



ECO/605
Revision of the Tobacco Taxation Directive

DRAFT OPINION

Section for Economic and Monetary Union and Economic and Social Cohesion

Proposal for a Council Directive on the structure and rates of excise duty applied to tobacco and tobacco related products (recast)
(COM(2025) 580 final - 2025/0580 (CNS))

Proposal for a Council Directive amending Directive (EU) 2020/262 as regards the general arrangements for excise duty in respect of tobacco and tobacco related products
(COM(2025) 581 final - 2025/0581 (CNS))

Rapporteur: **Matteo Carlo BORSANI**

For the attention of the section members

Section meeting 5/2/2026, 10:30

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Study Group Revision of the Tobacco Taxation Directive

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Legislative procedure
Referrals
EU Law Tracker
Council of the European Union, 12/9/2025 (COM(2025) 580 final)

Legal basis
European Commission, 29/8/2025
Articles 113 and 304 of the Treaty on the Functioning of the European Union
European Union
COM(2025) 580 final - 2025/0580 (CNS)
Summary of COM(2025) 580 final - 2025/0580 (CNS)
COM(2025) 581 final - 2025/0581 (CNS)
Summary of COM(2025) 581 final - 2025/0581 (CNS)

Relevant Sustainable
Development Goals (SDGs)
SDG 3 - Good health and well-being
SDG 8 - Decent work and economic growth

Section responsible
Economic and Monetary Union and Economic and Social Cohesion

Adopted in section
Outcome of vote
(for/against/abstentions)
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Adopted at plenary session
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1. RECOMMENDATIONS

The European Economic and Social Committee (EESC)

- 1.1 **supports** the revision of the Tobacco Taxation Directive, recognising the need to adapt the excise framework to market developments, new products and public health objectives, while stressing that the reform must remain proportionate, predictable and economically sustainable;
- 1.2 **warns** against abrupt or excessive increases in excise duties, which risk fuelling illicit trade, undermining fiscal revenues and weakening public health outcomes; therefore **recommends** that excise adjustments be gradual and accompanied by strengthened enforcement, customs cooperation and cross-border anti-smuggling measures;
- 1.3 **calls** for the consistent application of risk-proportionate taxation, ensuring that non-combustible and reduced-risk products are not taxed the same as combustible tobacco products, in line with the principle of 'less harm, less tax' and the objectives of the Europe's Beating Cancer Plan;
- 1.4 **recommends** improving legal clarity and the harmonisation of product definitions, in particular by explicitly defining heated tobacco products, clearly distinguishing them from combustible products and ensuring that tax categories are consistent with Article 113 TFEU and the single market;
- 1.5 **asks** the Commission to enhance coherence between excise definitions and the Combined Nomenclature (CN) by maintaining updated correlation tables and providing interpretative guidance whenever changes to customs classifications affect excise categorisation;
- 1.6 **calls** for sufficient flexibility for Member States in excise structures, including the possibility to choose between unit-based or weight-based taxation for heated tobacco products, in order to reflect national market conditions while respecting EU-wide minimum levels;
- 1.7 **stresses** the need to preserve purchasing power parity mechanisms and appropriate flexibility, including careful sequencing of adjustments and consideration of core inflation indexing, in order to avoid disproportionate impacts across Member States and ensure fair burden-sharing;
- 1.8 **cautions** against single market fragmentation in relation to raw tobacco, noting that existing national monitoring systems already provide effective control, and that additional excise obligations could duplicate controls, increase administrative burdens and undermine the competitiveness of EU producers;
- 1.9 **highlights** the importance of protecting SMEs and regional employment, particularly in the cigar and cigarillo sector, and recommends maintaining proportionate tax differentials to avoid disproportionate impacts without significant public health benefits;
- 1.10 **recommends** carrying out a comprehensive mapping of existing jobs and skills in the sector, alongside an assessment of the medium- and long-term scenarios associated with the proposal

and the development of clear forecasts on its impact on employment; also recommends the deployment of reskilling and upskilling measures to anticipate the impact of the transition;

1.11 **calls** for predictable and limited use of delegated acts, strictly confined to technical inflation adjustments, ensuring that essential elements of excise taxation, such as tax bases, product scope and minimum rates, remain subject to the ordinary legislative procedure, in line with subsidiarity and Member States' fiscal sovereignty.

2. EXPLANATORY NOTES

- 2.1 The EESC recognises the need to update Directive 2011/64/EU in order to align the taxation of tobacco and nicotine products with market developments and the EU's public health objectives. However, it stresses that the revision must respect the principles of proportionality and fiscal neutrality, avoiding distortions and disproportionate economic impacts on European production chains.
 - 2.1.1 While the EESC fully embraces the commitment to reducing tobacco consumption, it emphasises that taxation cannot be the only, nor the principal, tool to achieve this goal.
 - 2.2 **Risk of expansion of illicit trade**
 - 2.2.1 According to official data collected by Europol and national customs authorities, illicit trade in tobacco and nicotine products is increasing in several Member States. The EESC believes that a sudden hike in excise duties could lead to an undesired increase in illicit trade. Therefore, the future rates should be based on option 1 of the Commission impact assessment report, which would see the minimum rates for cigarettes increased to EUR 155 per 1000 cigarettes instead of the EUR 215 per 1000 cigarettes actually proposed by the Commission. In addition, any increase in excise duties must be accompanied by strengthened enforcement capacity, customs cooperation and cross-border anti-smuggling measures to avoid substitution effects towards illegal and unregulated products. The risk of illicit trade expansion warrants explicit and robust counter-measures.
 - 2.2.2 Evidence from France and the Netherlands illustrates how abrupt excise hikes can fuel illicit market penetration. The current excessive excise increase proposal could undermine the objective to raise additional excise revenues and actually generate EUR 15.5 billion in significant revenue losses (excise + VAT) if it triggers a 5% increase in illicit trade.
 - 2.2.3 The EESC underlines that excise adjustments should be predictable and economically sustainable and in line with Recital 12 of the proposal, which states that different minimum duties should be established for each category according to their distinctive product characteristics and their intended use. Excessive or abrupt increases risk undermining both tax revenues and public health objectives by fuelling illicit trade and market distortions.
 - 2.2.4 The EESC therefore calls on the Commission and the Member States to strengthen enforcement capacity, inter-agency data-sharing and prevention strategies in parallel with tax increases.

2.2.5 The EESC also calls on the Commission and the Member States to reconsider alternative approaches to the increases in the EU-wide minimum rates, in parallel with strengthening enforcement capacity, inter-agency data-sharing and illicit trade prevention strategies.

2.3 Protection of young people and prevention

2.3.1 The Committee supports the goal of deterring young people from smoking. A comprehensive approach combining health education, age-verification controls, oversight of online sales and marketing regulation is required.

2.3.2 Beyond deterrent measures targeting young people, the Committee endorses the objective set out by the European Commission in the Europe's Beating Cancer Plan to achieve a substantial and sustained reduction in tobacco consumption.

2.4 Technological neutrality and innovation

2.4.1 The Directive must maintain technological neutrality between product categories and avoid penalising innovation in lower-risk products. Overly broad definitions or taxation that covers any substance or device capable of containing nicotine could include products not intended for human consumption, creating legal uncertainty and discouraging technological development in Europe.

2.5 Socio-economic and agricultural impact

2.5.1 The EESC asks the Commission to carry out a socio-economic and territorial impact assessment, focusing on regions where tobacco cultivation and processing remain an important source of income and employment. Given that the EU contributes around 46% of global tobacco exports, the Directive should also take into account its potential impact on manufacturing activities, investment and the risk of job losses. It is advisable to provide accompanying measures to support producers.

2.5.2 It is also recommended that alternative economic activities be developed at an early stage in order to offset the likely job losses in the regions concerned, particularly in rural areas. Tobacco growing and manufacturing are often located in very rural and remote areas, which are likely to be disproportionately affected by significant increases in taxation. It is therefore important to maintain high-quality employment in these regions of Europe, where alternative economic opportunities may be scarce or non-existent.

2.5.3 Constantly improving working conditions and protecting the internal market to ensure fair competition by safeguarding social standards, alongside promoting social dialogue and collective bargaining, should remain an ongoing concern. At the same time, the EU's global impact on the tobacco industry should be taken into account.

2.5.4 The EESC calls for comprehensive research and impact assessments on the social impact of the transition, notably on employment and working conditions, in order to ensure workers' support for the effective implementation of these policies.

2.6 Flexibility and subsidiarity

2.6.1 The revision of the Directive must allow for national adaptation, enabling the Member States to adjust excise duties according to their own economic and social conditions, while respecting the EU-wide minimum levels. Flexibility for the Member States must remain a guiding principle. National authorities should retain the possibility to adapt excise structures within agreed EU minima in order to balance public health, fiscal sustainability and socio-economic conditions.

2.6.2 The EESC suggests expanding this flexibility to mitigate disproportionate impacts in Member States experiencing above-average inflation or acute risks of illicit trade displacement. The EESC therefore recommends a careful sequencing of adjustments and consideration of a methodological shift towards core inflation indexing, as already established in the Energy Tax Directive proposal. This would enhance policy coherence across excise regimes and contribute to predictability and stability of fiscal planning in the Member States.

2.6.3 The EESC believes that the purchasing power parity mechanism should be retained as a core feature to ensure that the burden is shared fairly and to prevent unintended disparities.

2.7 Delegated and implementing acts

2.7.1 The EESC notes that the proposal grants the Commission delegated power to amend the rates to account for inflation every three years. However, the proposal should be made clearer to underline that the delegated powers are related to inflation adjustments only and that it cannot be used to modify any elements that determine the taxable base, product categorisation or minimum excise rates, which remain essential components of tax sovereignty under Article 113 TFEU.

2.7.2 The EESC therefore recommends that any empowerment to adopt delegated acts be narrowly defined, time-limited and subject to prior consultation of the Member States and relevant stakeholders, including the Committee where appropriate. In the Committee's view, substantial amendments affecting the scope of taxation or the classification of new products should be introduced only through the ordinary legislative procedure, ensuring democratic scrutiny and legal certainty.

2.7.3 The EESC believes that more predictability is needed concerning future delegated acts and proposes removing Recital 36 and the corresponding Article 28(4), since the TFEU's emphasis on subsidiarity and respect for Member States' fiscal sovereignty should be protected.

2.8 Structure and definitions

2.8.1 The EESC welcomes the intention to broaden the scope of the Directive but recommends ensuring clarity in definitions and proportionality in rates. Taxation should focus on the consumable component of the product (m) of liquid, grams of tobacco or nicotine pouch), excluding hardware or accessories.

2.8.2 The EESC notes stakeholder calls to improve alignment between tax definitions and the Combined Nomenclature (CN) used for customs classification. While it is neither technically feasible nor necessary for the two systems to be identical, the Committee considers it appropriate that the Commission maintain and regularly update correlation tables and issue interpretative guidance whenever amendments to the CN affect the excise categorisation of tobacco and nicotine products. Such coordination would enhance legal certainty, administrative consistency and coherence between customs and tax frameworks across the EU.

2.8.3 The Commission proposal defines heated tobacco but leaves older definitions of cigarettes/smoking tobacco unchanged and ambiguous, and this might undermine harmonisation under Article 113 TFEU. The EESC recommends explicitly redefining heated tobacco by clarifying that it is 'tobacco intended to be heated or otherwise activated by chemical reaction or some other means without combustion' and replacing 'capable of being smoked' under the definition of cigarettes and smoking tobacco with 'intended to be smoked'. Furthermore, it is important to ensure that products meeting the definition of heated tobacco can only be classified as such by adding 'without combustion' to the criteria, and to ensure that heated tobacco is the determining category in any overlap.

2.8.4 The EESC also recommends a simplified single-base excise model, for the newly introduced categories, under which taxation would be applied per category with a unique tax base either per unit or grams or millilitres rather than more than one tax application for the same category. This approach, already applied in alcohol taxation, could improve transparency, better achieve tax harmonisation between the Member States, reduce administrative complexity and facilitate adaptation to hybrid or novel products that do not fit traditional classifications.

2.8.5 More specifically, Recital 25 implies that it depends on product type, but Article 20 clearly allows either method (with a minimum given per 1000 sticks or per kilogramme). The EESC recommends amending the proposal by allowing the Member States to choose taxing HTPs by unit or weight. In order to avoid any contradiction, the EESC proposes removing the phrase 'depending on the type of product' from Recital 25 and ensuring accordance with Article 20

2.9 New products and harm reduction

2.9.1 New-generation products should be treated in a manner proportionate to their reduced risk profile, maintaining a consistent tax differential compared with combustible products.

2.9.2 The Committee also suggests that the Commission establish an assessment mechanism based on scientific evidence that supports excise differentials that reflect the relative risk profiles of products compared to combustible products. Such calibration, based on evidence periodically reviewed by independent public health authorities, would ensure that tax incentives remain consistent with the objectives of the Europe's Beating Cancer Plan and the principle of evidence-based policymaking.

2.9.3 Proper implementation of the 'less harm, less tax' principle requires that tax policies reflect the different levels of health risk associated with tobacco and nicotine products, while allowing

Member States the necessary flexibility to incorporate this principle into their national taxation frameworks.

2.10 Coherence with existing EU regulation

2.10.1 Tax rules must be coherent with the current TPD, the EU customs combined nomenclature and best practices from the EU Member States' tax policies which the TED revision intends to harmonise. The EESC recommends avoiding regulatory inconsistencies while maintaining a clear distinction between product policy and tax policy.

2.11 Cigars and cigarillos

2.11.1 The EESC stresses that cigars and cigarillos constitute a distinct category within the tobacco market, representing less than 2% of total consumption. With distinct consumer profiles and occasional use, these products are not substitutes for cigarettes. They are typically used occasionally by a different consumer group and are produced largely by small and medium-sized enterprises (SMEs), often family-owned and rooted in European regions. Excessive uniform increases in EU minimum rates would be disproportionate and detrimental to SME competitiveness, without significant public health benefits. The EESC therefore recommends maintaining a proportionate tax differential and avoiding abrupt harmonisation of minimum excise levels. Finally the EESC invites the Commission to re-address this issue, as in the proposed solution the system may disadvantage lower-priced European products versus premium imports.

2.12 Combating illicit trade

2.12.1 The EESC supports introducing monitoring and control requirements under the EMCS system for raw tobacco and recommends considering similar traceability measures for raw nicotine, for control purposes only and not for taxation (i.e. without imposing a minimum excise rate). Enhanced cooperation between customs, police and tax authorities, supported by Europol and OLAF, is necessary to counter illicit manufacturing and distribution.

2.12.2 The EESC recommends a unified data interface between the EMCS, OLAF, Europol and national customs systems which would enhance enforcement efficiency while avoiding duplication of reporting requirements.

2.13 Raw tobacco

2.13.1 The EESC notes that raw tobacco, classified as an agricultural product under Annex I of the TFEU, is already subject to well-established national systems for tracking and control. These mechanisms, adapted to the specific contexts of tobacco-producing Member States, have been enforced under government oversight, ensuring transparency and security for both public authorities and private operators, while also contributing to the fight against illicit trade.

2.13.2 The Commission proposal, while setting an EU minimum excise duty at EUR 0/kg, explicitly allows Member States to apply higher national rates where they identify 'high evasion risks'.

The EESC stresses that such flexibility risks fragmenting the internal market, as producers could face different tax burdens solely based on their location.

2.1.3.3 Furthermore, the Commission's Impact Assessment acknowledges that extending the EMCS to raw tobacco would impose significant compliance costs – estimated at EUR 0.1 million in one-off expenses and EUR 2 million annually for economic operators – alongside additional administrative burdens for public authorities. Introducing raw tobacco as a new excise category risks duplicating existing controls, given that national monitoring systems already ensure compliance, and could undermine the competitiveness of EU tobacco producers.

2.1.4 Monitoring and reporting

2.1.4.1 Monitoring obligations should be harmonised and must not duplicate existing tools such as Eurobarometer or WHO surveys. Indicators must be clearly defined to ensure comparability of data across the Member States.

2.1.4.2 The EESC supports the development of a harmonised data architecture integrating EMCS records, Eurostat trade data and national health surveys. The Committee recommends establishing standardised indicators for consumption, illicit trade, and product substitution, aligned with WHO and OECD methodologies. This would promote evidence-based evaluation and comparability across the Member States.

2.1.4.3 The EESC proposes providing more flexibility to the Member States to meet the spirit of the law by applying the method that best suits their market. Minimum excise duty rates solely based on nominal values, rather than incidence percentage, will provide more flexibility to markets and ensure equal taxation within each product category. Reducing or removing the mandated incidence percentages and focusing on the specific minimum rate as the primary floor could be taken into account.

3. PROPOSED AMENDMENTS TO THE LEGISLATIVE PROPOSAL OF THE EUROPEAN COMMISSION

Amendment 1

linked to recommendations 2.6.2, 2.7.1 and 2.7.2 (inflation adjustment of minimum Union rates)

Recital (13)

Modify

| Text proposed by the European Commission | EESC amendment |
|--|--|
| To avoid its obsolescence over time, the minimum Union rate of excise duty for each product category should be updated every three years on the basis of changes in the Union harmonised index of consumer prices, as published by Eurostat, and of the primary objective of the European System of Central Banks (ESCB) under Article 127(1) TFEU to maintain price | To avoid its obsolescence over time, the minimum Union rate of excise duty for each product category under Article 2 (1 and 2) should be updated every three years on the basis of changes in the Union harmonised index of consumer prices, as published by Eurostat, and of the primary objective of the European System of Central Banks (ESCB) under Article 127(1) TFEU to maintain price |

stability in the euro area by aiming to meet a symmetric inflation target over the medium term.

Reason

Maintaining price stability through a symmetric medium-term inflation objective is a core principle of the EU's economic governance framework, as reflected in the EU Treaties and put into practice through the Harmonised Index of Consumer Prices (HICP). Any automatic tax indexation mechanism introduced at EU level should therefore be consistent with this objective and avoid pro-cyclical or desubstituting effects.

- The inflation indexation (subject to European Commission delegated powers, as suggested) should be applied **only to the product categories under Art. 2 (1 and 2)** and not to raw tobacco (Art. 2 (3)) and to nicotine (Art. 2 (4)), which should remain exempt from tax and hence exempt from any introduction or indexation thereof at a later stage.

- The **European Commission delegated powers in this Directive to adjust minimum rates should be limited only to inflation indexation on taxable products under Art. 2 (1 and 2)** and not to any other elements of this Directive.

- The use of HICPX (core inflation, excluding the most volatile prices of consumer goods such as energy and food) reduces volatility and prevents pro-cyclical tax effects.

A maximum 6% cap (increase or decrease) on inflation indexation over a three-year period is consistent with the ECB's symmetric 2% medium-term inflation objective and provides a necessary stabilising safeguard. Such a ceiling enhances the predictability and proportionality of excise adjustments, mitigates the pro-cyclical effects observed during recent high-inflation episodes, and supports sound fiscal planning and macroeconomic stability across the EU, while **preserving competitiveness and respect for the proportionality principle.**

Amendment 2

linked to recommendations 2.6.2, 2.7.1 and 2.7.2 (inflation adjustment of minimum Union rates)

Recital (34)

Modify

| Text proposed by the European Commission | EESC amendment |
|---|--|
| For reasons of legal clarity and transparency, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the minimum Union rates set by this Directive to reflect changes in harmonised index of consumer prices. | For reasons of legal clarity and transparency, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission to amend the minimum Union rates set by this Directive to reflect changes in harmonized index of consumer prices, excluding energy and food |
| It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, that those consultations be conducted in accordance with the principles laid down in the Intra-institutional Agreement of 13 April 2016 on Better Law-Making ⁴ . In particular, to ensure equal | It is of particular importance that the Commission (HICPX – core inflation) in order to reduce volatility and avoid pro-cyclical effects in the inflation-adjustment formula while ensuring consistency with the Union's price stability objective. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and application of the inflation-adjustment formula that those consultations be conducted in while ensuring consistency with the Union's price stability objective. It is of particular importance that the Commission carry out appropriate consultations during its |

participation in the preparation of delegated acts, preparatory work, including at expert level, and the Council receives all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Reason

See above

Amendment 3

linked to recommendations 2.6.2, 2.7.1 and 2.7.2 (inflation adjustment of minimum Union rates)
Art. 12 (2)
Modify

| | |
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| Text proposed by the European Commission | EESC amendment |
| The Union rate used to determine the minimum tax level of a product, as provided for in Article 16, Article 20(2) and Article 22(2) shall be adjusted by increasing or decreasing the base amount in euro by the percentage change over the preceding 3 calendar years in the all items annual Union average value of the harmonised index of consumer prices as published by Eurostat | The Union rate used to determine the minimum tax level of a product, as provided for in Article 16, Article 20(2) and Article 22(2) shall be adjusted by increasing or decreasing the base amount in euro by the percentage change over the preceding 3 calendar years in the items annual Union average value of the harmonised index of consumer prices, excluding energy and food as published by Eurostat, that cumulatively shall not exceed a 6% increase or decrease over a three-year period. |

Reason

See above

Amendment 4

linked to recommendation 2.11
Article 4
Modify

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| Text proposed by the European Commission | EESC amendment |
| 1. For the purposes of this Directive, the following shall be deemed to be 'cigars' or 'cigarillos' if they can be and, given their properties and normal | 1. For the purposes of this Directive, the following shall be deemed to be 'cigars' or 'cigarillos' if they can be and, given their properties and normal consumer |

| | |
|---|---|
| consumer expectations, are exclusively intended to be smoked as they are: | expectations, are exclusively intended to be smoked as they are: |
| (a) rolls of tobacco with an outer wrapper of natural tobacco covering the product in full including, where relevant, the filter, but without any further layer partially covering the outer wrapper; regarding tipped cigars, the outer wrapper shall not cover the tip; | (a) rolls of tobacco with an outer wrapper of natural tobacco covering the product in full including, where relevant, the filter, but without any further layer partially covering the outer wrapper; regarding tipped cigars, the outer wrapper shall not cover the tip; |
| (b) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including, where appropriate, the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm. | (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. Cigarillos are cigars of a maximum weight of 3 g each. | 2. Products which consist in part of substances other than tobacco but otherwise fall within the definitions set out in paragraph 1 shall be treated as cigars or cigarillos. |

Reason

The cigar/cigarillo category represents a tiny share of the tobacco market, and in the majority of Member States this is not creating any issue. As concluded in the European Commission's supporting studies, 'a split is hardly justified on the ground of proportionality and the administrative costs incurred by Member States for revising their excise systems'. When compared to the application of homogenous minima to the entire cigars and cigarillos category, the marginal effects on the total demand are negligible.

Amendment 5

linked to recommendation 2.11
Article 19
Modify

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| Text proposed by the European Commission | EESC amendment |
| The following groups of manufactured tobacco 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: (a) cigars and (b) cigarillos; | The following groups of manufactured tobacco 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: (a) cigars and cigarillos; (b) fine-cut tobacco for the rolling of cigarettes; |

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| (c) fine-cut tobacco for the rolling of cigarettes; (d) other smoking tobacco; (e) waterpipe tobacco; (f) heated tobacco; (g) other manufactured tobacco. | (c) other smoking tobacco (d) waterpipe tobacco; (e) heated tobacco; (f) other manufactured tobacco. |
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| | |
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| See above | Reason |
|-----------|---------------|

Amendment 6
linked to recommendations 2.8 and 2.9
Article 22
Modify

| Text proposed by the European Commission | EESC amendment |
|--|--|
| 1. Member States shall apply an excise duty to tobacco related products which may be one of the duty to nicotine-containing products in following: (a) an ad valorem duty calculated on accordance with paragraphs 2 to 5 of this Article. the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Union and by importers from third countries in accordance with Article 25; (b) a specific duty expressed as an amount per kilogram; (c) a mixture of both, combining an ad valorem element and a specific element. Where the excise duty is either ad valorem or mixed, Member States may establish a minimum amount of excise duty. | 1. Member States shall apply a minimum excise duty to nicotine-containing products in accordance with paragraphs 2 to 5 of this Article. |
| 2. The overall excise duty on liquids for electronic cigarettes, expressed as a percentage or as an amount per millilitre, shall be at least equivalent to the rates or minimum amounts laid down for: (a) liquids containing from 0 mg of nicotine per millilitre to a maximum of 15 mg of nicotine per millilitre; 20 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,12 per millilitre, adjusted in accordance with Article 12; (b) liquids containing more than 15 mg of nicotine per millilitre; 40 % of the retail selling price inclusive of all taxes or the Union rate of EUR 0,36 per millilitre, adjusted in accordance with Article 12. | 2. The overall excise duty on liquids for electronic cigarettes, expressed as an amount per millilitre, shall be equal to the Union rate of EUR 0.15 per millilitre, adjusted in accordance with Article 12. This minimum Union rate shall apply uniformly to liquids for electronic cigarettes, irrespective of their nicotine content. |

Reason
20 of the 27 EU Member States already have a tax on vaping which is a pure volume tax. Unlike traditional tobacco and HNB, e-liquids are often sold combined with a hardware cartridge (atomisers) in order to be vaporised. An ad valorem tax would mean a tax on hardware that is disproportionate and unconstitutional in many EU Member States. Ad valorem requires a tariff system. The e-liquid market is much more diversified compared to traditional tobacco. This will create a huge administrative burden both for institutions and SMEs. Setting a minimal tax of 0.36€/ml for e-liquids over 15mg/ml means, compared to the current level of taxation, that 80% of Member States will have to apply a tax increase of over 100%, with the unintended effect of boosting illicit trade and parallel trade. Leaving 0.12€/ml as a unique and minimal level will be in line with the weighted average tax in EU, will allow the Member States with a zero rate to introduce the tax without a market shock and will give the Member States that want to apply a higher tax the freedom to do so.

Amendment 7
linked to recommendations 1.6, 2.8 and 2.9
Recital 25
Modify

| Text proposed by the European Commission | EESC amendment |
|---|--|
| To capture the heterogeneity in current formats of heated tobacco, and to anticipate future formats, the setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for the functioning of the internal market. Thus, the overall minimum excise duty should be expressed as an amount per kilogram or an amount for a given number of items <i>depending on the type of heated tobacco product concerned.</i> | To capture the heterogeneity in current formats of heated tobacco, and to anticipate future formats, the setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for the functioning of the internal market. Thus, the overall minimum excise duty should be expressed as an amount per kilogram or an amount for a given number of items. |