



EUROPEAN
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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**

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

Council Directive (EU) 2020/262¹ (hereinafter ‘the Directive’) sets out general arrangements for goods subject to excise duty, with particular emphasis on the production, storage and movement of excise goods between Member States. The Directive has replaced Council Directive 2008/118/EC². The main objective of the Directive is to allow goods to circulate freely within the EU while also ensuring that the correct tax debt is collected by the Member States.

This technical amendment to the Directive stems from the revision of Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco³. The context of this initiative is set out comprehensively in the explanatory memorandum for the proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products⁴. The draft proposal would revise Council Directive 2011/64/EU by better aligning the taxation of tobacco and tobacco related products with health objectives and adapt to new developments and market trends, by introducing harmonised excise duty taxation rules for new products (such as heated tobacco products, liquids for electronic cigarettes and other nicotine containing products) and raw tobacco.

The proposal to amend the Directive is required to bring legal certainty and ensure that general arrangements for excise duty will also be applicable to the newly defined tobacco and tobacco related products and to raw tobacco.

• Consistency with existing policy provisions in the policy area

The proposal carries forward the objectives of the Directive, namely, to ensure the smooth functioning of the internal market and to ensure effective taxation.

• Consistency with other Union policies

The revision of the Directive is consistent with the proposed revision of Council Directive 2011/64/EU which has the same objectives as that Directive, namely, to ensure the proper functioning of the internal market and an efficient excise administration.

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)⁵. This article provides for the Council, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic

¹ [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. 4–42.

² [Council Directive 2008/118/EC](#) of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC, OJ L 9, 14.1.2009, p.12-30.

³ [Council Directive 2011/64/EU](#) on the structure and rates of excise duty applied to manufactured tobacco, OJ L 176, 5.7.2011, p. 24–36.

⁴ Please include reference when available.

⁵ Consolidated version of the [Treaty on the Functioning of the European Union](#), OJ C 326, 26.10.2012, p. 47–390.

and Social Committee, to adopt provisions for the harmonisation of Member States' rules in the area of indirect taxation.

- **Subsidiarity (for non-exclusive competence)**

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 TFEU, the objectives of the proposal cannot be sufficiently achieved by Member States alone and can therefore be better achieved at Union level.

- **Proportionality**

This proposal complies with the principle of proportionality as set out in Article 5(4) TFEU. The proposed amendments do not go beyond what is necessary to address the issues at stake and to ensure that the internal market functions properly and effectively.

- **Choice of the instrument**

The proposal is a Directive.

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

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

Changes to the Directive are required following the changes proposed in the revision of Council Directive 2011/64/EU, including the extension of the scope of that Directive to cover new products and raw tobacco. The proposed revision of Council Directive 2011/64/EU has already undergone an evaluation process, which is extensively presented in the explanatory memorandum of the proposal to amend Council Directive 2011/64/EU.

- **Stakeholder consultations**

Extensive information on stakeholder consultations is provided in the explanatory memorandum of the proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products.

The consultation strategy for the revision of the Council Directive 2011/64/EU sought to gather feedback from stakeholders on the application of the current rules on the structures of excise duty applied to manufactured tobacco products, on the need to upgrade the EU regulatory framework and to get their views on possible changes.

- **Collection and use of expertise**

The collection and use of expertise is set out comprehensively in the explanatory memorandum of the proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products.

- **Impact assessment**

The impact assessment is provided in the explanatory memorandum of the proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products.

- **Regulatory fitness and simplification**

Extensive information on Regulatory fitness and simplification is provided in the explanatory memorandum of the proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products.

- **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**

An implementation plan is not necessary as this proposal is a technical amendment.

Proposal for a

COUNCIL DIRECTIVE

amending Directive (EU) 2020/262 as regards the general arrangements for excise duty in respect of tobacco and tobacco related products

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament¹,

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

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Council Directive (EU) 2020/262³ lays down general arrangements for excise duty levied on the consumption of certain excise goods, including manufactured tobacco covered by Council Directive 2011/64/EU⁴. Directive 2011/64/EU, which established the structure and rates of excise duty of manufactured tobacco, has been replaced by Council Directive (EU) XX/XXX [*OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive*]⁵ with effect from 1 January 2028. Directive (EU) XX/XXX [*OP please insert number and year of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive*] covers a number of new products functioning as substitutes for manufactured tobacco, containing tobacco or nicotine, and raw tobacco. Consequently, the list of excise goods to which Directive (EU) 2020/262 applies should also cover all those products.
- (2) To ensure the detection of irregularities and potential diversions, supply-chain operations for raw tobacco should be subject to the control and movement requirements of Council Directive (EU) 2020/262. Given the burden it would represent for small growers and the limited risk of fraud, Member States should

¹ OJ C , , p. .

² OJ C , , p. .

³ Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty (OJ L 58, 27.2.2020, p. 4, ELI: <http://data.europa.eu/eli/dir/2020/262/oj>).

⁴ Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ L 176, 5.7.2011, p. 24, ELI: <http://data.europa.eu/eli/dir/2011/64/oj>).

⁵ Council Directive XX/XXX [*OP please insert number and year and OJ reference of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive*].

exempt tobacco growers, their organisations and associations from the control and movement requirements, provided they are not involved in the transformation of cured or dried tobacco into processed tobacco.

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

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

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

the following Article is inserted:

‘Article 50a

Tobacco growers, their organisations and associations

Member States shall exclude tobacco growers, their organisations and associations from the requirements of Articles 14 to 21, 24 to 28, 30 to 31, 33 to 47 and from the other requirements relating to excise duty chargeability, provided that they are not involved in the transformation of cured or dried tobacco into processed tobacco.’

* Council Directive XX/XXX [OP please insert number and year, OJ reference and ELI of the Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products adopted the same day as this Directive].’

Article 2

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

They shall apply those provisions from 1 January 2028.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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

Article 3

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

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

*For the Council
The President*