

Submission to the consultation on the European Commission's proposal for revising the EU Tobacco Excise Directive

We appreciate the Commission's recognition of emerging nicotine product categories and their inclusion in the European Commission's proposal for revising the EU Tobacco Excise Directive (the 'TED'), adopted on 16th July 2025.

There are, however, several serious flaws in the proposal.

First, the proposed increases to existing minimum duty rates are excessive and would be disproportionately harmful to Member States in the eastern and southern regions of the EU.

Second, the proposal critically fails to reflect the reduced risk profile of heated tobacco, e-cigarettes and nicotine pouches when compared to combustible tobacco, such as traditional cigarettes; a glaring omission given the purpose of the Directive is to promote a high level of health protection in addition to ensuring the proper functioning of the Internal Market.

Third, the approach proposed for heated tobacco and vapour products is overly complex. It would bring an unnecessary burden and cost to Member States in the administration of the taxes on those products.

And, last but very much not least, the Commission's proposal would, in several areas, significantly infringe on the sovereignty of Member States to retain the right to set taxes as they see fit in their own countries. To address these shortfalls, material revisions to the current proposals are needed.

The Tobacco Excise Directive (the 'TED') defines and classifies various traditional tobacco products, such as cigarettes, and lays down the relevant minimum rates and structural requirements Member States must abide by in their national legislation.

Its purpose is to ensure the proper functioning of the Internal Market and a high level of health protection.

The European Commission adopted a proposal for a recast of the TED on 16th July 2025.

There are several fundamental flaws in the European Commission's proposal for revising the TED.

The proposal will, as such, require substantial revisions before it is enacted:

1. Tax rates do not need to be equalised across the EU to enable the effective functioning of the Internal Market.
2. The minimum excise duty on cigarettes proposed by the Commission, of €215 per 1,000 pieces, is excessive. It will damage excise revenues in several Member States. It would substantially increase the risk of a massive increase in illicit tobacco from outside the EU. And it would infringe the sovereign right of Member States in the east and south of the EU to set domestic excise duty rates at an appropriate level.
3. The proposal to increase the minimum excise incidence on cigarettes from 60% to 63% will make no positive contribution to harmonizing excise rates across Member States. The minimum excise incidence requirement on cigarettes should either be kept at 60% or, better still, dropped from the TED entirely.
4. The proposal to adjust the increased excise rates by only a third of each Member State's cost of living index is arbitrary and, consequently, fundamentally flawed. Excise rates should be either adjusted *in full* for each country's relative purchasing power (with individual Member States being able to opt out of the adjustment), or no PPP adjustment should be made at all.

5. We support the Commission's proposal for a harmonized excise on heated tobacco¹, vapour products² and nicotine pouches. But the rates should reflect the reduced risk profile of these products compared to combustible tobacco.
6. While we support the Commission's proposal for a harmonized excise for heated tobacco in the EU, the proposal for the minimum excise to be levied per KG or per stick or as a percentage of the price is unduly complicated. It would be much simpler to impose a minimum excise only on the weight of tobacco in the product, at €110 per KG.
7. A harmonized excise for vapour products is needed in the EU. However, the Commission's proposal for excise rates to be tiered by nicotine strength is unenforceable in practice, will lead to unjustifiable complexity in excise administration, and will create an additional illicit vapour problem in the EU.
8. The Commission's proposal for a minimum excise for nicotine pouches of €143 per KG is excessive. It fails to take proper account of the reduced risk profile of this product compared to combustible tobacco. And, critically, it would overrule the sovereign right of Member States – including Sweden, the EU's most successful country in achieving a smokefree status – to set excise rates in a way they consider appropriate to continue to achieve their policy objectives.
9. The proposed product definitions are vague and open to interpretation. They would, if included in EU legislation, create legal uncertainty for economic operators. This ambiguity would, in turn, create a material risk of an inconsistent excise treatment of the same products by customs and excise authorities across different Member States.
10. We recognise the importance of implementing a monitoring system to improve oversight of raw tobacco flows. However, the definition proposed by the Commission is ambiguous. To effectively differentiate between green leaf (which should not be subject to a harmonized monitoring system) and semi-processed tobacco (which should be monitored), the different forms of semi-processed tobacco should be clearly defined. Additionally, no minimum excise requirements should be established solely for the purpose of monitoring raw tobacco flows.
11. The delegated powers to the Commission should either be deleted or be limited to non-essential elements of the Directive (i.e. inflation adjustments mechanism only) in line with Article 290 of the Treaty on the Functioning of the European Union ('TFEU').
12. The Commission fails to assess the impact of its proposal on a range of stakeholders in its Impact Assessment, such as retailers and tobacco growers.

In the rest of this document, we provide further details to explain each of these points.

¹ Throughout this submission, 'heated tobacco' means tobacco (or reconstituted tobacco) that is heated (other than via a waterpipe) to produce an emission containing *inter alia* nicotine which, given its properties and normal consumer expectations, is intended to be inhaled by user(s) without any combustion process. Products which consist in part of substances other than tobacco but otherwise fulfil these criteria would also be treated as tobacco for heating in the context of the TED. This is aligned to the approach currently taken for cigarettes and fine cut tobacco in the TED.

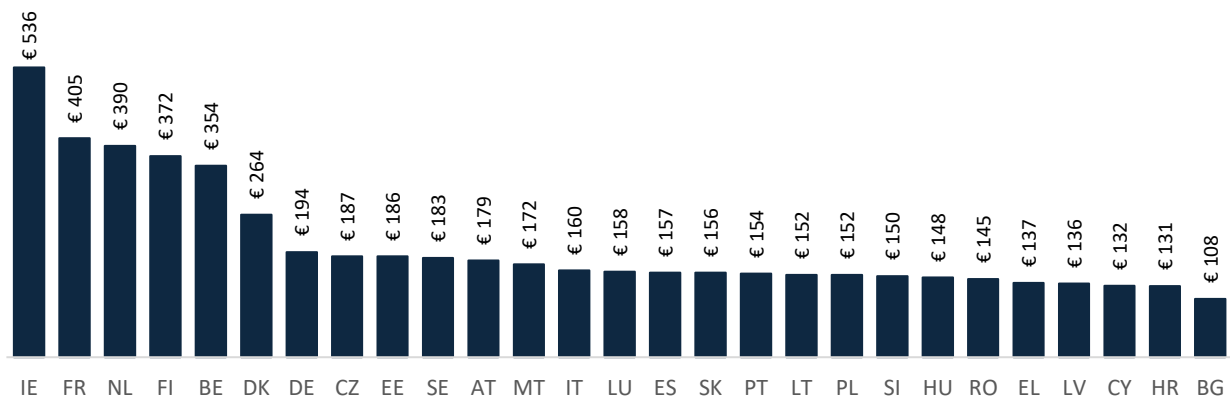
² Throughout this submission, we use the terms 'e-cigarettes' and 'vapour products' interchangeably, in line with common descriptions of these products.

1. It must be recognised that tax rates do not have to be equalised across the EU to enable the effective functioning of the Internal Market.

The European Commission thinks that a large increase in the minimum excise rates on cigarettes and other tobacco products is needed to facilitate convergence in the tax rates applied in Member States.

However, differences in the taxes on products and services between Member States are not a sign that the Internal Market is not functioning properly. There is no doubt, as shown in Figure 1, that the excise on cigarettes currently varies considerably across EU Member States.

Figure 1 – Average cigarette excise burden across the EU, based on the average price of cigarettes

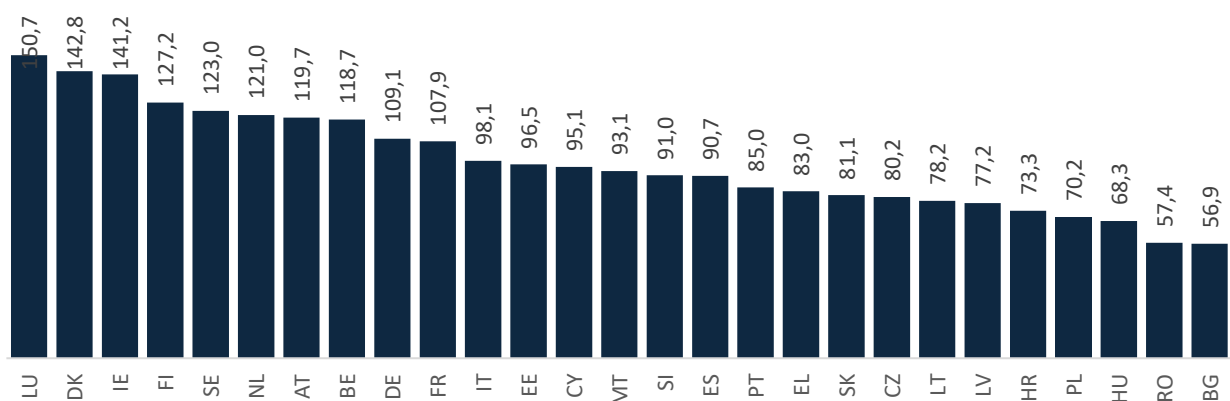


Source: European Commission's Taxes in Europe Database, October 2025

Because of these cross-border tax differences, the average price of cigarettes in Ireland is c.160% higher than the EU average (€207 per 1,000 units), whilst cigarette prices in Bulgaria are c.50% lower than the EU average. However, this is not a signal that the Internal Market is somehow failing to operate effectively or that tobacco taxes are interfering with its effective operation.

Critically, cigarette prices and taxes vary across EU Member States in much the same way as the prices of all consumer goods and services and the taxes levied on them. For example, Eurostat³ reports that the price levels of consumer goods and services in Denmark are 43% higher than the EU average, whilst the prices of all consumer goods and services in Poland are 30% lower than the EU average.

Figure 2 – Comparative price levels of consumer goods and services in the EU (EU=100)



Source: Comparative price levels of consumer goods and services, Eurostat, October 2024.

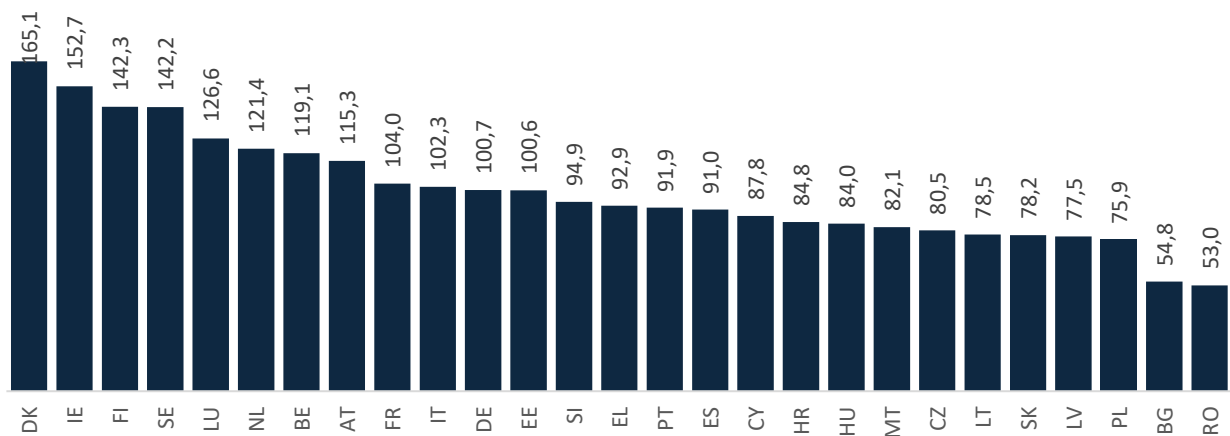
³ Eurostat, Oct 2024, Comparative price levels of consumer goods and services (https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Comparative_price_levels_of_consumer_goods_and_services#Overall_price_levels).

Differences in income levels and economic conditions across EU Member States can be – and, indeed, are – reflected in large differences in prices of goods and services. These price differences across EU Member States in *no way* undermine the effective operation of the EU Internal Market. Rather, it demonstrates how a competitive and well-functioning EU Internal Market does not require the price of *any* goods or services to be equalised across EU Member States.

It follows that with such large differences in the price of goods and services throughout the EU Internal Market, ***there is no reason for taxes to be equalised across the EU either.***

In Figure 3, we apply the current standard VAT rates in each EU Member States to Eurostat’s comparative price levels of consumer goods and services. This calculation provides an estimate of how the VAT levied on the consumer goods and services typically bought in each EU Member States varies.

Figure 3 – Index of PLI adjusted VAT rates on consumer goods and services in the EU



Source – Calculated by applying current standard VAT rates as reported by the European Commission to Eurostat’s October 2024 comparative price levels of consumer goods and services, EU average = 100.

It is clear from this chart that there is substantial variation in the VAT paid on consumer goods and services typically bought in each EU Member States, as well as variation in the price of products and services across countries.

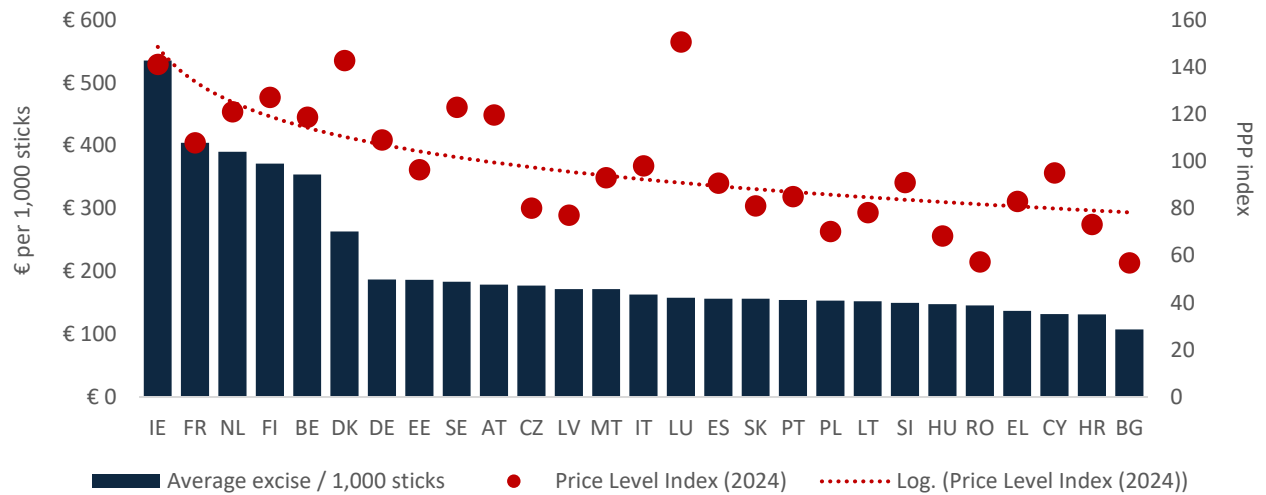
Given current price and VAT rate differentials across EU Member States, people in Denmark pay 65% more VAT (in Euros) for the goods and services they purchase than the EU average. People in Romania, in contrast, pay 47% less VAT in Euros for the goods and services they purchase than the EU average.

The variation in the VAT burden on different EU Member States does not mean that certain countries (especially those in Eastern Europe) somehow ‘under-tax’ goods and services compared to other EU countries. Neither is it an indication that there is a problem with the effective operation of the EU Internal Market. Rather, it is simply a reflection that *differences in the prices of goods purchased across an economic union, and the taxes levied on them, is entirely consistent with a properly functioning Internal Market.*

We should not, then, be in any way surprised to observe a similar pattern when it comes to cross-country differences in cigarette prices and taxes across the EU Member States. In short, *there is no economic rationale for the excise burden on tobacco products in nominal terms to be equalised across the EU.*

As Figure 4 shows, there is a strong positive correlation between the excise yield on cigarettes and the average price levels of consumer goods and services in the EU.

Figure 4 – There is a strong positive correlation between the excise yield on cigarettes and the average price levels of consumer goods and services in the EU

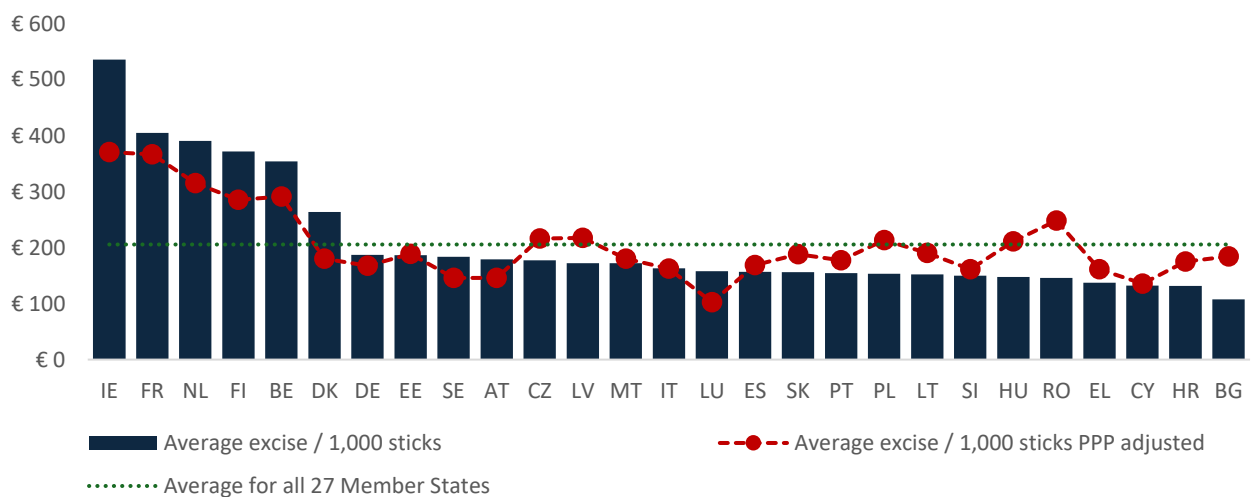


Source: European Commission's Taxes in Europe Database, October 2025; PPP index based on Eurostat's October 2024 comparative price levels of consumer goods and services.

Cigarette taxes and prices tend to be higher in countries which the price of all products and services are higher. And cigarette taxes and prices tend to be lower in the countries in which the price of all products are services are lower.

Figure 5 shows the same information as in Figure 4 but with PPP adjusted, average excise rates.

Figure 5 – Comparison between nominal and PPP adjusted cigarette excise rates in the EU



Source: European Commission's Taxes in Europe Database, October 2025; PPP index based on Eurostat's October 2024 comparative price levels of consumer goods and services.

It is apparent that:

- when cigarette excise yields are PPP adjusted to account for cross-country differentials in the price of all goods and services⁴, the excise on cigarettes in the Eastern European countries is in line with the EU average); and
- even after a PPP adjustment, there remains a minority of countries – notably, Ireland, Netherlands, France, and Finland – that set excise rates *well above* the rates set by most other EU Member States (and, in doing so, substantially distort the EU average).

The evidence demonstrates that because differences in incomes and other socio-economic factors between EU Member States result in large cross-country price differentials for *all* consumer goods and services, there is no economic rationale for the excise burden on cigarettes in Euros, or their prices, to be equalised across the EU.

It is critical, in light of the fundamental economics of indirect taxation in the EU, and what this means vis-à-vis the operation of the Internal Market, that the Commission's proposed revisions to the TED respects the sovereignty of Member States to retain the right to set taxes as they see fit in their own country.

In particular, it is essential that:

1. the power to tax remains primarily in the hands of the Member States;
2. EU tax policy is geared only towards the smooth running of the Internal Market and reflects the evidence shown above – otherwise, the power to introduce, remove or adjust taxes must remain in the hands of the Member States and provided it complies with EU rules, each Member State should be free to choose the tax system it deems most appropriate;
3. there should be no requirement that the level of taxes (i.e. tax rates) should be equalised across the EU (since this is, in no way, required to facilitate the effective functioning of the Internal Market);
4. there should not be a policy of upwards harmonization policy of the duties on tobacco and alcoholic products, through the constant raising of minimum taxation levels – it is not appropriate for the highest taxed Member States to demand that lower income Member States increase their taxes to keep up with the likes of Ireland, France, the Netherlands, Finland and Belgium; and
5. differing policies regarding the setting of levels of duties do not in themselves constitute a barrier to the internal market.

2. The minimum excise duty on cigarettes proposed by the Commission – of €215 per 1,000 pieces – is excessive. An increase to €155 per 1,000 cigarettes would be more acceptable.

Consumers in lower income Member States in the east and south of the EU would be especially hard hit by the Commission's proposal.⁵

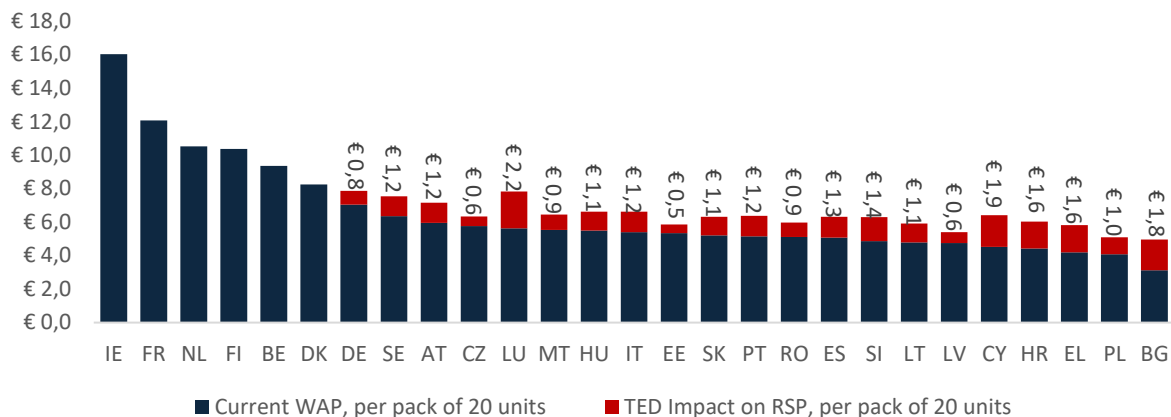
Workers in Bulgaria earn two-thirds less than the EU average wage. The average salary of employees in Greece, Hungary, Poland, Romania and Slovakia is less than half of what the typical EU worker earns. And Czechian, Estonian, Croatian, Latvian and Portuguese consumers earn thirty to forty per cent less than the EU average.

In stark contrast, consumers in higher income countries can earn more than double the European average.

⁴ Which is generally aligned to differences in income levels and other economic conditions between Member States.

⁵ This analysis assumes full tax pass-through to estimate the impact of excise changes on EU prices. The analysis uses official EU data at an aggregate level and is for analytical purposes only - [Taxes in Europe Database v4 - Search Tax \(Simple\)](#). It does not reflect any manufacturer's future pricing intentions or any other change other than tax impact. .

Figure 6: TED impact on current cigarette prices if the min. excise on cigarettes is increased to €215 per 1,000 units, with a partial 1/3 PPP adjustment



Source: European Commission's Taxes in Europe Database (WAP refers to year 2024) and BAT estimates (see footnote).

The Commission's proposal is an excessive increase in tax rates that will place unnecessary strain on millions of EU consumers at a time they are still recovering from the cost-of-living crisis triggered by spiralling global food and energy prices.

An increase to €155 per 1,000 cigarettes – in line with figures in the Commission's own calculations – would be far more acceptable to the less affluent Member States in the east and south of the EU, and their consumers. These EU countries must be allowed to continue to set domestic excise duty rates at a level appropriate to their own economic and social conditions.

It is *wrong* for higher income EU countries to attempt to infringe the sovereign right of lower income countries and force them to align to tax rates suitable for consumers in the west of Europe with much higher household income levels. It is not the purpose of the Internal Market or the Tobacco Excise Directive to force all other Member States to catch up with countries that have increased their own excise duty rates so rapidly that they have become out of step with the majority of the EU. A more balanced, and fair, approach to the TED revision is called for.

Not only that, the proposed minimum excise on cigarettes would certainly fail to deliver the extra tax revenues projected by the Commission. This is, not least, because its forecasts are based on erroneous assumptions that contradict not only the analysis undertaken by its own economic consultants, but also the evolution of tax revenues since the TED was last revised.

The Commission proposal has suggested that the proposed increase in the minimum rates would generate €13.9 billion in additional revenue.

The key parameter underpinning this calculation is the Commission's assumption about 'the price elasticity of demand' (or 'PED') for cigarettes⁶.

The Commission's calculations are based on a flawed assumption about the PED for cigarettes in the EU.

⁶ The own-price elasticity of demand for a product is defined as: the percentage change in demand for product X divided by the percentage change in the price of product X. Since demand tends to fall when prices rise, the own-price elasticity of demand for any product or service can be expected to be a negative number. When the own-price elasticity is between zero and minus one, the product is said to be price inelastic – that is, demand is relatively unresponsive to price. For example, an own-price elasticity of minus zero point five means that a 10% increase in price would lead to a 5% reduction in demand, all else equal. When the own-price elasticity is below minus one, the product is said to be price elastic – that is, demand is relatively responsive to price. For example, an own-price elasticity of minus two means that a 10% increase in price would lead to a 20% reduction in demand, all else equal. The price elasticity of demand for cigarettes is, therefore, a key parameter for understanding whether a tax rate increase on cigarettes is likely to increase in tax revenues.

The Commission's economic impact assessment estimated⁷ that the PED for *the tobacco market as a whole in the EU* is around -0.54. This was based on an econometric study by Economisti Associati, apparently bolstered by a review of several external papers.

This price elasticity estimate was used to calculate the likely economic impact of the Commission's proposed increase in the minimum excise on *cigarettes*.

But this is flawed for several reasons.

The -0.54 estimate relates to tobacco products as a whole, *not* to cigarettes. Economisti Associati modelled the demand for cigarettes as part of a wider study of tobacco demand.⁸ They report estimates of the PED for *cigarettes* in the EU range between -0.962 and -1.093.⁹ Using an estimate PED of -0.54 will inevitably, therefore, *substantially overstate* the positive revenue impact of the EC proposal.

In addition, with a PED of -0.54 it fails to reflect the evolution of the EU cigarette market since the TED was last revised.

As reported by a recent paper by Frontier Economics '*The price elasticity of demand for cigarettes in the EU*', the EC's own data show that a total of €64.9 billion in excise revenues was generated from the sale of 548 billion cigarettes across the whole of the EU in 2011. In 2023, €70.0 billion of excise revenues were collected from a much smaller 393 billion cigarettes sold.

On the face of it, 7% more excise revenues were collected in 2023 than they were a decade before but from 29% fewer cigarettes sold.

But it is well accepted good practice to look at any economic data in 'real terms' i.e. by adjusting prices and revenues for inflation. When this adjustment is made, EU cigarette excise revenues, in fact, fell in real terms by around 20% between 2011 and 2023. The 29% decline in the number of cigarettes released for consumption between 2011 and 2023 more than offset the increase in the average excise on cigarettes (in real terms).

It would, then, appear counterintuitive to assume that cigarette demand in the EU is price inelastic. Consistent with the Economisti Associati estimate of the PED for *cigarettes* in the EU of between -0.962 and -1.093.

The Commission's Impact Assessment, therefore, massively overestimates the additional tax revenues that would be collected from its proposed increase in the minimum excise on cigarettes. If the evolution of tax revenues since the last revision of the TED is repeated – which followed a smaller tax hike than the one currently being proposed – Member States will lose tax revenues, not find their tax revenues increases by over €13.9 bn annually.

This is, not least, because the Commission's proposed massive tax increases on cigarettes would elevate the risk of a significant increase in illicit trade from outside the EU. A new KPMG report finds that one in ten cigarettes consumed in the EU are counterfeit or contraband, evading domestic duties in the Member States in which they are consumed, costing €15 billion in lost tax revenues. The Commission's proposal would make this situation even worse.

For all these reasons, we consider the evidence strongly shows that minimum excise duty on cigarettes proposed by the Commission – of €215 per 1,000 pieces – is excessive.

⁷ Volume 1 of the European Commission's study on revising the Tobacco Excise Directive published in 2019.

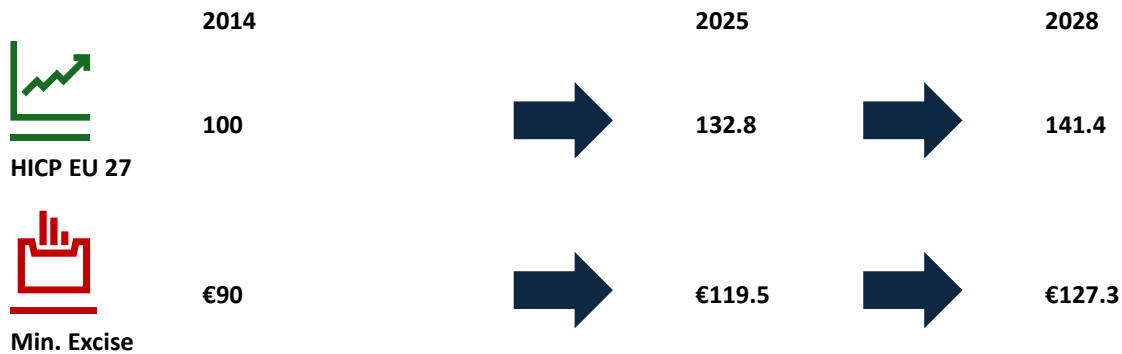
⁸ European Commission (January 2019) – 'Study on Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, Final Report, Volume 3 – Annexes'.

⁹ Depending on the model specification used, Economisti's reported estimates of the price elasticity of demand for tobacco products in the EU range between -0.39 and -0.64 instead.

An increase to €155 per 1,000 cigarettes would be more acceptable given prevailing economic conditions in the Member States.

Between January 2014 and the time of writing, consumer prices have increased by c.33% (as measured by Eurostat's Harmonised Index of Consumer Prices, or 'HICP', for all items) for the EU 27 Member States¹⁰.

If the minimum excise on cigarettes of €90 per 1,000 units that became applicable on January 2014 were increased in line with the price of all goods and services in the EU, then the rate at the time of writing would be just under €120 per 1,000 units.



Source: Eurostat and EU Central Bank.

According to the Commission's proposed timetable, it will not be until 2028 that any new minimum excise on cigarettes becomes applicable¹¹. Consumer prices in the EU will continue to go up between now and then. Assuming consumer prices in the EU rise in line with the European Central Bank's projections for the euro area¹², then adjusting the minimum excise on cigarettes by inflation would result in a rate of around €127 per 1,000 units.

Therefore, setting the minimum excise on cigarettes of €155 per 1,000 units would *more than* fully adjust for the increase in prices between January 2014, when the last EU minimum excise rate was implemented, and the time at which the new rate is intended to come into force.

It would do so in a way that places less stress on those Member States (especially in the east and south of the EU) with lower excise rates now, and with greater risk of illicit trade from outside the EU.

But, at the same time, it will continue to allow those Member States that already levy a higher excise to exercise their fiscal sovereignty by setting higher rates if they so wish.

This would represent a fair approach, aligned to the effective operation of the Internal Market (the fundamental objective of the TED itself).

¹⁰ Eurostat, All-items HICP, HICP - monthly data (index) [PRC_HICP_MIDX_custom_3381903] data.

¹¹ The European Commission's proposal was published in December 2022. However, as with all Tax Directives in the EU, the Commission's proposal must be agreed unanimously by all 27 Member States. In the previous revision to the TED, after the Commission made its proposals in July 2008, it took a further two-and-a-half years for the Member States to unanimously agree on the final document and for it to then be transposed into domestic law.

¹² https://www.ecb.europa.eu/pub/projections/html/ecb.projections202209_ecbstaff~3eafaaee1a.en.html#toc7 for the period 2022 to 2024 and then assuming that HICP inflation reverts to the 2% target thereafter.

3. The Commission's proposal to increase the minimum excise incidence on cigarettes from 60% to 63% will make no positive contribution to harmonizing excise rates across Member States.

The Commission proposed increasing the minimum excise incidence from 60% to 63% of the price of cigarettes.

However, the evidence clearly shows that setting a minimum excise incidence plays absolutely no role in facilitating tax harmonization in the EU.

Some countries with a similar excise incidence have a fundamentally different excise per cigarette in Euros. Both Ireland and Greece have an excise incidence of c.66% of the price of cigarettes, on average. But Ireland's excise per cigarette in Euros is four times higher than it is in Greece.

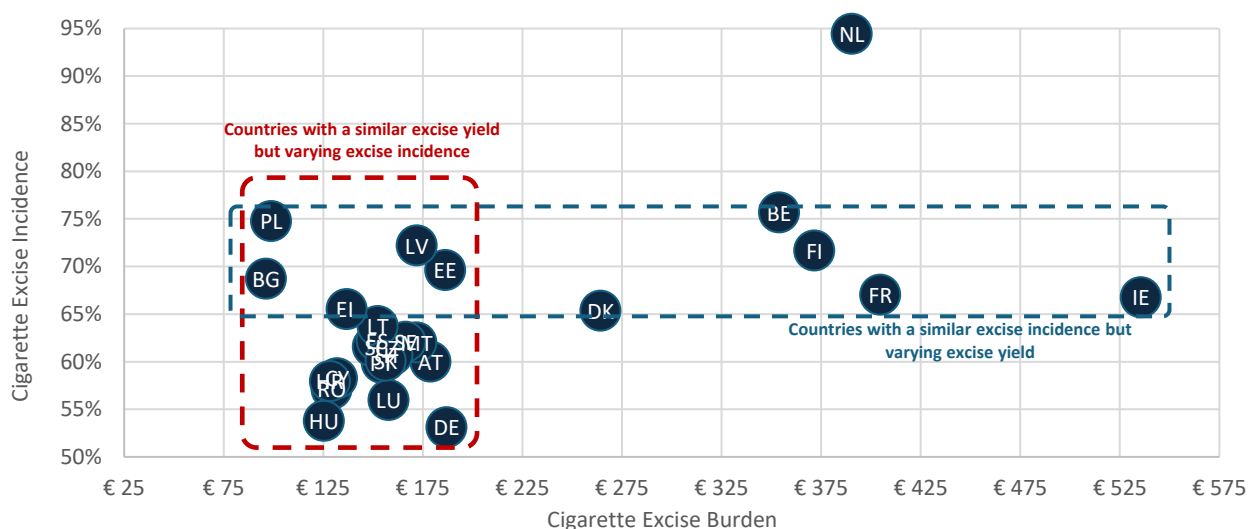
Aligning excise as a % of the retail price plays no part in harmonising taxes paid in currency terms.

Similarly, there is a group of countries with similar levels of cigarette excise in Euros but with very large differences in the excise when expressed as a percentage of the retail price.

There is, in short, no compelling rationale for maintaining a minimum excise incidence at all.

Increasing the minimum excise on cigarettes will, thus, play absolutely no role in harmonising excise across the Internal Market.

Figure 7: There is no relationship between the excise incidence and excise yield on cigarettes



Source: EU Commission Excise Duty Tables for Manufactured Tobacco

The Commission's proposed increase from 60% to 63% will, however, have a disproportionate negative impact on Germany, Hungary, Luxembourg, Sweden, Cyprus and Croatia, forcing them to substantially change their existing fiscal policies on tobacco products (with no corresponding benefits arising from making them do so).

This *cannot* be justified and minimum excise incidence requirement for cigarettes should be either removed from the TED or retained at the current 60% level.

4. The Commission's proposal to adjust the increased excise rates by a third of each Member State's cost of living index is fundamentally flawed. Excise rates should be either adjusted in full for each country's relative purchasing power (with individual Member States being free to opt out of the adjustment), or no PPP adjustment should be made at all.

The Commission acknowledges that the massive increase in excise rates it has proposed would disproportionately hit lower income Member States in the east and south of the EU.

To compensate, it has also proposed that the minimum excise duties in the TED should be adjusted by a third of each Member State's cost of living index.

But this proposal is fundamentally flawed and does not go far enough.

It would not – by a long way – address the problem of lower income Member States being disproportionately affected by the increase in cigarette excise duties. Countries including Bulgaria, Greece, Hungary, Poland, Romania, Slovakia, Czechia, Lithuania, Estonia, Croatia, Slovenia, Spain, Italy and Portugal would still be forced to implement massive tax increases that would damage tax revenues and accelerate an illicit trade problem.

There are two choices that, in principle, would make logical and economic sense.

One, that EU minimum rates applicable in each Member State are adjusted in full for that country's purchasing power.

The other, there is no PPP adjustment and EU minimum rates are set at a level that is appropriate for all Member States (including those in the east and south of the EU with lower incomes and price levels).

Both approaches have an economic logic. We have a preference for the second approach, of no adjustment and the right minimum rates to be set, since a full PPP adjustment would introduce unnecessary administrative complexity and uncertainty.

5. We support the Commission's proposal for a harmonized excise on heated tobacco, vapour products and nicotine pouches. But the rates should reflect the potential reduced risk of these products compared to combustible tobacco.

Any amendments to the Directive should reflect how certain emerging alternative tobacco and nicotine products potentially have a reduced risk compared to traditional combustible tobacco products.

The Commission's current proposed rates fail to reflect this concept for heated tobacco, vapour products and non-tobacco nicotine pouches, all of which have a potentially reduced risk compared to combustible tobacco.

While heated tobacco, e-cigarettes and nicotine pouches are not risk-free, they are increasingly considered less risky than combustible cigarettes based on the weight of evidence and assuming a complete switch from cigarette smoking.

The primary harm from combustible cigarettes arises from the toxicants in the smoke produced when tobacco is burned, not the nicotine.^{13, 14, 15, 16, 17}

Nicotine products which do not involve combustion are associated with a reduction in risks compared to combustible cigarettes. This reduction in comparative risk underscores the potential of these products as effective tools in tobacco harm reduction, aiming to reduce the future incidence of tobacco-related morbidity and mortality at a population level for adult smokers who switch completely to smokeless products.¹⁸

¹³ U.S. Department of Health and Human Services, The Health Consequences of Smoking: A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2004. Available at: <https://www.ncbi.nlm.nih.gov/books/NBK44695/> (Accessed: 20 October 2025)

¹⁴ U.S. Food & Drug Administration, Nicotine is Why Tobacco Products are Addictive. Available at: <https://www.fda.gov/tobacco-products/health-effects/tobacco-use/nicotine-why-tobacco-products-are-addictive> (Accessed: 20 October 2025)

¹⁵ Royal College of Physicians, Nicotine without smoke: Tobacco harm reduction. London: RCP, 2016. Available at: https://www.drugsandalcohol.ie/25448/1/Nicotine%20without%20smoke_0.pdf (Accessed: 20 October 2025)

¹⁶ U.K. National Health Service (NHS), Vaping myths and the facts. Available at: <https://www.nhs.uk/better-health/quit-smoking/vaping-to-quit-smoking/vaping-myths-and-the-facts/> (Accessed: 20 October 2025)

¹⁷ World Health Organization and International Agency for Research on Cancer, IARC Monographs on the Identification of Carcinogenic Hazards to Humans. Available at: <https://monographs.iarc.who.int/agents-classified-by-the-iarc/> (Accessed: 20 October 2025)

¹⁸ Royal College of Physicians, E-cigarettes and harm reduction: An evidence review. RCP, 2024. Available at: https://www.rcp.ac.uk/media/t5akldci/ecigarettes-nd-harm-reduction-executive-summary_0_0.pdf (Accessed: 20 October 2025)

The aerosols of products that do not combust tobacco contain significantly fewer toxicants compared to combustible cigarettes. Cigarette smoke from combustible cigarettes contains over 7,500 individual chemicals, including 150 known harmful chemicals and more than 60 carcinogens.^{19, 20, 21}

In contrast, products which do not involve combustion, have much simpler chemical profiles:

- Heated product aerosols contain approximately ten times fewer chemicals than cigarette smoke, with significantly reduced concentrations of toxicants.^{22, 23, 24}
- Vapour product aerosols are over 100 times less complex than cigarette smoke, consisting predominantly of high-quality e-liquid ingredients.^{25, 26}
- Oral tobacco products have lower levels of chemicals in their extractions compared to cigarette smoke, though more complex than non-tobacco oral nicotine pouches.²⁷
- Non-tobacco oral nicotine pouches have the lowest number of chemicals.

Analysis of BAT's products shows that on average, the World Health Organization's nine priority toxicants for reduction in cigarette smoke²⁸ are reduced by²⁹:

- 90-95% in heated products³⁰;
- 99% in vapour products³¹; and
- >99% in non-tobacco oral nicotine pouches³².

Since the Commission's stated purpose of the TED is to ensure a high level of health protection, as well as its primary goal of ensuring the proper functioning of the Internal Market, it would be appropriate that the minimum rates for heated tobacco, e-cigarettes and nicotine pouches reflect the potential role of these products in tobacco harm reduction.

¹⁹ Rodgman, A. and Perfetti, T.A., The chemical components of tobacco and tobacco smoke. CRC press, 2008. DOI: [10.1201/9781420078848](https://doi.org/10.1201/9781420078848)

²⁰ Jenkins, R.A., et al., Mainstream and sidestream smoke. In The chemistry of environmental tobacco smoke: composition and measurement (2nd ed.). CRC Press, 2000. p 49-75. DOI: [10.1201/9781482278651](https://doi.org/10.1201/9781482278651)

²¹ IARC Working Group on the Evaluation of Carcinogenic Risks to Humans, Tobacco smoke and involuntary smoking (No. 83). World Health Organization and International Agency for Research on Cancer, 2004. Available at: <https://www.ncbi.nlm.nih.gov/books/NBK316407/>

²² Forster, M., et al., Assessment of novel tobacco heating product THP1.0. Part 3: Comprehensive chemical characterisation of harmful and potentially harmful aerosol emissions. Regul Toxicol Pharmacol, 2018. 93: p. 14-33. DOI: [10.1016/j.yrtph.2017.10.006](https://doi.org/10.1016/j.yrtph.2017.10.006)

²³ Savareear B., et al., Non-targeted analysis of the particulate phase of heated tobacco product aerosol and cigarette mainstream tobacco smoke by thermal desorption comprehensive two-dimensional gas chromatography with dual flame ionisation and mass spectrometric detection. J Chromatogr A, 2019. 1603: p. 327-337. DOI: [10.1016/j.chroma.2019.06.057](https://doi.org/10.1016/j.chroma.2019.06.057)

²⁴ Savareear, B., et al., Headspace solid-phase microextraction coupled to comprehensive two-dimensional gas chromatography–time-of-flight mass spectrometry for the analysis of aerosol from tobacco heating product. J Chromatogr A, 2017. 1520: p. 135-142. DOI: [10.1016/j.chroma.2017.09.014](https://doi.org/10.1016/j.chroma.2017.09.014)

²⁵ Margham, J., et al., Chemical composition of aerosol from an e-cigarette: a quantitative comparison with cigarette smoke. Chem Res Toxicol, 2016. 29(10): p. 1662-1678. DOI: [10.1021/acs.chemrestox.6b00188](https://doi.org/10.1021/acs.chemrestox.6b00188)

²⁶ Pinto, M.I., et al., Chemical characterisation of the vapour emitted by an e-cigarette using a ceramic wick-based technology. Sci Rep, 2022. 12(1):16497. DOI: [10.1038/s41598-022-19761-w](https://doi.org/10.1038/s41598-022-19761-w)

²⁷ Azzopardi, D., et al., Chemical characterization of tobacco-free "modern" oral nicotine pouches and their position on the toxicant and risk continuums. Drug Chem Toxicol, 2022. 45(5): p. 2246-2254. DOI: [10.1080/01480545.2021.1925691](https://doi.org/10.1080/01480545.2021.1925691)

²⁸ The nine specific toxicants are: CO, formaldehyde, acetaldehyde, acrolein, 1,3-butadiene, benzene, benzo[a]pyrene, N-nitrosornicotine ("NNN"), and 4-(methylnitrosamino)-1-(3-pyridyl)-1-butanone ("NNK"). See Burns D.M., Dybing E., Gray N. et al., (2008) Mandated lowering of toxicants in cigarette smoke: a description of the World Health Organization TobReg proposal. Tobacco Control 2008;17:132-141. Available at <https://tobaccocontrol.bmj.com/content/17/2/132>.

²⁹ Comparison with smoke from a scientific standard reference cigarette (approximately 9 mg tar).

³⁰ Forster, M., et al., Assessment of novel tobacco heating product THP1.0. Part 3: Comprehensive chemical characterisation of harmful and potentially harmful aerosol emissions. Regul Toxicol Pharmacol, 2018. 93: p. 14-33. DOI: [10.1016/j.yrtph.2017.10.006](https://doi.org/10.1016/j.yrtph.2017.10.006)

³¹ Pinto, M.I., et al., Chemical characterisation of the vapour emitted by an e-cigarette using a ceramic wick-based technology. Sci Rep, 2022. 12(1):16497. DOI: [10.1038/s41598-022-19761-w](https://doi.org/10.1038/s41598-022-19761-w)

³² Azzopardi, D., et al., Chemical characterization of tobacco-free "modern" oral nicotine pouches and their position on the toxicant and risk continuums. Drug Chem Toxicol, 2022. 45(5): p. 2246-2254. DOI: [10.1080/01480545.2021.1925691](https://doi.org/10.1080/01480545.2021.1925691)

This would imply that:

- the minimum excise on heated tobacco, vapour products and non-tobacco oral nicotine pouches should *all* be lower than the minimum excise on cigarettes, fine cut tobacco and other combustible tobacco products covered by the TED;
- the minimum excise on vapour products should be lower than the minimum excise on heated tobacco; and
- the minimum excise on non-tobacco oral nicotine pouches should be lower than the minimum excise on both heated tobacco *and* vapour products.

It may not be realistic, in practice, to set the minimum excise duty on heated tobacco, vapour products and non-tobacco oral nicotine pouches *only* in proportion to levels of the WHO's nine priority toxicants in cigarette smoke in these products³³. However, this should be a part of the process of agreeing appropriate minimum rates for these products. Other considerations will include, for example, ensuring excise duties cover the costs of collecting and administering the tax.

6. We support the Commission's proposal for a harmonized excise for heated tobacco in the EU. But the proposal for the minimum excise to be levied per KG or per stick or as a percentage of the price is unduly complicated. It would be much simpler to impose a minimum excise only on the weight of tobacco in the product, at around €110 per KG.

A harmonized excise for heated tobacco will provide consistency and certainty in the way this rapidly growing tobacco product is excised in the Internal Market.

The proposal for the minimum excise to be levied per KG *or* per stick *or* as a percentage of the price is unduly complicated, would introduce administrative uncertainty and fail to achieve the harmonized approach to excise that the Member States are seeking.

It would, instead, encourage more disparity in the way heated tobacco is taxed in the EU than currently exists.

Since there is no standardised product format for heated tobacco (yet), the minimum excise should be levied only on the weight of tobacco in the product, at around €110 per KG.

This approach would be fair, simple and future proof.

7. A harmonized excise for vapour products *is* needed in the EU. But the Commission's proposal for excise rates to be tiered by nicotine strength is unenforceable in practice, will lead to unjustifiable complexity in excise administration and will create an additional illicit vapour problem in the EU.

It would be much better to levy a simpler minimum excise of 25 cents per ml for e-liquids regardless of nicotine strength, rather than a tiered system based on nicotine content.

The recent example from the UK is a timely example of why.

In its Spring Budget 2024, the UK Government announced the introduction of an excise duty on e-cigarettes.

An initial proposal for a three-tiered tax structure based on nicotine strength (£1.00–£3.00 per 10ml) was tabled but secured virtually no support during a three-month consultation involving industry stakeholders and public health bodies.

³³ That would mean that the minimum excise duty on cigarettes were set at €155 per 1,000 units, the minimum excise would be between €1.55 to €7.75 for an equivalent amount of smokeless products.

Concerns were raised, *inter alia*, about the complexity and significant cost associated with administering a tiered system.

It was also considered that an overly complex system that is difficult to enforce in such a fragmented market would result in a large degree of non-compliance and tax evasion (e.g. with unscrupulous e-cigarette product suppliers intentionally mis-declaring the nicotine content of their products in order to evade paying the right taxes).

After an extensive consultation process, in which the Government assessed the detailed costs and benefits of different approaches to levying an excise on e-cigarettes, it was decided, instead, to implement a simplified flat rate of £2.20 per 10ml across all vaping liquids, effective October 2026.

The TED should pursue a similar approach for e-cigarettes.

If the Commission, instead, continued with the current approach of an excise tiered by nicotine strength, this would introduce unnecessary administrative complexity and cost throughout the EU, with no corresponding benefits for the 23 Member States that already operate a simple structure.

8. A harmonized excise for nicotine pouches is needed in the EU. But the Commission's proposal for a minimum excise of €143 per KG is excessive. Countries – such as Sweden – that set much lower excise rates on these products must be allowed to maintain the sovereign right to set excise rate in a way it considers appropriate to continue to achieve its policy objectives.

The Commission's new proposal, if implemented today, would force several Member States to substantially increase the excise they levy on certain emerging non-combustible products.

Most notably, Sweden is widely lauded on a global scale for successfully reducing its daily smoking prevalence rate to only c.5.3%, significantly lower than the EU average (which is more than 20%) and very close to being 'smoke-free'.

Consequently, Sweden has a c.40% lower rate of death of all tobacco-related diseases compared to the EU average.

This is, in very large measure, the result of targeted taxes and regulations that have incentivised consumers to switch from combustible tobacco products to smokeless products including snus and non-tobacco nicotine pouches.

The Commission's proposal to require non-tobacco nicotine pouches to be excised at €143 per kilo would represent a sixfold increase of the tax rates currently levied in Sweden.

This could, in one fell swoop, all but destroy Sweden's nicotine pouch market and force Sweden to abandon its hitherto successful policy of tobacco harm reduction. If implemented, the excise duty on nicotine pouches would go up by more than seven-and-a-half times, from about SEK 3 per can today to almost SEK 22.

Assuming this tax hike is fully passed on to the consumer, the price of a of nicotine pouch can would increase from SEK 45 to a massive SEK 70 a can.

Today, a can of nicotine pouches is around a third cheaper than a pack of cigarettes. The Commission's proposal would completely eliminate this price gap. The financial incentive for consumers to use nicotine pouches instead of cigarettes would disappear overnight.

Even the Commission's own calculations, from its Impact Assessment, imply the sale of nicotine pouches in Sweden would be slashed by three quarters if its proposal were made European law. The reality could be even worse than that.

This is a curious, and poorly thought out, policy decision from the EU Commission.

The EU's constitution, enshrined in the Treaties of the European Union, is very clear that EU level intervention in the area of taxation is justified if, and only if, it is needed to ensure the establishment and functioning of the Internal Market and avoid distortion of competition. This principle applies as equally to excise taxes.

It is by no means clear – from the European Commission's own analysis or anywhere else – that the tax rates Sweden sets on nicotine pouches in any way distorts the effective functioning of the EU Internal Market. But it is crystal clear that by imposing extreme excise rates on nicotine pouches in Sweden, the EC proposal would eliminate, not facilitate, competition for tobacco and nicotine products in Sweden. Such an outcome is *precisely the opposite of what EU level legislation is supposed to do*.

It is important to bring novel, non-combustible, products – including tobacco for heating, e-cigarettes, and non-tobacco nicotine pouches –into the scope of the Directive. But, at the same time, it is essential that Member States retain the sovereign right to set taxes as they see fit in their own country, given their own economic conditions and tobacco harm reduction policy priorities. Unless there is clear evidence that Sweden's taxes are compromising the functioning of the Internal Market, it is not for the Commission to interfere with how Member States – including Sweden – taxes tobacco or any other products.

The minimum excise on non-tobacco nicotine pouches should, consequently, be set at no more than €25 per KG, to allow Sweden, the Member States most successful in reducing smoking, to continue to operate its existing fiscal and regulatory policies.

9. The proposed product definitions are vague and open to interpretation, which creates legal uncertainty for economic operators. This ambiguity may result in inconsistent decisions by customs and excise authorities across different Member States.

Rather than establishing mutually exclusive product categories, the product definitions used in the current TED, as well as those proposed in the revised version, employs a cascading system in which definitions may overlap.

This is in contrast compared with most other EU legislation.

Because they are not currently defined in the TED, the classification of novel products currently depends on national legislation or court rulings. Several of these have made it clear that the current cascading structure of product definitions means that a product is classified under certain categories only if it does not meet the criteria for others. This has led to inconsistent treatment throughout the EU of the same products for excise purposes.

For example, Member States have adopted divergent interpretations of how heated tobacco products should be classified; some treat them as smoking tobacco, others as 'other tobacco products', or even as non-excisable. To avoid future legal uncertainty and to strengthen the goal of EU-wide harmonisation, the product definitions of both novel products and the products already covered by the TED need to be amended³⁴.

The lack of coherence between the proposed product definitions in the revised TED and other EU legislation runs counter to the European Commission's Smart Regulation agenda, which seeks to ensure that EU law is clear, consistent, and easy to implement and enforce. For example, a heated tobacco product might be correctly classified under the TPD, yet still be treated as a cigarette for excise purposes, leading to conflicting regulatory outcomes.

In addition, the proposed definitions for new products in the TED would result in misalignment with International Standards. For example, the proposed definition of heated tobacco products in the TED should reflect the decisions set out by the World Customs Organization in the 2022 update to the Harmonised System. Failure to

³⁴ Such ambiguity did not exist prior to the introduction of novel products to the EU market. Product definitions in the TED were fit for purpose at the time they were introduced. However, as novel products have become a permanent feature in the EU, this has prompted the need to amend definitions of products already covered by the TED.

do so could result in products being treated as heated tobacco product for customs purposes but as combustible tobacco for excise purposes, further complicating classification and compliance.

10. We recognise the importance of implementing a monitoring system to improve oversight of raw tobacco flows. However, the definition proposed by the Commission is ambiguous. To effectively differentiate between green leaf (which should not be subject to a harmonized monitoring system) and semi-processed tobacco (which should be monitored), the various forms of semi-processed tobacco should be clearly defined. Additionally, no excise should be established solely for the purpose of monitoring raw tobacco flows.

There has been a growing trend of raw tobacco being diverted for illicit production as well as raw tobacco being sold directly to consumers as smoking tobacco which has undermined tax revenues for Member States.

Raw tobacco is currently not defined or covered by the TED or the Horizontal Directive (the 'HED'), and therefore it is not subject to excise duty at EU level and consequently, it cannot be moved under excise duty suspension using the Excise Movement Control System ('EMCS').

As there is a lack of EU harmonized approach on raw tobacco shipments, Member States have started to develop national legislation to monitor the movement of raw tobacco into and through their territories.

The definition needs to be broken down in two categories: the green leaf which will be out of scope and the processed leaf ('semi-processed tobacco') which has gone through one or more processing activities but which is not considered a manufactured tobacco product.

The objective of the inclusion of raw tobacco in the TED is to control the movements of semi-processed tobacco and not to collect revenues. In view of keeping the administrative burden for the various different operators to a minimum, no minimum rate should be established. Setting a minimum rate, even if this is €0, will add complexity and administrative burden for economic operators and Member States.

11. The delegated powers to the Commission are either deleted or limited to non-essential elements of the Directive (i.e. inflation adjustments mechanism only) in line with Article 290 of the Treaty on the Functioning of the European Union.

The delegated powers granted to the Commission under Article 12(5) of the Directive should either be deleted or explicitly limited to adjusting minimum excise levels based on inflation indexation only. This should be clearly clarified in the text of the Directive. This aligns with Article 290 of the Treaty on the Functioning of the European Union (the 'TFEU') which permits delegation only for non-essential elements.

The delegated authority should be confined to adjusting minimum excise levels based on core inflation (excluding volatile components like energy and food), with a cap of 6–10% over each three-years period.

Additionally, we recommend deletion of Recital 36 and Article 28(4) from the Directive, which implies a mandate for tax equalization across tobacco product categories.

Such a mandate exceeds the scope of Article 113 TFEU and undermines the principles of subsidiarity, proportionality, and national sovereignty.

Equalization disregards the distinct characteristics of different products, potentially stifling innovation and limiting consumer choice.

Accordingly, taxation decisions should be reserved for national governments, which possess the authority to levy taxes on various products in alignment with their respective national policies, priorities and strategies. We urge policy makers to ensure that the Directive maintains flexibility for Member States to tailor excise policies according to their national contexts and priorities.

12. The Commission failed to assess the impact on a range of stakeholders throughout the Impact Assessment.

The Impact Assessment ('IA') systematically ignores the impact of the proposed changes to the TED on the various stakeholders:

- The IA references potential SME closures but does not sufficiently quantify the economic and employment effects, particularly in the retail and processing segments.
- While the IA acknowledges the number of EU tobacco growers, it does not assess the socio-economic implications of reduced demand resulting from strengthened tobacco control measures.
- The IA assumes marginal employment impacts without providing supporting labour market data or considering regional concentration.
- The IA does not assess affordability across income groups or the behavioural implications of price increases.

————— **END** —————