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NOTE

From:	General Secretariat of the Council
To:	Council
Subject:	Draft Council Directive on the structure and rates of excise duty applied to raw tobacco, manufactured tobacco and tobacco related products (recast) - General approach

Delegations will find attached the Presidency compromise text.

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Draft

COUNCIL DIRECTIVE

on the structure and rates of excise duty applied to raw tobacco, 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:

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(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 should be subject to a harmonised excise duty structure and harmonised minimum excise duties in the Union. This Directive is without prejudice to the right of a Member State to prohibit a certain category of tobacco or related products in accordance with Article 24(3) of Directive 2014/40/EU[2].

(2a) Tobacco for oral use as defined in Article 2(8) of Directive 2014/40/EU of the European Parliament and of the Council is prohibited from being placed on the market pursuant to Article 17 of that Directive. Article 151 of the Act of Accession of Austria, Finland and Sweden, in conjunction with Part X of Annex XV thereto, grants Sweden a derogation from that prohibition and provides that Sweden is to take all necessary measures to ensure that tobacco for oral use is not placed on the market of other Member States.

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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)

2 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, ELI: http://data.europa.eu/eli/dir/2014/40/oj).

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(3) It is necessary to ensure that the Union's fiscal legislation on tobacco and tobacco related products continues to ensure the proper functioning of the internal market and, at the same time, a high level of human health protection, as required by Article 168 of the Treaty on the Functioning of the European Union, bearing in mind that tobacco and tobacco related products can cause serious harm to health, that Europe's Beating Cancer Plan[3] set the goal of reaching a tobacco-free Europe and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control. To achieve that twin objective the Union and the Member States should step up their efforts to fight illicit tobacco trade, notably illicit imports of tobacco and tobacco related products from third countries[4]. New products (liquids for electronic cigarettes, other manufactured tobacco, nicotine pouches and other nicotine products) have increased in popularity, especially among young people. In addition to the intrinsic public health risk that those products represent, they can also have the potential of opening the way towards conventional smoking.

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

(5) Manufactured tobacco and tobacco related products should be 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 Union.

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3 Europe's Beating Cancer Plan, COM(2021) 44 final.

4 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)

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(6) The various types of manufactured tobacco and tobacco related products, distinguished by their characteristics and by the way in which they are used, should be defined.

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

(8) A distinction should be made between fine-cut tobacco for the rolling of cigarettes, other smoking tobacco, waterpipe tobacco and heated tobacco to improve legal certainty and fight against fraud.

(9) In the interests of uniform and fair taxation, a definition of cigarettes, cigars and cigarillos, fine-cut tobacco for the rolling of cigarettes, smoking tobacco, waterpipe tobacco and heated tobacco should also be laid down to reflect the following: rolls of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more. However, cigars and cigarillos which have visual similarities to cigarettes, in particular because of a paper covering, should be treated as cigarettes. Smoking tobacco which is similar in many respects to fine-cut tobacco for the rolling of cigarettes is treated as fine-cut tobacco. Tobacco which can be used in a waterpipe is treated as waterpipe tobacco. Tobacco which is heated or otherwise activated by chemical reaction and is intended for inhalation without combustion is treated as heated tobacco. Other tobacco prepared and intended for human consumption is treated as other manufactured tobacco. Also, tobacco refuse should be clearly defined.

(9a) To ensure uniform and effective taxation, tobacco products should, in the first instance, be classified under the most specific and suitable category as set out in this Directive. In cases where there is genuine and significant uncertainty as to the appropriate tax category for a product, due to the product falling within the definition of more than one category, based on both objective characteristics and typical use, the resolution mechanism contained in this Directive should be applied by Member States. This mechanism should only be applied when it is not reasonably possible for a Member State to determine the single, most appropriate category for taxation.

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(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, liquids for electronic cigarettes, nicotine pouches and other nicotine products should be defined.

(11) A manufacturer should be defined as a natural or legal person who actually prepares manufactured tobacco and tobacco related products or has such a product designed or manufactured, and markets that product under his name or trademark.

(12) For the proper functioning of the internal market, minimum excise duties for all categories of manufactured tobacco and tobacco related products should be established. 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.

(13) To avoid its obsolescence over time, the Union rate used to determine the minimum 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. To ensure uniform conditions for the implementation of this Directive, implementing powers should be conferred on the Council, which should decide such an update. Conferring such implementing powers on the Council mirrors the Council's prerogatives under Article 113 TFEU and reflects the politically sensitive nature of indexation.

(14) To ensure a balanced distribution of the impact of the minimum excise duties across Member States, two alternative mechanisms for adjusting minimum excise duty rates are introduced by this Directive. Member States can choose to adjust, at national level the Union rates used to determine the minimum excise duty for each category by the price level index of each Member State, as published by Eurostat (data set PRC_PPP_IND) to take into account their economic situation. Alternatively, Member States can choose to adjust, at national level, the Union rates used to determine the minimum excise duty for each category by applying a fixed upward adjustment of at least 3%. Member States should inform the Commission of the option chosen for adjusting the minimum excise duties at national level. Such adjustment should be revised every three years.

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(14a) Several Member States, including Bulgaria, Greece, Spain, Croatia, Italy, Cyprus, Luxembourg, Portugal, Romania and Slovenia, would need to increase their national excise duty rates for cigarettes by more than 2.35 % on average per year as of 1 January 2025 to comply with the provisions of this Directive. In such cases, Member States should be allowed, upon notification to the Commission, additional transitional periods to adapt smoothly to the levels of the overall excise duty.

(14b) Member States that qualify for the additional transitional periods for cigarettes also qualify for additional transitional periods for fine-cut tobacco for the rolling of cigarettes in order to adapt smoothly to the levels of the overall excise duty.

(15) The structure of the excise duty on cigarettes should include, in addition to a specific component calculated per unit of the product, a proportional component based on the retail selling price, inclusive of all taxes. The turnover tax on cigarettes has the same effect as an *ad valorem* excise duty and that fact should be taken into account when the ratio between the specific component of the excise duty and the total tax burden is being established.

(16) Without prejudice to the mixed tax structure and the maximum percentage of the specific component of the total tax burden, Member States should be able to levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum level of taxation applies throughout the Union.

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

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(17a) In the specific case of Hungary, where, on the basis of existing national legislation, the retail selling price of cigarettes is linked to a mandatory minimum retail margin, a lower level to comply with the price related minimum requirement should be allowed, as the mandatory retail margin results in a significant automatic increase of the reference base against which compliance to a price related minimum requirement is measured.

(18) A certain degree of convergence of level of taxation would 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 habits. Fraud and smuggling undermine tax induced price levels, in particular of cigarettes and fine-cut tobacco for the rolling of cigarettes, and thus jeopardise the achievement of tobacco control and health protection objectives.

(19) In view of its specific structural social and economic situation, Portugal should be able to apply a reduced rate of excise duty for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira.

(20) As regards products other than cigarettes, a harmonised incidence of tax should be established for all products belonging to the same group of manufactured tobacco or tobacco related products. The setting of an overall minimum excise duty expressed as a percentage or as an amount per kilogram or for a given number of items or as an amount per millilitre is the most appropriate for the functioning of the internal market.

(21) 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, or as an amount per kilogram, or for a given number of items is the most appropriate for the functioning of the internal market.

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

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

(24) The minimum excise duty for fine-cut tobacco for the rolling of cigarettes should be brought closer to the minimum excise duty 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, minimum excise duties for cigars and cigarillos and other smoking tobacco should be increased to reduce the gap with the rate of excise duty for cigarettes to achieve a progressive convergence between products and minimise the risk of product substitution. Also, Member States should be allowed to set a different minimum excise duty for cigars and cigarillos, so as to take into account the specific characteristics of their market.

(25) As regards waterpipe tobacco, Member States should be allowed to set a lower minimum excise duty than for other smoking tobacco, so as to take into account the specific characteristics of the waterpipe tobacco market.

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(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 and other manufactured tobacco. For the same reason, minimum tax levels also should be set for tobacco related products which can be seen as substitutes for tobacco products from a fiscal perspective.

(27) Liquids for electronic cigarettes, whether they contain nicotine or not, should be subject to a minimum excise duty, in order to avoid any additional administrative burden and to prevent tax avoidance through ‘do-it-yourself’ mixtures.

(28) Harmonisation of structures of excise duties must, in particular, result in competition between the different categories of manufactured tobacco and tobacco related products belonging to the same group not being distorted by the effects of the charging of the tax and, consequently, in the opening of the national markets of the Member States.

(29) In view of the different rates of excise duty applicable in Member States, transitional periods should be laid down to allow Member States to adapt smoothly to the levels of the overall excise duty, taking into account national specificities, thus limiting possible side effects.

(30) In order to prevent the diversion of raw tobacco to illicit manufacturing and consequential tax evasion, raw tobacco should be subject to a minimum 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.

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(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 their authorised agents in the Union should be allowed freely to determine the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption.

(32) Member States should be allowed to grant exemptions from excise duty or make refunds of excise duty in respect of raw tobacco, certain types of manufactured tobacco and tobacco related products depending on the use which is made of them.

(33) In order to assess the functioning of this Directive, the Commission should submit reports on a regular basis to the European Parliament and Council on the application of this Directive, examining in particular levels of taxation taking into account proper functioning of the internal market, public health, the real value of the rates of excise duty, and the difference between excise revenues due and collected.

(34) 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].

[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).

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(35) The Commission should review this Directive, taking into account the future revision of Directive 2014/40/EU (Tobacco Products Directive).

(36) 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.

(37) 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, to Directive 2011/64/EU,

HAS ADOPTED THIS DIRECTIVE:

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CHAPTER 1

SUBJECT MATTER

Article 1

1. This Directive lays down general principles for the harmonisation of the structure and rates of the excise duty to which the Member States subject raw tobacco, manufactured tobacco and tobacco related products.

2. This Directive does not apply to tobacco for oral use, as referred to in paragraph (a) of Part X of Annex XV to the Act of Accession of Austria, Finland and Sweden.

CHAPTER 2

DEFINITIONS

Article 2

1. For the purposes of this Directive, ‘manufactured tobacco’ means:

   (a) cigarettes;

   (b) cigars and cigarillos

   (c) smoking tobacco:

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

      (ii) other smoking tobacco;

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(d) waterpipe tobacco

(e) heated tobacco;

(f) 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 is not manufactured tobacco.

4. For the purposes of this Directive, ‘nicotine’ means all forms of nicotine including synthetic nicotine and its analogues.

5. Products containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco or tobacco related products.

6. Notwithstanding existing Union provisions, the definitions referred to in Articles 3 to 10 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 this Directive.

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Article 3

1. For the purposes of this Directive, ‘cigarettes’ means:

   (a) rolls of tobacco capable of being smoked as they are via a combustion process and which are not cigars or cigarillos;

   (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes; or

   (c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

2. For the purpose of this Directive, ‘roll of tobacco’ means two cigarettes where, excluding filter or mouthpiece, the roll of tobacco is longer than 8 cm but not longer than 11 cm, 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, ‘cigars’ or ‘cigarillos’ means the following, if, given their properties and normal consumer expectations, they are capable of being smoked as they are via a combustion process:

   (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;

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(b) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm.

2. Products consisting in part of substances other than tobacco but otherwise falling within the definition set out in paragraph 1 shall be treated as cigars or cigarillos.

3. Products falling within the definition set out in paragraph 1, which have visual similarities with cigarettes, in particular a paper covering, shall be treated as cigarettes.

Article 5

1. For the purposes of this Directive, ‘smoking tobacco’ means:

(a) tobacco which has been cut or otherwise split, twisted or pressed into blocks which is capable of being smoked via a combustion process without further industrial processing;

(b) tobacco refuse put up for retail sale which does not fall under Article 3(1), Article 4(1), Article 6(1) and Article 7 and which can be smoked.

1.a For the purposes of this Directive, ‘tobacco refuse’ means remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

2. For the purposes of this Directive, ‘fine cut tobacco for the rolling of cigarettes’ means smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than 1,5 mm.

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

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

Article 6

1. For the purposes of this Directive, ‘waterpipe tobacco’ means tobacco which can be used in a waterpipe for the production of emissions which are passed through a liquid before inhalation by the users.

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

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 without combustion, to produce an emission containing nicotine or other chemicals, intended for inhalation by users, other than via a waterpipe.

2. Where heated tobacco is taxed per item in accordance with Article 20(1) point (b), an item of heated tobacco shall, for excise duty purposes, be considered as two items where the tobacco content is higher than 0,45 grams but not higher than 0,75 grams, as three items where the tobacco content is higher than 0,75 grams but not higher than 1,05 grams, and so on.

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3. 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, shall be treated as heated tobacco.

Article 7a

In circumstances where, given their properties and normal consumer expectations, a Member State determines a product falls within the definition of more than one category of product as defined in Articles 3, 4, 5, 6 and 7 of this Directive, such products shall be treated as follows:

1. Products which fall within the definitions of both cigarettes and smoking tobacco shall be treated as cigarettes.

2. Products which fall within the definitions of both cigars or cigarillos and smoking tobacco shall be treated as cigars or cigarillos.

3. Products which fall within the definitions of both waterpipe tobacco and smoking tobacco shall be treated as waterpipe tobacco.

4. Products which fall within the definitions of both heated tobacco and cigarettes shall be treated as heated tobacco.

5. Products which fall within the definitions of both heated tobacco and cigars or cigarillos shall be treated as heated tobacco.

6. Products which fall within the definitions of both heated tobacco and smoking tobacco shall be treated as heated tobacco.

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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 and cigarillos, smoking tobacco, waterpipe tobacco and heated tobacco.

2. For the purposes of this Directive, ‘products containing tobacco prepared and intended for human consumption’ means products containing tobacco which by simple nonindustrial handling are 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 or similar vaporising devices;

   (b) liquids not containing nicotine which are intended to be used in electronic cigarettes or similar vaporising devices or to refill electronic cigarettes or similar vaporising devices.

2. For the purposes of this Directive, ‘electronic cigarette’ means a product that can be used for consumption of vapour, or any component of that product, that can be disposable or refillable or rechargeable.

Article 10

1. For the purposes of this Directive, ‘nicotine pouches’ means products containing nicotine intended for oral intake and plant fibres or equivalent substrate, which are presented in sachet portions or porous sachets or in an equivalent format and which do not contain tobacco.

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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 and liquids for electronic cigarettes.

Article 11

For the purpose of this Directive, ‘manufacturer’ means a natural or legal person established in the Union who manufactures a product or has such a product designed or manufactured, and markets that product under his name or trademark.

CHAPTER 3

CALCULATION OF THE EXCISE DUTY ON MANUFACTURED TOBACCO AND TOBACCO RELATED PRODUCTS

Article 12

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 respects the minimum excise duties laid down in Article 16, Article 20(2), Article 22(2) and (5).

The minimum excise duties applicable in Member States for manufactured tobacco and tobacco related products laid down in Article 16, Article 20(2) and Article 22(2) and (5) shall be adjusted every three years in accordance with Articles 12a and 12b.

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Article 12a

1. From 1 January 2035 the Union rate used to determine the minimum excise duty of a product, as provided for in Article 16, Article 20(2) and Article 22(2) and (5) may be adjusted, in accordance with paragraph 2a, by increasing or decreasing the base amount in euro by the percentage change in the all-items annual Union average value of the harmonised index of consumer prices (HICP) as published by Eurostat as measured over the three calendar years immediately prior to the preceding year.

2. For the calculation of the adjustment of the Union rate laid down in paragraph 1 the following formula shall apply, assuming that y is the first year the adjusted rate shall apply:

$$Union\ Rate_y = \left[\frac{\mathrm{HICP}_{y-2}}{\mathrm{HICP}_{y-\mathbf{5}}} \right] \times Union\ Rate_{y-3}$$

2a. The decision to adjust the Union rate shall be taken by the Council by means of an implementing act adopted by unanimity on a proposal by the Commission. The Commission shall submit a first proposal by 1 January 2034 so as to ensure application from 1 January 2035, and shall submit additional proposals every three years thereafter. In deciding whether to adopt a decision adjusting the Union rate, the Council shall take into account overall economic developments as well as the need for excise duties to deter consumption of manufactured tobacco and tobacco related products.

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Article 12b

1. From 1 July 2028 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:

   (a) the sum of one third of the Union rate for the corresponding category multiplied by the price level index (PLI) divided by one hundred plus two thirds of the Union rate for the corresponding category. For the purposes of this Directive, Price level index (PLI) 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 PLI of the year immediately prior to the preceding year; or

   (b) the sum of the Union rate and the Union rate for the corresponding category multiplied by 3%. For the purposes of this formula, the Union rate shall be adjusted in accordance with Article 12a.

2. For calculating the adjustment referred to in paragraph 1(a) Member States shall apply the following formula, assuming that y is the first year the adjusted rate shall apply:

$$MS\ Minimum\ Applicable\ Rate = \left(\frac{1}{3} \times Union\ Rate_{y} \times \frac{MS\ PLI_{\ y-2}}{100}\right) + \left(\frac{2}{3} \times Union\ Rate_{y}\right)$$

2a. `Member States shall inform the Commission of their choice to adjust minimum rates in accordance with paragraph 1(a) or (b), at least 4 months prior to adoption.

2b. `The choice made by Member States in accordance with paragraph 1 shall apply for each subsequent three-year adjustment, unless the Member State informs the Commission otherwise, at least four months prior to adoption.

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3. By way of derogation from Article 12, during transitional periods set out in Article 16(3) to (6), Article 20(4) and (5), Article 22(3) and (4) and Article 22(6) and (7) the minimum excise duties applicable in Member States for manufactured tobacco and tobacco related products shall be adjusted in accordance with this Article.

4. By way of derogation from Article 12, during transitional periods set out in Article 16a, the minimum excise duties applicable in Member States for cigarettes shall be adjusted in accordance with this Article.

Article 12c

1. From 1 July 2028 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 (5) as adjusted in accordance with Article 12b.

2. From 1 January 2035, and every three years thereafter, 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 (5) as adjusted, firstly in accordance with Article 12a and then Article 12b.

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CHAPTER 4

PROVISIONS APPLICABLE TO CIGARETTES

Article 13

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

   Member States may exclude customs duties from the basis for calculating the *ad valorem* excise duty on cigarettes.

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

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

4. Member States may levy a minimum excise duty on cigarettes, provided that the mixed structure of taxation and the band of the specific component of the excise duty referred to in Article 14 is respected.

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Article 14

1. The percentage of the specific component of the excise duty in the amount of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price.

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

3. The specific component of the excise duty on cigarettes shall not be less than 7,5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

   (a) specific excise duty;

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

4. Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the specific component of the excise duty, expressed as a percentage of the total tax burden, below the percentage of 7,5 % or above the percentage of 76,5 % of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until 1 January of the second year following that in which the change occurs.

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Article 15

1. Member States shall apply minimum excise duty to cigarettes in accordance with the rules provided for in Articles 13 to 17.

2. Paragraph 1 shall apply to the taxes which, pursuant to Articles 13 to 17, 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; and

   (c) a VAT proportional to the retail selling price.

Article 16

1. The overall excise duty on cigarettes shall represent at least 60% of the weighted average retail selling price of cigarettes released for consumption. That overall excise duty shall not be less than the Union rate of EUR 200 per 1000 cigarettes, adjusted in accordance with Article 12, irrespective of the weighted average retail selling price.

2. However, Member States which levy an excise duty of at least the Union rate of EUR 255 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 60% of the weighted average retail selling price of cigarettes released for consumption set out in paragraph 1.

3. By way of derogation from paragraph 1, from 1 July 2028 until 31 December 2029 Member States shall ensure that excise duty rates are at least EUR 140 per 1 000 items inclusive of all taxes for cigarettes.

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4. By way of derogation from paragraph 2, from 1 July 2028 until 31 December 2029 Member States which levy an excise duty of at least the Union rate of EUR 177 per 1000 cigarettes on the basis of the weighted average retail selling price need not to comply with the requirement of an overall excise duty of 60% of the weighted average retail selling price of cigarettes released for consumption set out in paragraph 1.

5. By way of derogation from paragraph 1, from 1 January 2030 until 31 December 2031 Member States shall ensure that excise duty rates are at least EUR 170 per 1 000 items inclusive of all taxes for cigarettes.

6. By way of derogation from paragraph 2, from 1 January 2030 until 31 December 2031 Member States which levy an excise duty of at least the Union rate of EUR 215 per 1000 cigarettes, on the basis of the weighted average retail selling price need not to comply with the requirement of an overall excise duty of 60% of the weighted average retail selling price of cigarettes released for consumption set out in paragraph 1.

7. By way of derogation from paragraph 2, Hungary need not to comply with the requirement of an overall excise duty of 60% of the weighted average retail selling price of cigarettes released for consumption set out in paragraph 1, provided that Hungary levies an excise duty of at least the Union rate of EUR 230 per 1000 cigarettes, adjusted in accordance with Article 12.

   This derogation shall apply from 1 January 2032 provided that the mandatory retail margin linked to the retail selling price account for at least 13% of the retail selling price of cigarettes.

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Article 16a

1. By way of derogation from Article 16, Member States that would need to increase their national excise duty rates for cigarettes by more than 2.35 % on average per year as of 1 January 2025 to comply with the provisions of Article 16 paragraphs 1 and 2 may decide to extend the time period set out in paragraphs 3 and 4 of Article 16 until 31 December 2031 and postpone and extend the time period set out in paragraphs 5 and 6 of Article 16 from 1 January 2032 until 31 December 2035.

2. Member States which decide to postpone or extend time periods in accordance with paragraph 1 shall notify the Commission in advance.

3. From 1 January 2036, the Member States who avail of the derogation set out in paragraph 1, shall ensure that the minimum excise duty rate applied is in accordance with the requirements of Article 16, as it would have been adjusted in accordance with Articles 12, 12a and 12b.

Article 17

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

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

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

Article 18

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

CHAPTER 5

PROVISIONS APPLICABLE TO MANUFACTURED TOBACCO OTHER THAN CIGARETTES

Article 19

Manufactured tobacco other than cigarettes produced in the Union or imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 20.

Article 20

1. Member States shall apply an excise duty to manufactured tobacco other than cigarettes which may be:

   (a) either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Union and by importers from third countries in accordance with Article 24; or

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(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.

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

2. The overall excise duty, expressed as a percentage, as an amount per kilogram or for a given number of items, shall be at least equivalent to the rates or minimum amounts laid down for:

(a)	cigars and cigarillos	:	30% of the retail selling price inclusive of all taxes or the Union rate of EUR 80 per 1000 items or per kilogram, adjusted in accordance with Article 12;
(b)	smoking tobacco		
(i)	fine-cut tobacco for the rolling of cigarettes	:	60% of the weighted average retail selling price of fine-cut tobacco for the rolling of cigarettes released for consumption, or the Union rate of EUR 180 per kilogram, adjusted in accordance with Article 12;
(ii)	other smoking tobacco	:	50% of the retail selling price inclusive of all taxes, or the Union rate of EUR 143 per kilogram, adjusted in accordance with Article 12;

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(c)	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;
(d)	heated tobacco	:	55% of the retail selling price inclusive of all taxes or the Union rate of EUR 240 per kilogram, or the Union rate of EUR 80 per 1000 items, adjusted in accordance with Article 12;
(e)	other manufactured tobacco	:	50% of the retail selling price inclusive of all taxes, or the Union rate of EUR 143 per kilogram, adjusted in accordance with Article 12.

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

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

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3(a). By way of derogation from paragraph 3, in the case of cigars and cigarillos, where an excise duty is either *ad valorem* or mixed, Member States may establish a different minimum amount of excise duty for cigars or cigarillos.

4. By way of derogation from paragraph 2, from 1 July 2028 until 31 December 2029 Member States shall ensure that excise duty rates are at least:

(i) 5% of the retail selling price inclusive of all taxes or the Union rate of EUR 12 per 1 000 items or per kilogram for cigars and cigarillos;

(ii) 50% of the weighted average retail selling price inclusive of all taxes or the Union rate of EUR 120 per kilogram for fine-cut tobacco for the rolling of cigarettes;

(iii) 20% of the retail selling price inclusive of all taxes or the Union rate of EUR 22 per kilogram for other smoking tobacco;

(iv) 20% of the retail selling price inclusive of all taxes or the Union rate of EUR 22 per kilogram for waterpipe tobacco;

(v) 45% of the retail selling price inclusive of all taxes or the Union rate of EUR 60 per 1 000 items or EUR 180 per kilogram for heated tobacco and

(vi) 0% of the retail selling price inclusive of all taxes or the Union rate of EUR 0 per kilogram 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:

(i) 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 50 per 1 000 items or per kilogram for cigars and cigarillos;

(ii) 55% of the weighted average retail selling price inclusive of all taxes or the Union rate of EUR 160 per kilogram for fine-cut tobacco for the rolling of cigarettes;

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(iii) 25% of the retail selling price inclusive of all taxes or the Union rate of EUR 71,5 per kilogram for other smoking tobacco;

(iv) 25% of the retail selling price inclusive of all taxes or the Union rate of EUR 54 per kilogram for waterpipe tobacco;

(v) 50% of the retail selling price inclusive of all taxes or the Union rate of EUR 70 per 1 000 items or EUR 210 per kilogram for heated tobacco, and

(vi) 25% of the retail selling price inclusive of all taxes or the Union rate of EUR 71,5 per kilogram for other manufactured tobacco.

Article 20a

1. Any Member State to which Article 16a applies may decide to extend the time period set out in paragraph 4 (ii) of Article 20 until 31 December 2031 and postpone and extend the time period set out in paragraph 5 (ii) of Article 20 from 1 January 2032 until 31 December 2035.

2. Member States who decide to postpone or extend time periods in accordance with paragraph 1 shall notify the Commission in advance.

3. From 1 January 2036, Member States who avail of the derogation set out in paragraph 1, shall ensure that the minimum excise duty rate applied is in accordance with the requirements of Article 20, as it would have been adjusted in accordance with Articles 12, 12a and 12b.

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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 24;

   (b) in the case of liquids for electronic cigarettes a specific duty expressed as an amount per millilitre;

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(c) in the case of nicotine pouches and other nicotine products a specific duty expressed as an amount per kilogram;

(d) a mixture of points (a) and (b), or points (a) and (c) accordingly, 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 whether they contain nicotine or not, shall be at least equivalent to the rates or minimum amounts laid down for:

(a) liquids containing no nicotine: 30 % 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;

(b) liquids containing nicotine: 30 % 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. By way of derogation from paragraph 2, from 1 July 2028 until 31 December 2029 Member States shall ensure that excise duty rates are at least 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,20 per millilitre.

4. 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 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,25 per millilitre.

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5. The overall excise duty on nicotine pouches and other nicotine products 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 50 per kilogram, adjusted in accordance with Article 12;

(b) other nicotine products: 50 % of the retail selling price including all taxes or the Union rate of EUR 80 per kilogram, adjusted in accordance with Article 12.

6. By way of derogation from paragraph 5, from 1 July 2028 until 31 December 2029 Member States shall ensure that excise duty rates are at least:

(a) nicotine pouches: 10 % of the retail selling price including all taxes or the Union rate of EUR 30 per kilogram;

(b) other nicotine products: 10 % of the retail selling price including all taxes or the Union rate of EUR 30 per kilogram.

7. By way of derogation from paragraph 5, from 1 January 2030 until 31 December 2031 Member States shall ensure that excise duty rates are at least:

(a) nicotine pouches: 25 % of the retail selling price including all taxes or the Union rate of EUR 40 per kilogram;

(b) other nicotine products: 25 % of the retail selling price including all taxes or the Union rate of EUR 50 per kilogram.

8. The rates or amounts referred to in paragraphs 1 to 7 shall apply for all products belonging to the group of tobacco related products concerned, without distinction within each group as to the quality, presentation, origin of the products, materials used, characteristics of the firms involved or any other criterion.

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CHAPTER 7

PROVISIONS APPLICABLE TO RAW TOBACCO

Article 23

Raw tobacco grown in the Union and imported from third countries shall be subject, in each Member State, to a minimum excise duty of EUR 0 per kilogram.

CHAPTER 8

DETERMINATION OF THE MAXIMUM RETAIL SELLING PRICE OF MANUFACTURED TOBACCO AND TOBACCO RELATED PRODUCTS

Article 24

1. Manufacturers or, where appropriate, their representatives or authorised agents in the Union and importers of manufactured tobacco and tobacco related products from third countries shall be free to determine the maximum retail selling price for each of their products for each Member State for which the products in question are to be released for consumption.

   The first subparagraph may not, however, hinder implementation of national systems of legislation regarding the control of price levels or the observance of imposed prices, provided that they are compatible with Union legislation.

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2. In order to facilitate the levying of the excise duty, Member States may, for each group of manufactured tobacco and tobacco related products, fix a scale of retail selling prices on condition that each scale has sufficient scope and variety to correspond in fact with the variety of products originating in the Union.

Each scale shall be valid for all the products belonging to the group of manufactured tobacco and tobacco related products which it concerns, without distinction on the basis of quality, presentation, the origin of the products or of the materials used, the characteristics of the undertakings or of any other criterion.

CHAPTER 9

COLLECTION OF EXCISE DUTY, EXEMPTIONS AND REFUNDS

Article 25

1. Where they collect the excise duty by means of tax stamps, Member States shall be obliged to make those stamps available to manufacturers and dealers in other Member States. Where they collect the excise duty by other means, Member States shall ensure that no obstacle, either administrative or technical, affects trade between Member States on that account.

2. Importers and Union manufacturers of manufactured tobacco and tobacco related products shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.

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Article 26

1. Where Member States apply excise duty on raw tobacco, they shall refund an amount of excise duty that has been paid for raw tobacco used to produce manufactured tobacco.

   Member States shall determine the conditions and formalities to which the refunds are subject.

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

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

   (b) manufactured tobacco, tobacco related products and raw tobacco which are destroyed under administrative supervision;

   (c) manufactured tobacco and tobacco related products which are solely intended for scientific tests and for tests connected with product quality;

   (d) manufactured tobacco and tobacco related products which are reworked by the producer.

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

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CHAPTER 10

FINAL PROVISIONS

Article 27

1. The Commission shall publish once a year the value of the euro in national currencies to be applied to the amounts of the overall excise duty.

   The exchange rates to be applied shall be calculated as the average exchange rate of the business days between 1 January and 30 June. Those average exchange rates shall be published by the European Commission in the *Official Journal of the European Union* and shall have effect from 1 January of the following calendar year.

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

Article 28

1. By 31 December 2032 and every 5 years thereafter, the Commission shall submit to the European Parliament and the Council a report on the application of this Directive.

   The report by the Commission shall examine levels of taxation taking into account the proper functioning of the internal market, public health, the real value of the rates of excise duty, the effect of applying harmonised movement and control requirements to inclusion of raw tobacco in the EMCS to counteract illicit trade, 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.

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Member States shall, upon request, submit to the Commission available information needed to prepare the report, including the statistical data needed to support an assessment of the magnitude of lost excise revenue each year on their territory due to non-compliance.

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 without undue delay review this directive, taking into account the future revision of Directive 2014/40/EU (Tobacco Products Directive).

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 is deleted]

Article 31

1. Member States shall adopt and publish, by 30 June 2028, the laws, regulations and administrative provisions necessary to comply with Article 1, Article 2(1), points (d), (e) and (f), Article 2(2) to (6), Article 4(1), point (a), Article 4(3), Articles 6 to 12, Articles 16 and 17, 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.

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They shall apply those measures from 1 July 2028.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to the Directive repealed by this Directive shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

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

Article 32

Directive 2011/64/EU is repealed with effect from 1 July 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, to Directive 2011/64/EU.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in the Annex.

Article 33

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

Article 2(1), points (a) to (c), Article 3, Article 4(1), point (b), Article 4(2), Article 5, Articles 13, 14, 15 and 17, Article 19, Article 20(1), points (a) and (c), Article 20(3), Article 25(1), Article 27 and Article 28(2) shall apply from 1 July 2028.

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Article 34

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

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