



Council of the  
European Union

Brussels, 23 September 2022  
(OR. en)

12560/22  
ADD 1

SAN 519  
MI 670  
COMPET 715  
FISC 184  
DELECT 168  
UD 184

**'I/A' ITEM NOTE**

---

From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

---

No. Cion doc.: 10815/22 - C(2022) 4367 final

---

Subject: Commission delegated directive (EU) of 29.6.2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products  
- *Statement by Bulgaria, Cyprus, Greece and Italy*

---

Delegations will find in Annex a statement by Bulgaria, Cyprus, Greece and Italy on the above-mentioned delegated act, to be added to the minutes of Coreper and Council.

**JOINT STATEMENT of BULGARIA, CYPRUS, GREECE AND ITALY**

**concerning the Commission Delegated Directive (EU) .../... amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products**

Bulgaria, Cyprus, Greece and Italy reiterate that the DA proposed by the Commission has a deep impact on the discipline of heated tobacco products.

As already stated, we are not convinced that such a complex and comprehensive reform could be introduced by the means of a Delegated Act.

Without prejudice of our assessment on the substantive aspects of the Commission proposal, the new discipline arising by the DA, in our view, goes beyond the delegated power under Directive 2014/40/EU and involves essential elements reserved for the European legislators and, as such, should be submitted to the ordinary legislative review process. In particular, the Commission, by introducing a definition of "heated tobacco products" in the DA (see art. 1 which amends art 7(12) of Directive 2014/40/EU so as to insert the said definition in a second subparagraph), is according to us exceeding the limits of the delegation powers granted to it by the Directive 2014/40/EU (Articles 7, paragraph 12 and 11, paragraph 6 respectively).

Furthermore, given the scope and burden of the obligations introduced for authorities, we consider unrealistic the timelines for transposition and transitional periods set in the act.

Therefore, Bulgaria, Cyprus, Greece and Italy share the concern that this use of the delegated power by the Commission is problematic and puts the interinstitutional balance to the test creating legal uncertainty and practical difficulties for all parties involved. This act shall not be considered as a regulatory precedent.