)
⇨ new

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

⇩ new

(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.

↓ 2011/64/EU recital 9
⇨ new

(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.

↓ 2011/64/EU recital 21 (adapted)
⇨ new

(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.

⇩ new

(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.

↓ 2011/64/EU recital 10
⇨ new

(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. ⇦

↓ 2011/64/EU recital 23
⇨ new

(32) ~~A majority of~~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~~, and the exemptions or refunds for particular uses need to be specified in this Directive~~.

⇩ new

(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[4]. 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[5].

(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.

↓ 2011/64/EU recital 24

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

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

[5] 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).

↓ 2011/64/EU recital 25 (adapted)

(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, ⌦ of Directive 2011/64/EU, ⌫

↓ 2011/64/EU
⇨ new

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 ⇦ .

⇩ new

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.

↓ 2011/64/EU (adapted)

CHAPTER 2

DEFINITIONS

Article 2

1. For the purposes of this Directive, 'manufactured tobacco' ⌦ means ⌫ ~~shall mean~~:

(a) cigarettes;

(b) cigars;

(c) ~~and~~ cigarillos;

(d~~e~~) smoking tobacco:

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

(ii) other smoking tobacco;~~.~~

⇩ new

(e) waterpipe tobacco;

(f) heated tobacco;

(g) other manufactured tobacco.

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

🡻 2011/64/EU (adapted)
⇨ new

~~2. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in Article 3 or Article 5(1) shall be treated as cigarettes and smoking tobacco.~~

4. ~~Notwithstanding the first subparagraph,~~ Pproducts containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco ⇨ or tobacco related products ⇦ .

5~~3~~. Notwithstanding existing Union provisions, the definitions referred to in ~~paragraph 2 of this Article and~~ Articles 3~~, 4 and 5~~ ⇨ to 11 ⇦ shall be without prejudice to the choice of system or the level of taxation which shall apply to the different groups of products referred to in these Articles.

Article 3

1. For the purposes of this Directive, ‘cigarettes’ ~~shall mean~~ ⌦ 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.

⇩ new

2. Cigarillos are cigars of a maximum weight of 3 g each.

🡻 2011/64/EU (adapted)

~~2. By way of derogation from paragraph 1, the following subparagraph may continue to be applied by Germany and Hungary until 31 December 2014.~~

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

~~(a) rolls of tobacco made entirely of natural tobacco;~~

~~(b) rolls of tobacco with an outer wrapper of natural tobacco;~~

~~(c) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, and a binder, both being of reconstituted tobacco, where the unit weight, not including filter or mouthpiece, is not less than 1,2 g and where the wrapper is fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar;~~

~~(d) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouth-piece, is not less than 2,3 g and the circumference over at least one third of the length is not less than 34 mm.~~

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

Article 5

1. For the purposes of this Directive, 'smoking tobacco' ~~shall mean~~ ⌦ 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 ⌫ ~~millimetre~~ shall be deemed to be fine-cut tobacco for the rolling of cigarettes.

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

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

⇩ new

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).

↓ 2011/64/EU
⇨ new

Article 11~~6~~

A natural or legal person established in the Union who ~~converts tobacco into manufactured products prepared for retail sale~~ ⇨ 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.

⇩ new

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 31 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).

↓ 2011/64/EU (adapted)
⇨ new

CHAPTER 4~~3~~

PROVISIONS APPLICABLE TO CIGARETTES

Article 13~~7~~

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

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

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

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

4. Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty ~~as laid down~~ ⌦ referred to ⌫ in Article 14~~8~~ is strictly respected.

Article 14~~8~~

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

~~(a) specific excise duty;~~

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

3~~4~~. ~~From 1 January 2014,~~ T~~t~~he specific component of the excise duty on cigarettes shall not be less than 7,5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

(a) specific excise duty;

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

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

5~~6~~. Subject to paragraphs ~~3,~~ 3~~4~~ and 4~~5~~ of this Article and ~~the second subparagraph of~~ Article 13~~7~~(1), second subparagraph, Member States may levy a minimum excise duty on cigarettes.

Article 15~~9~~

1. Member States shall apply ~~to cigarettes~~ minimum consumption taxes ⌦ to cigarettes ⌫ in accordance with the rules provided for in ~~this Chapter~~ Articles 13 to 18.

2. Paragraph 1 shall apply to the taxes which, pursuant to ~~this Chapter~~ 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~~10~~

~~1.~~ The overall excise duty ~~(specific duty and ad valorem duty excluding VAT)~~ on cigarettes shall represent at least ⇨ 63 ⇦ ~~57~~ % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than ⌦ the Union rate of ⌫ EUR ⇨ 215 ⇦ ~~64~~ 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 ⇦ ~~101~~ 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 ⇦ ~~57~~ % requirement set out in the first subparagraph ⌦ of this Article ⌫ .

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

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

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

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

Article 17~~11~~

1. Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the overall excise duty below the levels specified in ~~the first sentence of paragraph 1~~ ~~and in the first sentence of paragraph 2~~ ~~of~~ Article 16~~10~~, first paragraph, first sentence ~~respectively~~, the Member State concerned may refrain from adjusting that duty until 1 January of the second year following that in which the change occurs.

2. Where a Member State increases the rate of VAT on cigarettes, it may reduce the overall excise duty up to an amount which, expressed as a percentage of the weighted average retail selling price, is equal to the increase in the rate of VAT, also expressed as a percentage of the weighted average retail selling price, even if such an adjustment has the effect of reducing the overall excise duty to below the levels, expressed as a percentage of the weighted average retail selling price, laid down in ~~the first sentence of paragraph 1~~ ~~and in the first sentence of paragraph 2 of~~ Article 16~~10~~, first paragraph, first sentence ~~respectively~~.

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

Article 18~~12~~

~~1.~~ Portugal may apply a reduced rate of up to 50 % less than that laid down in Article 16~~10~~ to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

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

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

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

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

CHAPTER 5~~4~~

PROVISIONS APPLICABLE TO MANUFACTURED TOBACCO OTHER THAN CIGARETTES

Article 19~~13~~

The following groups of manufactured tobacco produced in the Union ~~and~~ ⌦ or ⌫ imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 20~~14~~:

(a) cigars

(b) ~~and~~ cigarillos;

(c~~b~~) fine-cut tobacco ~~intended~~ for the rolling of cigarettes;

(d~~c~~) other smoking tobacco~~s~~;.

⇩ new

(e) waterpipe tobacco;

(f) heated tobacco;

(g) other manufactured tobacco.

🡻 2011/64/EU (adapted)
⇨ new

Article 20~~14~~

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~~15~~; or

(b) a specific duty expressed as an amount per kilogram~~,~~ or, in the case of cigars, ~~and~~ cigarillos~~,~~ ⇨ and heated tobacco, ⇦ alternatively for a given number of items; or

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

~~In cases~~ W~~w~~here ⌦ an ⌫ excise duty is either *ad valorem* or mixed, Member States may establish a minimum amount of excise duty.

2. The overall excise duty ~~(specific duty and/or ad valorem duty excluding VAT)~~ , expressed as a percentage, as an amount per kilogram or for a given number of items, shall be at least equivalent to the rates or minimum amounts laid down for:

(a)	cigars ~~or cigarillos~~	:	~~5~~ ⇨ 40 ⇦ % of the retail selling price inclusive of all taxes or ⌦ the Union rate of ⌫ EUR ~~12~~ ⇨ 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; ⇦
(cb)	fine-cut ~~smoking~~ tobacco ~~intended~~ for the rolling of cigarettes	:	~~40~~ ⇨ 62 ⇦ % of the weighted average retail selling price of fine-cut ~~smoking~~ tobacco ~~intended~~ for the rolling of cigarettes released for consumption, or ⌦ the Union rate of ⌫ EUR ~~40~~ ⇨ 215 ⇦ per kilogram ⇨ , adjusted in accordance with Article 12 ⇦;
(dc)	other smoking tobacco~~s~~	:	~~20~~ ⇨ 50 ⇦ % of the retail selling price inclusive of all taxes, or ⌦ the Union rate of ⌫ EUR ~~22~~ ⇨ 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. ⇦

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

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

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

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

~~fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.~~

The weighted average retail selling price shall be calculated by reference to the total value of fine-cut ~~smoking~~ tobacco ~~intended~~ for the rolling of cigarettes released for consumption, based on retail selling price including all taxes, divided by the total quantity of fine-cut ~~smoking~~ tobacco ~~intended~~ for the rolling of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

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

⇩ new

4. 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.

🡻 2011/64/EU (adapted)

~~4. By way of derogation from paragraphs 1 and 2, France may continue to apply, for the period from 1 January 2010 to 31 December 2015, a reduced rate of excise duty to manufactured tobacco other than cigarettes released for consumption in the departments of Corsica. The reduced rate shall be:~~

~~(a)~~	~~for cigars and cigarillos~~	~~:~~	~~at least 10 % of the retail selling price, inclusive of all taxes;~~
~~(b)~~	~~for fine-cut smoking tobacco intended for the rolling of~~	~~:~~	~~(i) until 31 December 2012, at least 27 % of the retail selling price, inclusive of all taxes;~~ ~~(ii) from 1 January 2013, at least 30 % of the~~

	~~cigarettes~~		~~retail selling price, inclusive of all taxes;~~ ~~(iii) from 1 January 2015, at least 35 % of the retail selling price, inclusive of all taxes;~~
~~(c)~~	~~for other smoking tobacco~~	~~:~~	~~at least 22 % of the retail selling price, inclusive of all taxes.~~

⇩ new

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.

↓ 2011/64/EU (adapted)
⇨ new

CHAPTER 8~~5~~

DETERMINATION OF THE MAXIMUM RETAIL SELLING PRICE OF MANUFACTURED TOBACCO ⌦ AND TOBACCO RELATED PRODUCTS ⌫ ~~COLLECTION OF EXCISE DUTY, EXEMPTIONS AND REFUNDS~~

Article 24~~15~~

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~~5~~

COLLECTION OF EXCISE DUTY, EXEMPTIONS AND REFUNDS

Article 25~~16~~

1. ~~At the final stage of harmonisation of the excise duty, at the latest the rules for collecting the excise duty shall be harmonised. During the preceding stage, the excise duty shall, in principle, be collected by means of tax stamps.~~ ⌦ Where ⌫ ~~If~~ they collect the excise duty by means of tax stamps, Member States shall be obliged to make these stamps available to manufacturers and dealers in other Member States. ~~If~~ ⌦ 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~~17~~

⇩ new

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.

🡻 2011/64/EU (adapted)
⇨ new

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

(a) denatured manufactured tobacco used for industrial or horticultural purposes;

~~(b) manufactured tobacco which is destroyed under administrative supervision;~~

(b~~e~~) manufactured tobacco ⇨ and tobacco related products ⇦ which ⌦ are ⌫ ~~is~~ solely intended for scientific tests and for tests connected with product quality;

(c~~d~~) manufactured tobacco ⇨ and tobacco related products ⇦ which ⌦ are ⌫ ~~is~~ reworked by the producer.

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

CHAPTER 10~~6~~

FINAL PROVISIONS

Article 27~~18~~

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~~19~~

1. ⇨ By 31 December 2032 and ⇦ e~~E~~very ⇨ 5 ⇦ ~~four~~ years ⌦ thereafter ⌫ , the Commission shall submit to ⇨ the European Parliament and ⇦ the Council a report ⇨ on the application of ⇦ ~~and, where appropriate, a proposal concerning the rates and the structure of excise duty laid down~~ ~~in~~ this Directive.

The report by the Commission shall ⇨ examine minimum levels of taxation ⇦ ⌦ taking ⌫ ~~take~~ 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. ⇦

⇩ new

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.

🡻 2011/64/EU (adapted)
⇨ new

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 ⇨ 30(2) ⇦ ~~43 of Council Directive (EU) 2020/262 2008/118/EC~~[6], ⌦ determining ⌫ ~~determine~~ 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 not publish or otherwise divulge data where it would lead to the disclosure of a commercial, industrial or professional secret.~~

⇩ new

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.

⇩ new

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.

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[6] ~~OJ L 9, 14.1.2009, p. 12.~~

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.

↓ 2011/64/EU

Article 31~~20~~

⇩ new

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.

↓ 2011/64/EU (adapted)
⇨ new

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

Article 32~~21~~

~~Directives92/79/EEC, 92/80/EEC and 95/59/EC, as amended by the Directives listed in Annex I, Part A, are~~ ⌦ 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 ~~II~~.

Article 33~~22~~

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

⇩ new

Article 2(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.

🡻 2011/64/EU

Article 34~~23~~

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President