

Draft

Act amending the Act on tobacco products etc. and various other acts¹
(Implementation of parts of the prevention plan targeting children and
adolescents – tobacco, nicotine and alcohol)

Section 1

The Act on tobacco products, cf. Consolidation Act No 1489 of 18 June 2021, as amended through Section 2 of Act No 2071 of 21 December 2020, Section 2 of Act No 99 of 25 January 2022, and Section 1 of Act No 738 of 13 June 2023, shall be amended as follows:

1. In *Section 2, No 17*, the following shall be inserted after ‘a tobacco product’: ‘, a tobacco surrogate’.
2. In *Section 2, Nos 18–21*, the following shall be inserted after ‘tobacco products’: ‘, tobacco surrogates’.
3. In *Section 2*, the following shall be inserted as *No 32*:
‘32) Age verification system: An IT system that unambiguously confirms the consumer’s age electronically in accordance with the age limit.’
4. *The heading* of Chapter 7 shall be worded as follows:

‘Chapter 7
Distance sales’.

5. In *Section 24(1)*, the following shall be inserted after ‘tobacco products’: ‘, tobacco surrogates and herbal products for smoking’, and ‘registered under Section 23(1), must operate an age verification system’ shall be replaced by: ‘must operate, in the case of distance sales, an age verification system which verifies, at the time of sale, that the customer is at least 18 years of age’.

¹[This Act has been notified as a draft in accordance with Directive 2015/1535/EU of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification).]

6. After Section 35, the following shall be inserted before the heading before Section 36:

‘Section 35a. The Danish Safety Technology Authority may seize tobacco products, tobacco surrogates, herbal products for smoking and equipment intended to be used with these, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated.

(2) Products that come into the Danish Safety Technology Authority’s possession as a result of seizures, must be recorded and labelled as soon as possible. The Danish Safety Technology Authority shall issue acknowledgement of receipt.

(3) Seizures carried out pursuant to (1) shall be carried out in accordance with Chapter 74 of the Administration of Justice Act on seizures.

Section 35b. The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

(2) The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

(3) The Danish Safety Technology Authority may, on behalf of the Customs and Tax Administration to ensure customs duties and taxes, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Customs and Tax Administration.’

Section 2

The Act on electronic cigarettes, etc., cf. Consolidated Act No 1876 of 20 September 2021, as amended by Section 3 of Act No 2071 of 21 December 2020, Section 1 of Act No 99 of 25 January 2022 and Section 2 of Act No 738 of 13 June 2023, shall be amended as follows:

1. In Section 2, Nos 6–9, the following shall be inserted after ‘refill container with’: ‘ and without’.

2. In Section 2, the following shall be inserted as No 12:

‘12) Age verification system: An IT system that unambiguously confirms the consumer’s age electronically in accordance with the age limit.’

3. Section 15(3) shall be repealed.

(4) and (5) subsequently become (3) and (4).

4. In Section 15(4), which becomes (3), the following shall be inserted after ‘with’: ‘and without’ and ‘registered under Section 13(1), shall operate an age verification system, cf. (5)’ shall be replaced by: ‘must operate, in the case of distance sales, an age verification system which verifies, at the time of sale, that the customer is at least 18 years of age, cf. (4)’.

5. The following shall be inserted after Chapter 7:

‘Chapter 7a

Prohibition of import, purchase, possession, etc. of certain electronic cigarettes, etc.

Section 18b. It is not allowed to import, purchase, supply, receive, manufacture, process or possess electronic cigarettes and refill containers with nicotine, which are covered by the prohibition in Section 25a(1) or exceed the nicotine content limit in a nicotine-containing liquid as laid down pursuant to Section 7(2).

(2) The prohibition referred to in (1) shall not include:

- 1) Luggage and possession of up to 10 units for personal consumption.
- 2) Import, purchase, supply, receipt, manufacture, processing or possession with a view to marketing in other countries or to consumers in countries other than Denmark.

- 3) Import, purchase, supply, receipt, manufacture, processing or possession for scientific or control purposes.

6. In *Section 19(1)*, the following shall be inserted after ‘3–6’: ‘, 7a’, and the following *second sentence* shall be inserted: ‘The Customs and Tax Administration shall assist with the control of the requirements of Chapter 7a.’

7. In *Section 19* the following shall be inserted as (3) and (4):

‘(3) The Danish Safety Technology Authority may, in the period from 1 July 2024 up to and including 30 June 2026 as part of the control of the requirements laid down in *Section 15(1)* and (2), make use of young control purchasers with hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the place of business.

(4) The Danish Safety Technology Authority shall not, during controls in accordance with (3), affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the offence.

8. After *Section 22*, the following shall be inserted before the heading before *Section 23*:

‘**Section 22a.** The Danish Safety Technology Authority may seize electronic cigarettes with or without nicotine, refill containers with or without nicotine, as well as equipment and flavourings intended to be used together, if there is reason to believe that they are covered by the penalties of this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated.

(2) Products that come into the Danish Safety Technology Authority’s possession as a result of seizures, must be recorded and labelled as soon as possible. The Danish Safety Technology Authority shall issue acknowledgement of receipt.

(3) Seizures carried out pursuant to (1) shall be carried out in accordance with Chapter 74 of the Administration of Justice Act on seizures.

Section 22b. The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to

believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

(2) The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

(3) The Danish Safety Technology Authority may, on behalf of the Customs and Tax Administration to ensure customs duties and taxes, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Customs and Tax Administration.’

9. In *Section 30(1)*, ‘Section 15(4)’ shall be replaced by: ‘Section 15(3)’.

10 In *Section 33(1)(1)*, ‘Section 15(1–4)’ shall be replaced by: ‘Section 15(1–3)’

11. In *Section 33(1)(1)*, the following shall be inserted after ‘Section 18a(1)’: ‘Section 18b(1)’.

12. In *Section 33(2)*, ‘Section 15(5)’ shall be replaced by: ‘Section 15(4)’.

Section 3

The Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act No 583 of 26 March 2021, as amended by Section 3 of Act No 738 of 13 June 2023, shall be amended as follows:

1. *Section 2a(2)* shall be repealed.
(3–9) subsequently become (2–8).

2. In *Section 2a(4)*, which becomes (3), ‘must require the customer, before the sale is made, to state unequivocally that he or she is at least 16 years of age’ shall be replaced by: ‘must operate an age verification system which verifies, at the time of sale, that the customer is at least 16 years of age’.

3. In *Section 2a(6)*, which becomes (5), ‘must require the customer, before the sale is made, to state unequivocally that he or she is at least 18 years of age’ shall be replaced by: ‘must operate an age verification system which verifies, at the time of sale, that the customer is at least 18 years of age’.

4. In *Section 2a(7)*, which becomes (6), ‘cf. (3–6)’ shall be replaced by: ‘cf. Section 2 and Section 2a(2–5)’.

5. In *Section 2a(8)*, which becomes (7), ‘cf. (1) and (2)’ shall be replaced by: ‘cf. Section 1 and Section 2a(1)’.

6. In *Section 2a(9)*, which becomes (8), ‘cf. (7)’ shall be replaced by: ‘cf. (6)’.

7. In *Section 2b(1) and (2)*, and *Section 5(1)*, *first and second sentences*, ‘Section 2a(9)’ shall be replaced by: ‘Section 2a(8)’.

8. In *Section 2b*, the following shall be inserted as (4) and (5):

‘(4) The Danish Safety Technology Authority may, in the period from 1 July 2024 up to and including 30 June 2026 as part of the control of the requirements laid down in Section 1(1), Section 2 and Section 2a(1), (2) and (4), as well as rules issued pursuant to Section 2a(8), make use of young control purchasers with a hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the place of business.

(5) The Danish Safety Technology Authority shall not, during controls in accordance with (4), affect significant circumstances in relation to the offence, in particular an increase the extent or seriousness of the offence.’

Section 4

Act No 2071 of 21 December 2020 amending the Act on the prohibition of tobacco advertising etc., the Act on tobacco products etc., the Act on electronic cigarettes etc. and various other acts (Implementation of the national action plan against smoking among children and adolescents) shall be amended as follows:

1. *Section 2, Nos 13–14*, shall be repealed.

Section 5

Act No 738 of 13 June 2023 amending the Act on tobacco products, etc. and various other acts (Implementation of parts of the Delegated Directive on heated tobacco products, etc.) shall be amended as follows:

1. *Section 2, No 5*, shall be repealed.

Section 6

(1) The Act enters into force on 1 July 2024, without prejudice to (2).

(2) Section 1, Nos 3–5, Section 2, Nos 2–4, 9–10 and 12, Section 3, Nos 1–7, Section 4 and Section 5 shall enter into force on 1 October 2024.

(3) Rules laid down pursuant to Section 15(5) of the Act on electronic cigarettes, etc., cf. Consolidation Act No 1876 of 20 September 2021, as amended by Act No 738 of 13 June 2023, shall remain in force until they are repealed or replaced by regulations issued pursuant to Section 15(4) of the Act on electronic cigarettes, etc.

(4) Rules laid down pursuant to Section 2a(9) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act No 583 of 26 March 2021, as amended by Act No 738 of 13 June 2023, shall remain in force until they are repealed or replaced by regulations issued pursuant to Section 2a(8) of the Act on the prohibition of the sale of tobacco and alcohol to persons under 18 years of age.

Comments on the draft Act

General comments

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1. Introduction

Tobacco is the most important preventable cause of illness and death in Denmark. At the same time, children and adolescents are particularly sensitive to the harmful effects of nicotine and alcohol. For example, nicotine can have a serious impact on the ability to learn, concentrate and pay attention. Adolescents who have an early onset of alcohol and/or have a high alcohol consumption are also more likely to drink more later in life than other adults, leading to an increased risk of alcohol-related diseases and injuries.

The proportion of children and adolescents using at least one tobacco or nicotine product is increasing, especially in relation to some of the new nicotine products. Danish adolescents drink more and are more often drunk than adolescents in other European countries.

Children and adolescents have an easy access to alcohol and nicotine products – even if they are too young for the products to be sold to them. This also applies to nicotine products that are illegal to market in Denmark, such as the so-called ‘puff bars’ with sweet tastes.

On 14 November 2023, an agreement was reached on a prevention plan targeting the use of tobacco, nicotine and alcohol by children and adolescents between the government [Socialdemokratiet (the Social Democrats), Venstre (the Liberal Party) and Moderaterne (the Moderates)], Socialistisk Folkeparti (the Socialist People’s Party), Danmarksdemokraterne (the Danish Democrats), Det Konservative Folkeparti (the Conservative People’s Party) and Alternativet (the Alternative). The agreement contains a total of 30 initiatives to help reduce the consumption of tobacco, nicotine and alcohol by children and adolescents – and to support more inclusive communities. The draft Act implements parts of the agreement.

The draft Act proposes to introduce a prohibition on the import, purchase, supply, receipt, manufacture, processing and possession of electronic cigarettes and refill containers with nicotine that have illegal characterising flavours or an excessive nicotine content. The initiative should allow authorities to intervene before the illegal products are actually marketed to consumers. The prohibition is designed to take action against the supply chain and distributors so that products, for example, do not reach kiosks or are not sold from sports bags and luggage compartments. It is not intended to criminalise individuals who carry or possess of a certain amount for personal consumption.

The draft Act also proposes to give the Danish Safety Technology Authority the legal basis to seize illegal tobacco and nicotine products, as well as equipment and flavourings intended to be used with these. The initiative will help to make the Danish Safety Technology Authority’s control of existing and new rules more effective. With the possibility of carrying out seizures, the Danish Safety Technology Authority itself can remove the products and will thus not have to call the police.

Finally, the draft Act proposes to strengthen the age verification for tobacco, nicotine and alcoholic beverages. It is envisaged that the Danish

Safety Technology Authority may, for a period of two years, have the legal basis to use young control purchasers – so-called mystery shoppers. Before the end of the period, an evaluation will be carried out to determine the further use of the scheme. In addition, it is proposed to require more effective age verification for online sales of alcoholic beverages, while putting in place requirements for more effective age verification for online sales of tobacco and nicotine products.

The draft Act implements parts of the political agreement on a prevention plan targeting the use of tobacco, nicotine and alcohol by children and adolescents. The other initiatives in the agreement, which require legislation, are implemented with two other draft Acts. On the one hand, a draft Act in the area of responsibility of the Ministry of Taxation, which results in an increase in taxes on nicotine products and smokeless tobacco. On the other hand, a draft Act in the area of responsibility of the Ministry of the Interior and Health, which includes further strengthening of verifications, tougher penalties, limited availability of tobacco, nicotine and alcohol, less attractive tobacco and nicotine products, and regulation of smoke-free and vapour-free environments. The forthcoming draft Act on the Ministry of the Interior and Health will also implement a prohibition of import, purchase, possession, etc. of tobacco surrogates.

2. Main points of the draft Act

2.1. Prohibition of import, purchase, possession, etc.

2.1.1. Existing law

Section 7(2) of the Act on electronic cigarettes, etc., cf. Consolidation Act No 1876 of 20 September 2021, as amended, provides that the Minister for Health lays down rules on the quality, composition and safety of electronic cigarettes and refill containers with nicotine, including requirements for ingredients and measures to protect against damage and liquid leakages. The Minister may inter alia lay down rules on the amount of permitted ingredients and rules that certain substances may not form part of electronic cigarettes and refill containers with nicotine.

Pursuant to the aforementioned enabling provision, Order No 784 of 13 June 2023 on the quality, labelling and age verification system, etc. of electronic cigarettes and refill containers, etc. was issued.

Section 3 of the Order provides that a nicotine-containing liquid must have a maximum nicotine content of 20 mg/ml.

Section 25a(1) of the Act on electronic cigarettes, etc. provides that electronic cigarettes, refill containers with and without nicotine and

flavourings for use in electronic cigarettes with a characterising flavour may not be marketed in Denmark. However, the prohibition does not apply for a characterising flavour of menthol or tobacco.

Section 25(2) of the Act provides that the Danish Safety Technology Authority may prohibit the marketing of electronic cigarettes and refill containers with or without nicotine, if they do not meet the requirements of the rules laid down pursuant to Section 7(2) of the Act.

Section 33(1)(1) of the Act provides that, unless a higher penalty is incurred under the second Act, fines shall be imposed on anyone who infringes Section 25a(1) of the Act.

Section 33(2) of the Act provides that in rules laid down pursuant to, inter alia, Section 7(2), fines for infringements of the provisions of the rules may be imposed.

Applicable rules do not provide for the possibility of prohibiting the import, purchase, supply, receipt, manufacture, processing or possession of electronic cigarettes and refill containers with nicotine if they do not comply with the requirements and/or infringe Section 7(2) and Section 25a(1).

2.1.2. Considerations of the Ministry of the Interior and Health and the proposed scheme

The legislation lays down a number of rules for electronic cigarettes and refill containers with nicotine, including the prohibition of characterising flavours other than tobacco and menthol and nicotine content limit.

Despite this, electronic cigarettes with illegal characterising aromas and very high concentrations of nicotine are nevertheless available for and used by children and adolescents.

Today, the Danish Safety Technology Authority can only intervene if it can be documented that the products are marketed. ‘Placing on the market’ means that the products are made available to consumers, with or without payment. At the time of the products’ import into Denmark, these – as a starting point – have not yet been made available to Danish consumers. Similarly, the burden of proof that the product is marketed may be difficult to lift when, for example, a private person has many products on him or her, in a bag or otherwise in his possession.

Therefore, it is proposed to insert a new Chapter 7a with a Section 18b in the Act on electronic cigarettes, etc., which stipulates that it will not be

allowed to import, purchase, supply, receive, manufacture, process or possess electronic cigarettes and refill containers with nicotine, which are covered by the prohibition laid down in the Act on electronic cigarettes, etc. as regards characterising flavours or exceed the nicotine content limit in a nicotine-containing liquid.

The proposed new provisions are limited to infringements of the rules on characterising flavours and nicotine content only. The delimitation was made for the sole purpose of covering matters relating to the content of the products and which, therefore, cannot subsequently be regularised. At the same time, these are matters that are deemed possible for consumers, retailers, etc. to assess in terms of their compliance, as the content of characterising flavours and the nicotine content will often appear in the online marketing of the product or its packaging and labelling.

The draft will involve addressing the supply chain and distributors so that, for example, products do not reach kiosks or are not sold from sports bags and luggage compartments. However, it will be possible to carry and possess up to 10 units for personal consumption.

The draft would thus provide for an exception for luggage and possession of up to 10 units for personal consumption. If you have luggage or are in possession of 10 units or more, it is considered not to be for private consumption and will therefore not be covered by the exception. There may also be specific cases where luggage or possession of less than 10 units is not considered to be for private consumption. These will, for example, be the situations where the limit of 10 is systematically attempted to be circumvented, or if there are obvious other factors indicating that the purpose of the products is to be transferred to others.

The draft will also provide for an exception allowing Denmark to be a transit country for the products and for Danish companies to manufacture and process the products, etc. to be marketed in other countries or to consumers in countries other than Denmark. The requirements for characterising flavours are set at national level and the nicotine limit requirement is laid down in the EU, so there are a number of other countries with different legislation. If Denmark is used as a transit country, or if the products are manufactured or processed, etc. in Denmark, it will be a prerequisite that it can be documented that the products must be marketed in other countries or to consumers in countries other than Denmark. The documentation requirement may consist of presentation of invoice, documentation of the place of delivery and the like.

In order to ensure the possibility of regulatory control and research in the field, it is also proposed to exclude those situations where it is demonstrated that the import, purchase, supply, receipt, production, processing and possession are carried out for scientific or control purposes.

A similar prohibition of import, purchase, possession, etc. will be introduced for certain tobacco surrogates. It will be part of the upcoming draft Act, which translates the remaining elements of the political agreement on ‘A prevention plan targeting children and adolescents – tobacco, nicotine and alcohol’ reached on 14 November 2023. This draft Act will include, among other things, the reinforced product requirements for tobacco surrogates.

2.2. Seizures

2.2.1. Existing law

The Act on tobacco products, etc., and the Act on electronic cigarettes, etc., stipulates the control powers of the Danish Safety Technology Authority in relation to tobacco products, tobacco surrogates, herbal products for smoking as well as electronic cigarettes and refill containers with and without nicotine.

Section 36 of the Act on tobacco products, etc., cf. Consolidated Act No 1486 of 18 June 2021, as amended, provides that the Danish Safety Technology Authority may prohibit the marketing of tobacco products and tobacco surrogates for a number of specific provisions. Section 37 of the Act provides that, for a number of specific provisions, the Danish Safety Technology Authority may prohibit the marketing of herbal products for smoking.

Section 38 of the Act provides that the Danish Safety Technology Authority, for a number of specific provisions, may order manufacturers, importers, distributors and retailers of tobacco products, tobacco surrogates and herbal products for smoking to withdraw such products from the market or recall them from consumers, if it otherwise considers that the products pose a serious risk to human health.

Section 38a of the Act provides that the Danish Safety Technology Authority may order the owner of an online interface to modify or remove content referring to a product that does not comply with the rules of the Act, rules laid down pursuant to the Act or Regulations relating to the scope of the Act.

Section 38b of the Act provides that an online interface may be blocked if an order under Section 38a has not been complied with or the online interface has repeatedly sold or arranged the sale of products posing a serious risk. The scope of this blocking is set out in (2–5) of that provision.

Section 39a of the Act provides that, in duly justified cases, the Danish Safety Technology Authority may deactivate an economic operator's identification code, plant identification code or machine identification code.

Section 45(1) of the Act provides that, unless a higher penalty is incurred under the other legislation, fines shall be imposed on anyone who infringes or fails to comply with a number of provisions. In accordance with (2) of the provision, fines for infringements of rules issued pursuant to a number of provisions may be imposed. If the Danish Safety Technology Authority finds an infringement that is directly punishable under Section 45(1) and (2) of the Act, the Danish Safety Technology Authority shall report it to the police.

Section 25 of the Act on electronic cigarettes, etc., cf. Consolidated Act No 1876 of 20 September 2021, as amended, provides that, for a number of specific provisions, the Danish Safety Technology Authority may prohibit the marketing of electronic cigarettes and refill containers with or without nicotine.

Section 26 of the Act provides that the Danish Safety Technology Authority, for a number of specific provisions, may order manufacturers, importers, distributors and retailers of electronic cigarettes and refill containers with nicotine to withdraw such products from the market or recall them from consumers, if it otherwise considers that the products pose a serious risk to human health.

Section 27 of the Act provides that if the Danish Safety Technology Authority finds, or has reasonable grounds for believing, that certain electronic cigarettes or refill containers with nicotine or a certain type of electronic cigarette or refill container with nicotine, which may be presumed to comply with the requirements of this Act and in rules laid down pursuant to the Act, could pose a serious risk to human health, the Agency may temporarily prohibit the marketing of the products.

Section 27a of the Act provides that the Danish Safety Technology Authority may order the owner of an online interface to modify or remove content referring to a product that does not comply with the rules of this

Act, rules laid down pursuant to this Act or Regulations relating to the scope of this Act.

Section 27b of the Act provides that an online interface may be blocked if an order under Section 27a of the Act has not been complied with or the online interface has repeatedly sold or arranged the sale of products posing a serious risk. The scope of this blocking is set out in (2–5) of that provision.

Section 33(1) of the Act provides that, unless a higher penalty is incurred under the other legislation, fines shall be imposed on anyone who infringes or fails to comply with a number of provisions. In accordance with (2) of the provision, fines for infringements of rules issued pursuant to a number of provisions may be imposed. If the Danish Safety Technology Authority finds an infringement that is directly punishable under Section 33(1) and (2) of the Act, the Danish Safety Technology Authority shall report it the police.

The Act on tobacco products, etc. and the Act on electronic cigarettes, etc. do not lay down provisions that allow the Danish Safety Technology Authority to seize tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes with or without nicotine, refill containers with or without nicotine or equipment and flavourings intended to be used with these products.

2.2.2. The Ministry of the Interior and Health's considerations and the proposed scheme

With the Act on tobacco products, etc. and the Act on electronic cigarettes, etc., the Danish Safety Technology Authority has a number of control powers. However, the Danish Safety Technology Authority is not allowed to seize tobacco and nicotine products that do not comply with the legislation. Today, the Danish Safety Technology Authority will have to call the police in order for them to carry out the seizure.

Seizure is to be understood as the police or other authorities detaining items or temporarily in connection with the processing of a case.

It is therefore proposed to insert a new Section 35a and Section 35b in the Act on tobacco products, etc. and a new Section 22a and Section 22b in the Act on electronic cigarettes, etc., which gives the Danish Safety Technology Authority the legal basis to seize tobacco and nicotine products, as well as equipment and flavourings intended to be used with these, if there is reason to believe that they are covered by penalties in the

relevant acts, penalties laid down pursuant to the Acts or penalties in Regulations relating to the scope of the Acts, and there is reason to believe that the item may serve as evidence or should be confiscated. It also provides the legal basis for the Danish Customs and Tax Administration and the Danish Safety Technology Authority to detain products on behalf of each other.

Furthermore, it is proposed that the Danish Safety Technology Authority's seizures should be carried out in accordance with Chapter 74 of the Administration of Justice Act.

The proposed legal bases for seizures will mean that the Danish Safety Technology Authority's controls will be made more effective, as they will not, among other things, have to contact and await the police.

It is proposed that the Danish Safety Technology Authority, for example, will be able to use of the legal basis in cases where illegal products are being marketed in retail operations. Or in cases where imported, purchased, possessed, etc. products, with illegal characterising flavours or an excessive nicotine content, cf. point 2.1 of the general comments of the draft Act.

2.3. Strengthened age verification

2.3.1. Existing law

Age limits and age verification requirements are set out in the Act on tobacco products, etc., the Act on electronic cigarettes, etc. and the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, etc.

Section 23(1) of the Act on tobacco products, etc., cf. Consolidated Act No 1489 of 18 June 2021, as amended, provides that, before the marketing commences, anyone who wishes to market tobacco products to consumers in Denmark or in another EU/EEA country by means of cross-border distance sales must register with the Danish Safety Technology Authority. Marketing may only commence when the Danish Safety Technology Authority has confirmed that registration has taken place.

Section 24(1) of the Act provides that retailers of tobacco products registered under Section 23(1) of the Act must operate an age verification system. Under Section 24(2) of the Act, the Minister for the Interior and Health shall lay down detailed rules on the age verification system referred to in (1), including on the detailed requirements of the system, and on the

obligation of retailers to provide the Danish Safety Technology Authority with information on the content and use of the system.

Pursuant to the aforementioned enabling provision, Order No 780 of 13 June 2023 on limit values, health warnings and age verification systems, etc. of tobacco products, etc. was issued.

Section 21 of the Order provides that anyone who wishes to market tobacco products to consumers in Denmark or in another EU/EEA country in the case of cross-border distance sales must provide the Danish Safety Technology Authority with details of the type of age verification system established by the dealer in accordance with Section 24 of the Act. The information shall relate to the content and use of the age verification system.

With Act No 2071 of 21 December 2020, an amendment was adopted to Section 24(1) of the Act on tobacco products, etc., so that the reference to Section 23(1) shall be deleted, and retailers of tobacco products, tobacco surrogates and herbal products for smoking must operate an age verification system. The comments to the provision, cf. the Official Record of Parliamentary Proceedings (Folketingstidende) 2020–21, Appendix A, L 61, as submitted, p. 41, provide that the obligation to operate an age verification system will in the future rest on all retailers of tobacco products, tobacco surrogates and herbal products for smoking who market through distance sales, and not only those who market through cross-border distance sales. The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser. However, the amendment to Section 24(1) by Act No 2071 of 21 December 2020 has not yet entered into force as it is awaiting the right available solution. It is the Minister for the Interior and Health who determines the time of entry into force.

Section 13(1) of the Act on electronic cigarettes, etc., cf. Consolidated Act No 1876 of 20 September 2021, as amended, provides that, before the marketing commences, anyone who wishes to market electronic cigarettes and refill containers with nicotine to consumers in Denmark or in another EU/EEA country in the case of cross-border distance sales, must register with the Danish Safety Technology Authority. Marketing may only commence when the Danish Safety Technology Authority has confirmed that registration has taken place.

Section 15(1) of the Act provides that electronic cigarettes and refill containers with and without nicotine may not be marketed to persons under the age of 18. Under Section 15(2) of the Act, anyone who commercially sells electronic cigarettes or refill containers with or without nicotine at physical points of sale shall require the presentation of a valid photo ID if the seller is in doubt that the customer is at least 18 years of age. Under Section 15(3) of the Act, anyone who commercially markets electronic cigarettes or refill containers with or without nicotine online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age. Under Section 15(4) of the Act, retailers of electronic cigarettes and refill containers with nicotine registered under Section 13(1) shall operate an age verification system, cf. (3). Under Section 15(5) of the Act, the Minister for the Interior and Health shall lay down rules on the age verification system, including requirements for the system and on the retailer's obligation to provide the Danish Safety Technology Authority with information on the content and use of the system.

Pursuant to the enabling provision in Section 15(5), Order No 784 of 13 June 2023 on the quality, labelling and age verification system, etc. of electronic cigarettes and refill containers, etc. has been issued.

Section 15 of the Order provides that anyone who wishes to market electronic cigarettes and refill containers with nicotine to consumers in Denmark or in another EU/EEA country in the case of cross-border distance sales must provide the Danish Safety Technology Authority with details of the type of age verification system established by the dealer pursuant to Section 15(4) of the Act. The information shall relate to the content and use of the age verification system.

With Act No 2071 of 21 December 2020 amending the Act on the prohibition of tobacco advertising, etc., the Act on tobacco products, etc., the Act on electronic cigarettes, etc. and various other acts (Implementation of national action plan against children and adolescents' smoking), it was agreed to amend Section 15(2) of the Act on electronic cigarettes, etc. so that retailers of electronic cigarettes and refill containers with nicotine registered under Section 5a(1) or Section 13(1) must operate an age verification system. The comments to the provision, cf. the Official Record of Parliamentary Proceedings (Folketingstidende) 2020–21, Appendix A, L 61, as submitted, pp. 50–51, provide that the obligation to

operate an age verification system will in the future rest on all retailers of electronic cigarettes and refill containers with and without nicotine.

The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser. However, the amendment to Section 15(2) by Act No 2071 of 21 December 2020 has not yet entered into force as it is awaiting the right available solution. It is the Minister for the Interior and Health who determines the time of entry into force.

The amendment of Section 15(2) of the Act on electronic cigarettes, etc. was repealed and adopted again by Act No 738 of 13 June 2023 for technical reasons, thus referring to an amendment to Section 15(4) of the Act on electronic cigarettes, etc. instead of Section 15(2).

Section 1(1) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act 583 of 26 March 2021, as amended, provides that tobacco products, tobacco substitutes and herbal products for smoking may not be sold to persons under the age of 18.

Under § 2(1) of the Act, alcoholic beverages with an alcohol volume of 1.2 % or more may not be sold to persons under the age of 16 from shops where retail sales take place. Under § 2(2) of the Act, alcoholic beverages with an alcohol volume of 16.5 % or more may not be sold to persons under the age of 18 from shops where retail sales take place.

Section 2a(1) of the Act provides that a person who sells tobacco products, tobacco substitutes or herbal products for smoking on a commercial basis at physical points of sale must require the presentation of a valid photo ID if the seller is in doubt that the customer is at least 18 years of age. Under Section 2a(2) of the Act, anyone who commercially markets tobacco products, tobacco substitutes or herbal products for smoking online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

Under Section 2a(3) of the Act, any person who commercially sells alcoholic beverages with an alcohol volume of 1.2 % or more at physical outlets in the course of trade shall require the presentation of a valid photo ID if the seller is in doubt that the customer is 16 years of age. Under

Section 2a(4) of the Act, any person who commercially markets alcoholic beverages with an alcohol volume of 1.2 % or more online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 16 years of age.

Under Section 2a(5) of the Act, any person who commercially sells alcoholic beverages with an alcohol volume of 16.5 % or more at physical outlets in the course of trade shall require the presentation of a valid photo ID if the seller is in doubt that the customer is 18 years of age. Under Section 2a(6) of the Act, any person who commercially markets alcoholic beverages with an alcohol volume of 16.5 % or more online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

2.3.2. The Ministry of the Interior and Health's considerations and the proposed scheme

The parties behind the prevention plan targeting the use of tobacco, nicotine and alcohol by children and adolescents agree that the age verification for the sale of tobacco, nicotine and alcoholic beverages should be strengthened.

When the Danish Safety Technology Authority monitors the compliance with age limits in physical stores, it is a prerequisite that they are present to witness the sale and thus find that the dealer does not enforce the age limits. Therefore, it is rare that the Danish Safety Technology Authority's controls lead to police reports. The Danish Safety Technology Authority also relies on evidence that the adolescent provides information about his age and identification information.

It is therefore proposed to authorise the Danish Safety Technology Authority, for a period of 2 years, to use young control purchasers on an experimental basis during inspections in physical stores throughout Denmark. This means that the Danish Safety Technology Authority may employ adolescents below the age limits for the sale of tobacco, nicotine and alcohol in order to check whether the age limits are met. Before the end of the period, an evaluation will be carried out to determine the further use of the scheme.

The Danish Safety Technology Authority will only be able to make use of young control purchasers with a hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the

place of business. The Danish Safety Technology Authority shall not, during controls, affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the offence.

It is also proposed to require more effective electronic age verification for online sales – also known as distance sales – of alcoholic products. In parallel, the requirements for more effective electronic age verification for online sales of tobacco and nicotine products will be put into effect. An effective electronic age verification can take place e.g. through the current national eID solution such as MitID or it can take place through the creation of a user with a passport or other valid identification, which has also been provided for in the area of laughing gas by Act No 732 of 13 June 2023 amending the Act on the sale and marketing of laughing gas to consumers and the Act on marketing (Tightening of rules on the marketing of laughing gas for intoxication and introduction of the possibility of imprisonment).

In order to ensure the freedom of methodology, there can also be other verification solutions. These other solutions must also be able to effectively verify the purchaser's age. It is the person who markets the products who is responsible for ensuring that the age limits are met. It should be noted that the requirement of electronic age verification does not require confirmation of the exact age of the citizen, but merely confirms that the citizen is above the age limit.

3. Impact on the UN Sustainable Development Goals

This draft Act aims to strengthen efforts against non-compliant tobacco and nicotine products and, on the other hand, the sale of tobacco, nicotine and alcoholic beverages to children and adolescents below the age limits. The draft Act must therefore support the existing regulation, which has been introduced over time with the aim of ensuring a high level of health protection.

It is estimated that the draft Act could help reduce the consumption of tobacco, nicotine and alcohol among children and adolescents in particular. For example, the draft Act should make it easier for authorities to take action against electronic cigarettes with illegal characterising flavours that may appeal to children and adolescents so that they are less accessible. The draft Act is therefore assessed to support UN Sustainable Development Goal No 3 on good health and well-being.

4. Economic impact and implementation impact on the public sector

The draft Act consists of several elements that entail administrative costs for the Danish Safety Technology Authority, the Danish Customs Agency, the Danish Tax Agency, the police, the public prosecutor's office and the courts. Funding has been allocated as part of the agreement on a prevention plan targeting the use of tobacco, nicotine and alcohol by children and adolescents signed on 14 November 2023 between the government [Socialdemokratiet (the Social Democrats), Venstre (the Liberal Party) and Moderaterne (the Moderates)], Socialistisk Folkeparti (the Socialist People's Party), Danmarksdemokraterne (the Danish Democrats), Det Konservative Folkeparti (the Conservative People's Party) and Alternativet (the Alternative).

As regards the element prohibiting the import, purchase, possession, etc. of the prevention plan, a financial framework of DKK 17.8 million has been set aside in 2024 and DKK 30.5 million annually from 2025 for expenses of the Danish Safety Technology Authority, the Danish Customs Agency, the Danish Tax Agency, the police, the public prosecutor's office and the courts. The framework is intended to cover both costs related to the enforcement of the prohibition on the import, purchase, possession, etc. of electronic cigarettes with illegal characterising flavours and an excessive nicotine content in the present draft Act and the same prohibition for tobacco surrogates, which is included in a subsequent draft Act.

As regards the element on seizures, the prevention plan has allocated DKK 0.5 million in 2024 and DKK 6.3 million annually from 2025 to the Danish Safety Technology Authority.

As regards the element of strengthened age verification, the prevention plan has allocated DKK 5.0 million in 2024 and DKK 15.0 million annually from 2025 for an overall age verification effort in the Danish Safety Technology Authority.

To the extent that tobacco, nicotine and alcohol consumption decreases as a result of the draft Act, there will be a negative revenue impact on the state. There are no studies, evaluations, etc. that make it possible to make revenue calculations thereof.

It is estimated that the draft Act will have a positive implementation impact in terms of more effective control and enforcement of the legislation. On the other hand, that the Danish Safety Technology

Authority is given the legal basis to carry out seizures, so that fewer authorities are involved. On the one hand, that the Danish Safety Technology Authority shall have the legal basis to use young control purchasers in order to make the age verification more effective.

It is considered that the draft Act does not have any implementation impact on the State, regions and municipalities.

The draft Act is deemed to be in compliance with the principles for digital-ready legislation to the extent that the principles are relevant. This means, among other things, that the requirements for more effective age verification online are designed to allow the use of existing public IT infrastructure such as MitID, cf. Principle 6, and that it allows for effective IT use for control purposes, cf. Principle 7.

5. Economic and administrative impact on the business sector, etc.

The draft Act addresses tobacco and nicotine products that do not comply with the legislation in Denmark, and situations where tobacco, nicotine and alcohol are being sold to children and adolescents below the age limits. The draft Act thus largely supports existing regulations and requirements. In this regard, it should be noted that the economic impact assessments are intended to illustrate the impact on companies that comply with the rules.

The draft Act does not consider that there is any administrative impact on the business sector.

However, other compliance costs are assessed, cf. below, but these are estimated to be below the de minimis threshold of DKK 10 million and are therefore not quantified further.

The other compliance costs entail that the draft Act proposes a documentation requirement in connection with an exemption to the prohibition on import, purchase, possession, etc. This entails an impact on the business sector, as the adequate documentation must be ensured. However, the documentation requirement will consist of presentation of invoice, documentation of the place of delivery and the like. All other things being equal, it will therefore include information that the business sector will already have at its disposal.

The other compliance costs also imply that the draft Act proposes to require more effective electronic age verification for online sales of tobacco, nicotine and alcohol.

The requirement is expected to result in conversion and possibly operating costs for the business sector in order for all retailers of tobacco, nicotine and alcoholic beverages online to implement a system that effectively verifies that no sales are made to purchasers below the specified age limit. However, there are no requirements as to the specific system to be used by online retailers, and the amount of the cost will depend on the specific method chosen. An effective electronic age verification can, for example, be via the current national eID solution such as MitID or through user creation with a passport or other valid identification, as is done in the area of laughing gas. In order to ensure the freedom of methodology, there can also be other verification solutions. The key is that the retailer implements a system that effectively verifies whether the purchaser is above the specified age limit. The age verification system must also take into account the protection of consumers' personal data. The requirement for effective age verification online will generally apply to both Danish and foreign websites that sell the products to Danish consumers. The requirement is supposed to apply to not far more than 650 Danish online retailers.

If MitID is chosen as an age verification system, the dealer is expected to have conversion costs if they are not already connected to MitID in other contexts. The conversion costs depend on the individual MitID broker, a private company that facilitates access to the MitID system. The costs of this cannot therefore be stated. In addition, the dealer will incur costs partly via fees to the brokers and partly via the individual dealer's costs for developing his web shop. The price per transaction, i.e. the price per time age verification is applied, depends on the individual broker and the solution it has developed. It is therefore not possible to indicate a general price. It is not possible to estimate the number of online transactions containing tobacco, nicotine and/or alcoholic beverages. It should be noted that there are already companies that, for example, use MitID for verification.

It will depend on the specific wishes and needs of the dealer, what an age verification solution will look like and how it is implemented. The freedom of method also allows each dealer to choose the method that is most cost-effective for them, as long as it is ensured that the method effectively verifies the purchaser's age. It should be noted that a

requirement to operate an age verification system for cross-border distance sales is also laid down in Article 18(4) of the Tobacco Product Directive.

The draft Act proposes that the provisions for more effective online age verification enter into force on 1 October 2024. Thus, reasonable time is given for retailers to identify which age verification solution they want to use and to implement said solution. Similarly, in the period up to 1 October 2024, there will be market developments and increased competition in this area, as more age verification solutions can be developed and offered to dealers.

Further to the above, the draft Act is innovation-friendly and technology-neutral, as retailers marketing tobacco, nicotine and alcohol online do not have to use a specific method to ensure that the age limit for the products is respected. Thus, the age verification requirement does not affect the ability of companies or entrepreneurs to test, develop and apply new technologies and innovation. The requirement for electronic age verification does not require confirmation of the exact age of the citizen, but merely confirms that the citizen is above the age limit. Data is thus minimised, which promotes the use of security-enhancing and privacy-enhancing technologies. The relevance to security and privacy will be affected by the chosen method, as some methods will require more data than others. Furthermore, the draft Act is not considered relevant in relation to the innovation and entrepreneurship check.

6. Administrative impact on citizens

The draft Act imposes greater responsibility on citizens to assess whether electronic cigarettes and refill containers with nicotine contain illegal characterising flavours and/or an excessive nicotine content before potential import, purchase, possession, etc., as they may in the future be punished for doing so. However, characterising flavours and nicotine content are often reflected in the online marketing of the products or their packaging and labelling. There is also an exception for luggage and possession for private consumption in order not to criminalise private individuals.

The draft Act is also estimated to have a less negative administrative impact on citizens in terms of the requirement for more effective age verification online. The draft Act proposes that when citizens purchase tobacco, nicotine and alcohol online in the future, they must verify

themselves with e.g. MitID or by user creation. This may mean that in the future, a purchase will take longer to complete than today.

7. Climate impact

The draft Act is deemed to have no climate impact.

8. Impact on the environment and nature

The draft Act is not considered to have any impact on the environment or nature.

9. Relationship to EU law

Electronic cigarettes and refill containers with nicotine are covered by the free movement of goods under the TFEU. Member States may therefore normally not set conditions that impede the free movement of goods. However, it also follows from the TFEU that the free movement of goods may be restricted on grounds of, inter alia, public health.

The Tobacco Products Directive (2014/40/EU) lays down common rules in the EU on which tobacco products, herbal products for smoking as well as electronic cigarettes and refill containers with nicotine are legal to market. It is also possible for Member States to lay down national rules going beyond the Directive.

In particular, in relation to the proposed prohibition on import, purchase, possession, etc., it should be noted that the Tobacco Products Directive does not require Member States to regulate characterising flavours in electronic cigarettes and refill containers, but it is apparent, inter alia, from Preamble 47 of the Directive that Member States are responsible for the adoption of rules on flavours in relation to electronic cigarettes and refill containers. With Act No 2071 of 21 December 2020, Denmark has adopted a prohibition on the marketing in Denmark of electronic cigarettes, refill containers with and without nicotine and flavourings for use in electronic cigarettes with a characterising flavour. However, the prohibition does not apply for a characterising flavour of menthol or tobacco.

The concern pursued by the existing regulation in the EU and Denmark is to ensure a high level of health protection, especially for children and adolescents.

With the proposed prohibition of import, purchase, possession, etc. in the present draft Act, the aim is to support the control and enforcement of this already adopted regulation. Thus, the prohibition only concerns products

which do not already comply with EU requirements due to an excessive nicotine content, or the requirements in Denmark due to illegal characterising flavours. The prohibition does not result in more products being illegal to market, etc. It is in the opinion of the Ministry of the Interior and Health that the proposed prohibition complies with EU law.

In particular, in relation to the proposed provisions on requirements for a more effective online age verification system, it should be noted that it follows from Article 18(4) of the Tobacco Products Directive that retail outlets engaged in cross-border distance sales shall operate an age verification system which verifies, at the time of sale, that the purchasing consumer complies with minimum age requirements provided for under the national law of the Member State of destination. This is implemented in Section 24(1) of the Act on tobacco products, etc. and Section 15(4) of the Act on electronic cigarettes, etc. The present draft Act requires a more effective age verification than the current one, it will not be sufficient in the future if the person marketing the products, for example, has a pop-up window asking the purchaser to confirm that he or she is above the age limit. The Ministry of the Interior and Health considers that the proposed requirement for more effective age verification is in line with EU law.

The proposed provisions of the draft Act on seizures are not considered relevant in the light of EU law.

The draft Act as a whole has been notified as a draft in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification).

10. Consulted government authorities/agencies and organisations, etc.

The draft Act was sent for consultation to the following authorities and organisations, etc., in the period from 8 February 2024 to 7 March 2024:

Advokatrådet, Alkohol og Samfund, Akademikernes Centralorganisation (AC), Arbejdsgiverforeningen KA, Arbejdstilsynet (the Danish Working Environment Authority), Astma-Allergi Forbund, Bagger-Sørensen Gruppen, Becig, Blå kors, BrancheDanmark, British American Tobacco, Bryggeriforeningen, Børnerådet, Børns vilkår, Center for Hjerneskade, Coop Danmark, Dagrofa, Danmarks Apotekerforening, Danmarks Farmaceutiske Selskab, Danmarks Lungeforening, Danmarks Restauranter og Cafeer (DRC), Dansk Arbejdsgiverforening (DA), Dansk e-Damper Forening (DADAFO), Dansk Erhverv (Danish Chamber of Commerce),

Dansk Industri (Confederation of Danish Industry), Dansk Lungemedicinsk Selskab, Dansk Psykiatrisk Selskab, Dansk Selskab for Almen Medicin, Dansk Selskab for Distriktpsykiatri, Dansk Selskab for Folkesundhed, Dansk Selskab for Patientsikkerhed, Dansk Supermarked, Dansk Sygeplejeråd, Dansk Transport og Logistik (DTL), Danske Fysioterapeuter, Danske Gymnasieelevers Sammenslutning, Danske Handicaporganisationer (DH), Danske Patienter, Danske Regioner (Danish Regions), Danske seniorer, Danske Skoleelever, Danske Tandplejere, Danske Ældreråd, Dataetisk råd, Datatilsynet (the Danish Data Protection Agency), De Samvirkende Købmænd, Den Danske Dommerforening, Det Ethiske Råd, Diabetesforeningen, Efuma, Erhvervsskolernes Elevorganisation, Fag og Arbejde (FOA), Fagbevægelsens Hovedorganisation (Danish Trade Union Confederation), Fagligt Fællesforbund – 3F, Farmakonomforeningen, Finanssektorens Arbejdsgiverforening, Forbrugerombudsmanden, Forbrugerrådet, Foreningen af Danske Lægestuderende (FADL), Foreningen af Speciallæger, Foreningen for Dansk Internet Handel, Foreningen for Parallelimportører af Medicin, Forsikring og Pension, Færøernes landsstyre (Home Government of the Faroe Islands), Gejser, Gigtforeningen, Hjerteforeningen, HK - Handel, Hotel-, Restaurant - & Turisterhvervet (HORESTA), House of Oliver Twist A/S, Industriforeningen for generiske og biosemilære lægemidler, Japan International Tobacco, Jordemoderforeningen, KFUM' s Sociale Arbejde, Kirkens Korshær, Komiteen for Sundhedsoplysning, Kommunernes Landsforening (KL), Kræftens Bekæmpelse (Danish Cancer Society), Landsorganisationen for sociale tilbud, Landssammenslutningen af Handelsskoleelever, LO – Landsorganisationen i Danmark, Lægeforeningen, Lægemiddelindustriforeningen, Medicoindustrien, Metal Ungdom, Mødrehjælpen, Naalakkersuisut, National Videnskabsetisk Komité, Nationalt Center for Etik, Nikotinbranchen, Nærbutikkernes Landsforening, Nærings- og Nydelsesmiddelarbejder Forbundet (NNF), Offentligt Ansattes Organisationer (OAO), Parallelimportørforeningen af lægemidler, Patientforeningen, Patientforeningen Danmark, Pharmadanmark, Pharmakon, Philip Morris, Praktiserende Lægers Organisation, Praktiserende Tandlægers Organisation, Rigsrevisionen, Røgfri Fremtid, Rådet for Socialt Udsatte, Skole og Forældre, Smoke Solution, SSP-Samrådet, Sund By Netværket, Sundhed Danmark - Foreningen af danske sundhedsvirksomheder, Sundhedskartellet , Swedish Match, Sygeforsikringen 'Danmark', Tandlægeforeningen, Tobaksindustrien, Tobaksproducenterne, Veterinærmedicinsk

Industriforening (VIF), Ældresagen (DaneAge Association) og Yngre læger.

11. Summary table

	Positive impact/lower costs (if yes, please specify extent/if no, enter 'None')	Negative impact/additional costs (if yes, please specify extent/if no, enter 'None')
Economic impact on the State, municipalities, and regions	Any reduced consumption of tobacco, nicotine and alcohol may, in the long term, reduce healthcare costs, etc. There are no studies, evaluations, etc. that make it possible to make calculations thereof.	Control and enforcement costs for the Danish Safety Technology Authority, the Danish Customs Agency, the Danish Tax Agency, the police, the public prosecutor's office and the courts. To the extent that the consumption of tobacco, nicotine and alcohol is reduced, there will be a negative revenue impact on the state. There are no studies, evaluations, etc. that make it possible to make calculations thereof.
Implementation impact on the State, municipalities, and regions	The Danish Safety Technology Authority may carry out seizures without involvement of the police and will be able to conduct a more effective age verification by using young control purchasers, etc.	None
Economic impact on businesses	None	The other compliance impact is estimated to be below the de minimis threshold of DKK 10 million and are therefore not further quantified.
Administrative impact on trade and industry	None	None.
Administrative	None	They are expected to have an

impact on citizens		administrative impact on citizens as they will have to consider whether electronic cigarettes and refill containers with nicotine comply with the rules in terms of characterising flavours and nicotine content. Similarly, all other things being equal, citizens will have to spend more time on age verification when purchasing tobacco, nicotine and alcohol online.
Climate impact	None	None
Impact on the environment and nature	None	None
Relationship to EU law	The aim of the draft Act is to protect public health by strengthening the control and enforcement of existing regulations in the EU and Denmark respectively. Thus, the prohibition on import, purchase, possession, etc. only concerns products that do not already comply with the requirements of either the EU or Denmark. As regards the requirements for more effective age verification, see Article 18(4) of the Tobacco Products Directive. The Ministry of the Interior and Health is of the opinion that the draft Act complies with EU law.	
Contravenes the five principles for the implementation of professional EU regulation (which, where relevant, also applies to the implementation of non-professional EU regulation)	Yes	No X

(put X)	
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Comments on the individual provisions of the draft Act

Re § 1

Re No 1

Section 2 of the Act on tobacco products, etc. provides what is meant by a number of terms in the Act. Section 2, No 17, provides that ‘manufacturer’ means any natural or legal person who manufactures a tobacco product or a herbal product for smoking or has that product designed or manufactured, and markets that product under their name or trademark.

It is proposed that in *Section 2, No 17*, ‘a tobacco product’ shall be inserted after ‘, a tobacco surrogate’.

The proposed amendment will mean that the definition of ‘manufacturer’ also includes tobacco surrogates, since the Act on tobacco products, etc. also regulates this type of product. The sole purpose of that provision is therefore to cover several products of the definition.

Re No 2

Section 2 of the Act on tobacco products, etc. provides what is meant by a number of terms in the Act. Section 2, No 18, provides that ‘importer’ means the owner of, or a natural or legal person with a right of disposal over, tobacco products or herbal products for smoking imported into the territory of the European Union. Section 2, No 19, provides that ‘distributor’ means any natural or legal person other than a manufacturer or importer who markets tobacco products or herbal products for smoking, with the exception of sales to consumers. Section 2, No 20, provides that ‘retailer’ means any natural or legal person who markets tobacco products or herbal products for smoking to consumers. Section 2, No 21, provides that ‘placing on the market’ means making tobacco products or herbal products for smoking available to consumers, with or without payment. In the case of cross-border distance sales the product is deemed to be placed on the market in the country where the consumer is located

It is proposed that in *Section 2, Nos 18–21*, ‘, tobacco surrogates’ shall be inserted after ‘tobacco products’.

The proposed amendment will mean that the definitions of ‘importer’, ‘distributor’, ‘retailer’ and ‘marketing’ also include tobacco surrogates, as the Act on tobacco products, etc. also regulates this type of product. The sole purpose of that provision is therefore to cover several products of the definitions.

Re No 3

Section 2 of the Act on tobacco products, etc. provides what is meant by a number of terms in the Act.

It is proposed that in *Section 2* of the Act, a definition of ‘age verification system’ shall be inserted as *No 32*, where the definition of an age verification system is an IT system that unambiguously confirms the consumer’s age electronically in accordance with the age limit.

The proposed amendment will mean that a definition of ‘age verification system’ will be added to the Act. The proposed definition transposes the corresponding definition in Article 2, No 36, of the Tobacco Products Directive into Danish law.

The age verification system must confirm that the age of the consumer is in accordance with the specified age limit, i.e. that the consumer has the relevant minimum age, the system does not necessarily have to confirm the exact age of the citizen. It also follows from the definition that it must be an IT system. The IT system can, for example, mean the use of MitID or user creation with a passport or other valid identification. It should be noted that when using MitID, more information is provided than just whether the consumer has the relevant minimum age.

The addition of the definitions does not in itself intend to change the regulation in this area. However, see Section 1, No 5, of the draft Act, which lays down requirements for an age verification system for online sales.

The same definition is proposed to be inserted in the Act on electronic cigarettes, etc., cf. Section 2, No 2, of the draft Act.

Re No 4

The heading to Chapter 7 of the Act on tobacco products etc. is ‘Cross-border distance sales’.

Pursuant to Section 2, No 13, of Act No 2071 of 21 December 2020, the heading of Chapter 7 is to be rewritten, entailing amending ‘cross-border distance sales’ to ‘distance sales’. The Minister for the Interior and Health shall determine the date of entry into force of Section 2, No 13, as it must first be ensured that the right available solution for an age verification system can be implemented by the dealers. The provision has not yet been put into effect.

It is proposed that the *heading* shall be worded as follows: ‘Distance sales’.

The amendment should be seen in conjunction with the fact that there is now an available solution for a more efficient age verification system that can be implemented by the dealers and put into effect. The solution is proposed to be implemented by Section 1, No 5, of the draft Act and, as a result, in Section 4, No 1, it is proposed to repeal Section 2, Nos 13 and 14, of Act No 2071 of 21 December 2020.

The draft implies that the heading of Chapter 7 shall be in connection with the introduction of an age verification system, cf. Section 1, No 5, of the draft Act.

Re No 5

Section 23(1) of the Act on tobacco products etc. provides that, before the marketing commences, anyone who wishes to market tobacco products to consumers in Denmark or in another EU/EEA country by means of cross-border distance sales must register with the Danish Safety Technology Authority. Marketing may only commence when the Danish Safety Technology Authority has confirmed that registration has taken place.

It follows from Section 24(1) of the same Act that retailers of tobacco products registered under Section 23(1) must operate an age verification system.

Section 2, No 13, of Act No 2071 of 21 December 2020 provides that the heading of Chapter 7 is to be rewritten, entailing amending ‘cross-border

distance sales’ to ‘distance sales’. After Section 2, No 14, of the same Act, in Section 24(1), ‘tobacco surrogates and herbal products for smoking’ shall be inserted after ‘tobacco products’, and ‘registered under Section 23(1)’ shall be deleted.

The amendments mean that the obligation to operate an age verification system will in the future rest on all retailers of tobacco products, tobacco surrogates and herbal products for smoking who market through distance sales, and not only those who market through cross-border distance sales. The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser.

Pursuant to Section 7(7) of Act No 2071 of 21 December 2020, the Minister for Health determines the date of entry into force of Section 2, Nos 13 and 14, of the Act, as it must first be ensured that the right available solution for an age verification system can be implemented by the dealers. The two provisions have not yet been put into force.

It is proposed in *Section 24(1)* to insert ‘, tobacco substitutes and herbal products for smoking’ after ‘tobacco products’ and to replace ‘registered under Section 23(1) must operate an age verification system’ by ‘must operate, in the case of distance sales, an age verification system which verifies, at the time of sale, that the customer is at least 18 years of age’.

The proposed amendment should be seen in the context of the fact that there is now an available solution for a more efficient age verification system that can be implemented by the dealers and put into effect.

It is proposed in Section 4, No 1, of the draft Act that Section 2, No 14, of Act No 2071 of 21 December 2020 shall be repealed as a consequence of the proposed amendment of Section 24(1) of the Act.

The proposed amendment will also make it clear that the age verification system will have to check, at the time of sale, that the consumer complies with minimum age requirements. The proposed amendment will result in the provision reflecting more Article 18(4) of the Tobacco Products Directive.

‘Time of sale’ means the time when the purchase is made. The age verification will thus have to be done when the customer seeks to complete

the purchase on the respective website or app. If the customer's age is not above the specified age limit, the request for purchase shall not be accepted for the product in question.

The proposed amendment – as was also the result of the specific comments on Section 2, No 14, of Act No 2071 of 21 December 2020, cf. the Official Record of Parliamentary Proceedings (Folketingstidende) 2020–21, Appendix A, L 61, as submitted, p. 41 – would mean that retailers of tobacco products, tobacco surrogates and herbal products for smoking must operate an age verification system. Thus, an obligation to operate an age verification system will in the future rest on all retailers of tobacco products, tobacco surrogates and herbal products who market through distance sales, and not only those who market through cross-border distance sales. Distance sales is also known as online sales.

The provision implies that in the future, for example, a pop-up window will not be sufficient to ask the purchaser to confirm that he or she is at least 18 years of age. The age of a purchaser must therefore be verified so as to ensure that people under the age of 18 cannot purchase tobacco products, tobacco substitutes and herbal products for smoking.

No central solution will be developed that can be used by retailers for the age verification. It will thus be the responsibility of the individual dealer to have an age verification system that can effectively verify the age of the purchaser in connection with a sale. An effective electronic age verification can, for example, be via the current national eID solution such as MitID or through user creation with a passport or other valid identification, as is done in the area of laughing gas. In order to ensure the freedom of methodology, there can also be other verification solutions. These other solutions must also be able to effectively verify the purchaser's age.

The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser.

The requirement will not apply to online platforms as defined in Article 3(i) of Digital Services Act including online platforms that allow consumers to conclude distance contracts with economic operators, as the

protection of minors, including measures on age verification, falls within the total harmonised scope of the Regulation.

Section 24(1) of the Act concerns requirements for age verification for sales of tobacco products, tobacco surrogates and herbal products for smoking online, also known as distance sales.

The provision follows from the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18. Section 1 of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that tobacco products, tobacco substitutes and herbal products for smoking may not be sold to persons under the age of 18. Section 2a(1) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that anyone who commercially sells tobacco products, tobacco substitutes and herbal products for smoking at physical points of sale must require the presentation of a valid photo ID if the seller is in doubt that the customer is at least 18 years of age. Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that anyone who commercially markets tobacco products, tobacco surrogates or herbal products for smoking online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

As a result of the proposed amendment requiring more effective age verification for all retailers for distance sales of tobacco products, tobacco surrogates and herbal products for smoking, it is proposed in Section 3, No 1, of the draft Act to repeal Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

An equivalent requirement for effective electronic age verification is introduced for online sales of electronic cigarettes and refill containers in Section 2, No 4, of the draft Act and for alcoholic beverages in Section 3, Nos 2–3, of the draft Act.

The requirement for a more effective age verification system ensures better enforcement of the age limit for the sale of tobacco products, tobacco surrogates and herbal products for smoking. The requirement does not include a specific verification method, but ensures a system that can effectively verify the purchaser's age. Thus, during the controls carried out

by the authorities, dealers will have to be able to explain and document how the chosen method effectively verifies the purchaser's age.

The proposed amendment does not intend to lead to amendments to the applicable criminal penalties for infringements of Section 24(1), which are laid down in Section 45(1)(1) of the Act on tobacco products, etc.

See also point 2.3 in the general comments on the draft Act.

Re No 6

The Act on tobacco products, etc. does not contain any rules on seizures of tobacco products, tobacco surrogates, herbal products for smoking or equipment intended to be used with these.

For a detailed description of existing law in relation to the control powers of the Danish Safety Technology Authority, see point 2.2.1 of the general comments to the draft Act.

It is proposed to insert *Section 35a* and *Section 35b* as new provisions in Chapter 10.

It is proposed in *Section 35a(1)* that the Danish Safety Technology Authority may seize tobacco products, tobacco surrogates, herbal products for smoking as well as equipment intended to be used with these, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated.

The proposed provision will mean that the Danish Safety Technology Authority will in the future have the legal basis to seize tobacco products, tobacco surrogates and herbal products for smoking, when they ascertain, on the basis of their controls, that there is reason to believe that a criminal offence has been committed.

The Danish Safety Technology Authority will also in the future have the legal basis to seize equipment intended to be used in conjunction with tobacco products, tobacco surrogates and herbal products for smoking, when they ascertain, on the basis of their controls, that there is reason to believe that a criminal offence has been committed. This applies, for example, to equipment that makes it possible to change the smell or taste

of tobacco products and herbal products for smoking or their smoke emission intensity, cf. Section 15a of the Act on tobacco products, etc.

The Danish Safety Technology Authority will be able to seize tobacco products, etc. in cases where there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item can serve as evidence or should be confiscated. Thus, the legal basis for seizures includes the legislation in force at the time and penalties in this area.

It is proposed in *Section 35a(2)* that products that come into the Danish Safety Technology Authority's possession as a result of seizures are recorded and labelled as soon as possible. The Danish Safety Technology Authority shall issue acknowledgement of receipt.

The proposed provision will require the Danish Safety Technology Authority to label seized products and include them in a goods report. The provision imposes the same requirements on the Danish Safety Technology Authority as for police seizures, cf. Section 807(5) of Consolidated Act 1655 of 25 December 2022 on the administration of justice.

It is proposed in *Section 35a(3)* that seizures carried out pursuant to (1) shall be carried out in accordance with Chapter 74 of the Administration of Justice Act on seizures.

The proposed provision will entail that the rules of the Administration of Justice Act on seizures in Chapter 74 of the Act shall apply when the Danish Safety Technology Authority, pursuant to the proposed Section 35a(1), seizes items, in such a way that the person against whom the action is directed makes a request to that effect, the Danish Safety Technology Authority shall submit the matter to the court as soon as possible and at the latest within 24 hours. It will then be for the public prosecutor to appear when hearings in the form of criminal proceedings are involved. It will be the task of the Danish Safety Technology Authority to provide all the facts of the case for the public prosecution's addressing of the issue of maintenance.

It is also assumed by the proposed provision that, prior to the controls, where there may be grounds for seizing the covered items, the Danish

Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business.

‘Reasonable grounds’ shall be understood in accordance with Section 9 of the Act on legal certainty in the administration’s application of coercive measures and information obligations. In cases where the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business, coercive measures, etc. can only be carried out in accordance with the rules laid down in the Administration of Justice Act.

It is proposed in *Section 35b(1)* that the Customs and Tax Administration, on behalf of the Danish Safety Technology Authority, may detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

The proposed provision means that the Tax Administration will be able to detain products on behalf of the Danish Safety Technology Authority. The provision must be seen in conjunction with the fact that there may be situations in which the Tax Administration, in the course of their controls, finds products that are in breach of the penalties of this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act. In these cases, it is relevant that the Tax Administration may detain products on behalf of the Danish Safety Technology Authority, so that detention can take place regardless of whether the products are taxable and whether the tax has been paid.

The proposed provision is aimed at products that are left with producers, importers or dealers, etc.

It is proposed in *Section 35b(2)* that the Customs and Tax Administration, on behalf of the Danish Safety Technology Authority, may detain products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

The proposed provision means that the Tax Administration will be able to detain products on behalf of the Danish Safety Technology Authority. The provision must be seen in conjunction with the fact that there may be situations in which the Tax Administration, in the course of their controls, finds products that are in breach of the penalties of this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act. In these cases, it is relevant that the Tax Administration may detain products on behalf of the Danish Safety Technology Authority, so that detention can take place regardless of whether the products are taxable and whether the tax has been paid.

The proposed provision is aimed at products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU.

It is proposed in *Section 35b(3)* that the Danish Safety Technology Authority, on behalf of the Customs and Tax Administration and in order to ensure customs duties and taxes, may detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Customs and Tax Administration.

The proposed provision means that the Danish Safety Technology Authority will be able to detain products on behalf of the Tax Administration. The provision should be seen in conjunction with the fact that there may be situations in which the Danish Safety Technology Authority, in the course of their controls, finds products where customs duties and taxes remain outstanding. In these cases, it is relevant that the Danish Safety Technology Authority may detain products on behalf of the Tax Administration, so that detention can take place regardless of whether the products are in breach of the rules laid down in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

Re § 2

Re No 1

Section 2 of the Act on electronic cigarettes, etc. provides what is meant by a number of terms in the Act. Section 2, No 6, provides that ‘manufacturer’ means any natural or legal person who manufactures an electronic cigarette or a refill container with nicotine or has that product designed or manufactured, and markets that product under their name or trademark. Section 2, No 7, provides that ‘importer’ means the owner of,

or a natural or legal person with a right of disposal over, electronic cigarettes or refill containers with nicotine imported into EU territory. Section 2, No 8, provides that ‘distributor’ means any natural or legal person, other than a manufacturer or importer, who markets electronic cigarettes or refill containers with nicotine, with the exception of sales to consumers. Section 2, No 9, provides that ‘retailer’ means any natural or legal person who markets electronic cigarettes or refill containers with nicotine to consumers.

It is proposed that in *Section 2, Nos 6–9*, ‘and without’ shall be inserted after ‘refill container with’.

The proposed amendment will mean that the definitions of ‘manufacturer’, ‘importer’, ‘distributor’ and ‘retailer’ also include electronic cigarettes and refill containers without nicotine, since the Act on electronic cigarettes, etc. also regulates this type of product. The sole purpose of that provision is therefore to cover several products of the definition.

Re No 2

Section 2 of the Act on electronic cigarettes, etc. provides what is meant by a number of terms in the Act.

It is proposed that in *Section 2* of the Act, a definition of ‘age verification system’ shall be inserted as *No 12*, where the definition of an age verification system is an IT system that unambiguously confirms the consumer’s age electronically in accordance with the age limit.

The proposed amendment will mean that a definition of ‘age verification system’ will be added to the Act. The proposed definition transposes the corresponding definition in Article 2, No 36, of the Tobacco Products Directive into Danish law.

The age verification system must confirm that the age of the consumer is in accordance with the specified age limit, i.e. that the consumer has the relevant minimum age, the system does not necessarily have to confirm the exact age of the citizen. It also follows from the definition that it must be an IT system. The IT system can, for example, mean the use of MitID or the use of user creation with a passport or other valid identification. It should be noted that when using MitID, more information is provided than just whether the consumer has the relevant minimum age.

The addition of the definitions does not in itself intend to change the regulation in this area. However, see Section 2, Nos 3 and 4, of the draft Act, which lays down requirements for an age verification system for online sales

The same definition is proposed to be inserted in the Act on tobacco products, etc., cf. Section 1, No 3, of the draft Act.

Re No 3

Section 15(1) of the Act on electronic cigarettes etc. provides that it is not permitted to market electronic cigarettes and refill containers with or without nicotine to persons under the age of 18. (2) of that provision provides that anyone who commercially sells electronic cigarettes or refill containers with or without nicotine at physical points of sale must require the presentation of a valid photo ID if the seller is in doubt that the customer is at least 18 years of age. (3) of that provision provides that anyone who commercially markets electronic cigarettes or refill containers with or without nicotine online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age. (4) of the provision provides that retailers of electronic cigarettes and refill containers with nicotine registered under Section 13(1) shall operate an age verification system, cf. (5).

Section 2, No 5, of Act No 738 of 13 June 2023 provides that in Section 15(4) of the Act on electronic cigarettes, etc., ‘Section 5a(1) or’ shall be inserted after ‘after’.

The amendment means that the obligation to operate an age verification system will in the future have to rest on all retailers of electronic cigarettes and refill containers with and without nicotine who market through distance sales, and not only those who market through cross-border distance sales. The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser.

Under Section 6(3) of Act No 738 of 13 June 2023, the Minister for the Interior and Health determines the date of entry into force of Section 2, No 5, of the Act, as it must first be ensured that the right available solution for a more effective age verification system can be implemented by the dealers. The provision has not yet been put into effect.

It is proposed that *Section 15(3)* shall be repealed.

The proposed amendment will mean that, in the future, there will be no requirement for anyone who professionally markets electronic cigarettes or refill containers with or without nicotine online to require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

Section 15(3) was introduced by Act No 738 of 13 June 2023 in order to determine the requirements applicable to age verification for online sales of electronic cigarettes or refill containers with or without nicotine until the Minister of the Interior and Health could put into effect the provisions relating to requirements to operate a more efficient age verification system. This requirement is inserted with Section 2, No 4, of the draft Act and, as a consequence, it is proposed that Section 15(3) shall be repealed.

See also Section 5, No 1, of the draft Act and its comments.

Re No 4

Section 15(4) provides that retailers of electronic cigarettes and refill containers with nicotine registered under Section 13(1) must operate an age verification system, cf. (5).

Section 2, No 5, of Act No 738 of 13 June 2023 provides that in Section 15(4) of the Act on electronic cigarettes, etc., ‘Section 5a(1) or’ shall be inserted after ‘after’. The Minister for the Interior and Health shall determine the date of entry into force of Section 2, No 5, of the Act, as it must first be ensured that the right available solution for an effective age verification system can be implemented by the dealers. The provision has not yet been put into effect.

It is proposed that in *Section 15(4)*, which becomes (3), the following shall be inserted after ‘with’: ‘and without’ and ‘registered under Section 13(1), shall operate an age verification system, cf. (5)’ shall be replaced by: ‘must operate, in the case of distance sales, an age verification system which verifies, at the time of sale, that the customer is at least 18 years of age, cf. (4)’.

The proposed amendment should be seen in the context of the fact that there is now an available solution for a more efficient age verification system that can be implemented by the dealers and put into effect.

Section 5, No 1, of the draft Act proposes that Section 2, No 5, of Act No 738 of 13 June 2023 shall be repealed as a consequence of the proposed amendment to Section 15(4) of the Act, which becomes (3).

The proposed amendment will also mean that the requirement to operate a more efficient age verification system is not determined on the basis of registration under Section 5a(1) and Section 13(1) as envisaged in the adopted Section 2, No 5, of Act No 738 of 13 June 2023. The intention is not to change which retailers are subject to the requirement, but to ensure that retailers who have failed to register in breach of the Act can continue to be sanctioned for failure to establish an age verification system.

The proposed amendment would also make it clear that the requirement also applies to electronic cigarettes and refill containers without nicotine.

Furthermore, the proposed amendment would clarify that the age verification system will have to verify that the consumer meets the age limit requirements at the time of sale. The proposed amendment will result in the provision reflecting more Article 18(4) of the Tobacco Products Directive.

‘Time of sale’ means the time when the purchase is made. The age verification will thus have to be done when the customer seeks to complete the purchase on the respective website or app. If the customer’s age is not above the specified age limit, the request for purchase shall not be accepted for the product in question.

The proposed amendment – as was also the result of the specific comments on Section 2, No 5, of Act No 738 of 13 June 2023, cf. the Official Record of Parliamentary Proceedings (Folketingstidende) 2022–23, 2nd session, Appendix A, L 123, as submitted, p. 18 – would mean that retailers of electronic cigarettes and refill containers with and without nicotine will operate an age verification system. Thus, an obligation to operate an age verification system for distance sales will in the future rest on all retailers of electronic cigarettes and refill containers with and without nicotine who market through distance sales, and not only those who market through cross-border distance sales. Distance sales is also known as online sales.

The provision implies that in the future, for example, a pop-up window will not be sufficient to ask the purchaser to confirm that he or she is at least 18 years of age. The age of a purchaser must therefore be verified so as to ensure that persons under the age of 18 cannot purchase electronic cigarettes and refill containers with and without nicotine.

A central solution will not be developed that sellers can use for age verification for sales of electronic cigarettes and refill containers with and without nicotine. It will thus be the responsibility of the individual dealer to have an age verification system that can effectively verify the age of the purchaser in connection with a sale. An effective electronic age verification can, for example, be via the current national eID solution such as MitID or through user creation with a passport or other valid identification, as is done in the area of laughing gas. In order to ensure the freedom of methodology, there can also be other verification solutions. These other solutions must also be able to effectively verify the purchaser's age.

The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser.

The requirement will not apply to online platforms as defined in Article 3(i) of the DSA, including online platforms that allow consumers to conclude distance contracts with economic operators, as the protection of minors, including measures on age verification, falls within the total harmonised scope of the Regulation.

An equivalent requirement for effective electronic age verification is introduced for online sales of tobacco products, tobacco substitutes and herbal products for smoking in Section 1, No 5, of the draft Act and for requirements for alcoholic beverages in Section 3, Nos 2–3, of the draft Act.

The requirement for a more efficient age verification system ensures better enforcement of the age limit for the sale of electronic cigarettes and refill containers with and without nicotine. The requirement does not include a specific verification method, but ensures a system that can effectively verify the purchaser's age. Thus, during the controls carried out by the authorities, dealers will have to be able to explain and document how the chosen method effectively verifies the purchaser's age.

The proposed amendment should be seen in conjunction with Section 2, No 3, of the draft Act, where it is proposed to repeal Section 15(3) of the Act on electronic cigarettes, etc.

The proposed amendment does not intend to lead to amendments to the applicable criminal penalties for infringements of Section 15, which are laid down in Section 33(1)(1) of the Act on electronic cigarettes, etc.

See also point 2.3 in the general comments on the draft Act.

Re No 5

The Act on electronic cigarettes, etc. contains no rules prohibiting the import, purchase, supply, receipt, manufacture, processing or possession of electronic cigarettes or refill containers with nicotine.

It is proposed to insert a new Chapter *7a* after Chapter 7 with a new *Section 18b*.

It is proposed in *Section 18b(1)* that it is not allowed to import, purchase, supply, receive, manufacture, process or possess electronic cigarettes and refill containers with nicotine, which are covered by the prohibition in Section 25a(1) or exceed the nicotine content limit in a nicotine-containing liquid as laid down pursuant to Section 7(2).

The proposed provision will mean that, in the future, the import, purchase, supply, receipt, manufacture, processing or possession of electronic cigarettes and refill containers with nicotine with a characterising flavour other than tobacco and menthol will not be permitted

The proposed provision will also mean that, in the future, the import, purchase, supply, receipt, manufacture, processing or possession of electronic cigarettes and refill containers with nicotine that exceed the applicable nicotine content limit in a nicotine-containing liquid will not be permitted. The nicotine content limit is laid down in Section 3 of Order No 781 of 13 June 2023 on quality, labelling and age verification system, etc. of electronic cigarettes and refill containers, etc. The current Order provides that a nicotine-containing liquid must have a maximum nicotine content of 20 mg/ml.

The rules on characterising flavours and nicotine content are matters which relate to the content of the products and which thus cannot subsequently be legalised. At the same time, these are matters that are deemed possible for consumers, retailers, etc. to assess in terms of their compliance, as the content of characterising flavours and the nicotine content will often

appear in the online marketing of the product or its packaging and labelling.

It should be noted that ‘import’ means the physical movement of products from one country to another. Imports therefore also include mail, parcels, etc. The aim is to cover all the ways in which the products enter the country. The importer will be the person bringing the product into the country or the person on whose behalf the product is imported, e.g. the person who orders the product to Denmark. It is thus provided that, in this context, no criminal liability can be imposed on the company that dispatches the product or the transporter, etc.

It should be noted that ‘possession’ means situations in which persons are carrying the products physically. It will also cover situations where the products are stored, for example in connection with a retailer. Possession could also be in a car or in a bag.

It should be noted that purchases include situations where a transaction has taken place and the product is moving from one party to another. This is for example in cases where the products are ordered online/through distance sales.

The proposed provision intends to support existing rules as it is already not permitted to market electronic cigarettes, refill containers with and without nicotine and flavourings for use in electronic cigarettes with a characterising flavour in Denmark, with the exception of menthol or tobacco, while it is a requirement that a nicotine-containing liquid must have a maximum nicotine content of 20 mg/ml. The proposed provision should allow the authorities to intervene earlier as they in the future must not be able to prove that marketing has taken place.

It is proposed in *Section 18b(2)* that the prohibition referred to in (1) does not cover three specific cases.

It is proposed in *Section 18b(2)(1)* that the prohibition does not cover luggage and possession of up to 10 units for personal consumption.

The proposed provision would mean that luggage and possession of up to 10 units for personal consumption are not criminalised.

‘Luggage’ means goods carried by travellers. The aim is to allow travellers to be able to import, to a reasonable extent, goods that they have purchased or obtained while travelling abroad. The exception does not therefore concern cross-border distance/online sales.

Luggage and possession of less than 10 units are only covered by the exception if they simultaneously are intended for personal consumption. There may be specific cases where luggage and possession of less than 10 units are not considered to be for personal consumption. These will be the situations where the limit of 10 is systematically attempted to be circumvented or if there are obvious other factors indicating that the products are for the purpose of further transfer.

For example, these could be situations where fewer than 10 units of luggage are carried in an organised manner and repeatedly, or where fewer than 10 units are packed and in possession of an individual who is in an area with many adolescents and displays seeking behaviour, or where it is an economic operator who attempts to hide them. These may also be cases where there are cash or other types of products that suggest that a sale took place.

It should be noted that the prohibition laid down in (1) covers electronic cigarettes and refill containers with nicotine with illegal characterising flavours and an excessive nicotine content. These are matters that are deemed possible for consumers, retailers, etc. to assess in terms of their compliance, as this will often appear from the online marketing of the product or the product's packaging and labelling.

It is proposed in *Section 18b(2)(2)* that the prohibition does not apply to import, purchase, supply, receipt, manufacture, processing or possession for marketing in other countries or to consumers in countries other than Denmark.

The proposed provision will allow companies, etc., to use Denmark as a transit country for the products and to allow Danish companies to manufacture, process, etc. products to other countries. If Denmark is used as a transit country, or if the products are manufactured or processed, etc. in Denmark, it will be a prerequisite that it can be documented that the products must be marketed in countries other than Denmark.

There are no requirements for the specific form of documentation. The documentation must be sufficient to justify that import, purchase, possession, etc. are for the purpose of marketing in or to countries other than Denmark. Depending on the specific situation, it may consist of the presentation of invoices, documentation of the place of delivery and the like. All other things being equal, it will be information that the company would already have.

It is proposed in *Section 18b(2)(3)* that the prohibition does not apply to import, purchase, supply, receipt, manufacture, processing or possession for scientific or control purposes.

The proposed provision will allow research institutions, etc., for example, to receive and examine the products if this is done for scientific purposes. This may be relevant if, inter alia, it is necessary to examine the harmfulness of the products or the specific content of the products.

The proposed provision will also allow the Danish Safety Technology Authority or other authorities, for example, to possess the products if this is done for control purposes. This may be relevant if, among other things, products from a dealer are to be seized.

See also point 2.1 in the general comments on the draft Act.

Re No 6

Section 19(1) of the Act on electronic cigarettes, etc. provides that the Danish Safety Technology Authority monitors the compliance with the rules laid down in Chapters 3–6, Section 25a and rules laid down pursuant thereto.

It is proposed that in *Section 19(1)*, the following shall be inserted after ‘3–6’: ‘, 7a’, and that the following *second sentence* shall be inserted: ‘The Customs and Tax Administration shall assist with the control of the requirements of Chapter 7a.’.

The proposed amendment will mean that it is provided that the Tax Administration shall assist with the control of the new provision on the prohibition of import, purchase, possession, etc., which is added to the Act on electronic cigarettes, etc. with Section 2, No 5, of the draft Act.

The Danish Safety Technology Authority will be the responsible control authority in relation to import, purchase and commercial possession.

The Tax Administration will be the responsible authority to control which products are imported and will involve the Danish Safety Technology Authority as appropriate. The Danish Tax Administration will also involve the Danish Safety Technology Authority if, in connection with their other controls on taxable goods, they find products violating the proposed Section 18b.

It should be noted that, as part of its ordinary activities, the police enforces criminal offences, including as regards the unlawful possession by private persons, as well as through unlawful supply, receipt, production and processing.

The detailed division is agreed between the authorities.

Re No 7

Section 19(1) of the Act on electronic cigarettes, etc. provides that the Danish Safety Technology Authority monitors the compliance with the rules laid down in Chapters 3–6, Section 25a and rules laid down pursuant thereto. (2) of the provision provides that the Danish Safety Technology Authority may require the communication of all information necessary for the exercise of the control referred to in (1).

It is proposed that in *Section 19*, the following shall be inserted as new (3) and (4).

It is therefore proposed that a new *Section 19(3)* shall be inserted, according to which the Danish Safety Technology Authority in the period from 1 July 2024 up to and including 30 June 2026 as part of the control of the requirements of Section 15(1) and (2) may make use of young control purchasers with a hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the place of business.

The proposed amendment will mean that the Danish Safety Technology Authority will be able to use young control purchasers with a hidden identity during their controls of the age limits for the sale of electronic cigarettes and refill containers with and without nicotine in physical stores. This means that the Danish Safety Technology Authority will be able to employ adolescents under the age of 18 who, when accompanied by a supervisor in kiosks and other retail stores, must be able to attempt to purchase electronic cigarettes and/or refill containers with or without nicotine that they are not old enough to purchase, in order to check whether the companies comply with the age limit. The purpose of the proposed provision is thus to control whether the age verification is respected at the place of business.

The proposed controls can only be carried out in cases where, prior to the controls, the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business.

‘Reasonable grounds’ shall be understood in accordance with Section 9 of the Act on legal certainty in the administration’s application of coercive measures and information obligations. In cases where the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business, coercive measures, etc. can only be carried out in accordance with the rules laid down in the Administration of Justice Act.

The use of young control purchasers – like the rest of the Danish Safety Technology Authority’s controls – will have to be based on a risk-based approach with a particular focus on places where compliance is generally expected to be low.

It is assumed that the young purchaser must be at least 15 years old, bearing in mind, inter alia, that, in the event that the person concerned is required to testify in any criminal proceedings, he or she will be subject, inter alia, to Chapter 17 of the Criminal Code on false statements and false accusations.

In addition, the control under the proposed provision will have to be carried out in such a way that the supervisor accompanying the young purchaser can identify the infringement himself or herself by witnessing the purchase, for example because the person concerned is within the visual and hearing distance of the transaction.

The Danish Safety Technology Authority will be able to use young control purchasers for a period of 2 years. Before the end of the period, an evaluation will be carried out with a view to discussing whether the scheme should be extended, made permanent or discontinued.

In addition, it is proposed that a new *Section 19(4)* shall be inserted, according to which the Danish Safety Technology Authority, during controls in accordance with (3), shall not affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the offence.

The use of young control purchasers shall not affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the infringement. Thus, the Danish Safety Technology Authority will only be able to purchase the minimum amount of electronic cigarettes and/or refill containers with or without nicotine in

order to control whether an illegal sale is taking place. The young control purchaser must only attempt to purchase legal products.

Young control purchasers will only be able to be used in situations where the Danish Safety Technology Authority is positively aware that kiosks and other shops sell electronic cigarettes and/or refill containers with or without nicotine in accordance with the otherwise applicable rules.

In cases where the Danish Safety Technology Authority is not positively aware of the sale, the powers under the proposed provision will not be available for the purpose of determining whether a sale is taking place. Similarly, young control purchasers will not be available in cases where it is unclear whether electronic cigarettes and/or refill containers are being sold with or without nicotine, e.g. where the products are stored in an unusual manner, including in the premises, in the warehouse or similar. The fact that the products are subject to a display prohibition (i.e. that they are behind a protection or similar) does not mean that the provision cannot be applied when the products are otherwise present at a normal point of sale, e.g. behind the counter or cash register in a shop, and when the Danish Safety Technology Authority has other indications that electronic cigarettes and/or refill containers with or without nicotine are being sold from the shop.

The proposed provision would mean that once the conditions for using the young control purchasers with a hidden identity are in place, the young control purchaser will be able to request legal products, even if these are not freely available to the person concerned. The control will have to be carried out in a manner that does not give rise to significant circumstances of the offence. Thus, a young control purchaser will not be able to take any further action than to request legal products. Thus, in the case of questions about ID or age, the person concerned may not lie about his age in order to complete the purchase.

The Danish Safety Technology Authority's controls under the proposed provision will be subject to the general requirements for public authorities on documentation, etc.

Re No 8

The Act on electronic cigarettes, etc. contains no rules on seizures of electronic cigarettes with or without nicotine, refill containers with or

without nicotine or equipment and flavourings intended to be used with these.

For a detailed description of existing law in relation to the control powers of the Danish Safety Technology Authority, see point 2.2.1 of the general comments to the draft Act.

It is proposed to insert Section 22a and Section 22b as new provisions in Chapter 8.

It is proposed in *Section 22a(1)* that the Danish Safety Technology Authority may seize electronic cigarettes with or without nicotine, refill containers with or without nicotine as well as equipment and flavourings intended to be used with these, if there is reason to believe that they are covered by the penalties of this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated.

The proposed provision will mean that the Danish Safety Technology Authority will in the future have the legal basis to seize electronic cigarettes with or without nicotine and refill containers with or without nicotine, when they ascertain, on the basis of their controls, that there is reason to believe that a criminal offence has been committed.

The Danish Safety Technology Authority will also in the future have the legal basis to seize equipment and flavourings intended to be used in conjunction with electronic cigarettes with or without nicotine and refill containers with or without nicotine, when they ascertain, on the basis of their controls, that there is reason to believe that a criminal offence has been committed. This applies, for example, to equipment that makes it possible to change the smell or taste of electronic cigarettes or their smoke emission intensity, cf. Section 25a(2) of the Act on electronic cigarettes, etc.

The Danish Safety Technology Authority will be able to seize electronic cigarettes, etc. in cases where there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated. Thus, the legal basis for seizures includes the legislation in force at the time and penalties in this area.

It is proposed in *Section 22a(2)* that products that come into the Danish Safety Technology Authority's possession as a result of seizures are recorded and labelled as soon as possible. The Danish Safety Technology Authority shall issue acknowledgement of receipt.

The proposed provision will require the Danish Safety Technology Authority to label seized products and include them in a goods report. The provision imposes the same requirements on the Danish Safety Technology Authority as for police seizures, cf. Section 807(5) of Consolidated Act 1655 of 25 December 2022 on the administration of justice.

It is proposed in *Section 22a(3)* that seizures carried out pursuant to (1) shall be carried out in accordance with Chapter 74 of the Administration of Justice Act on seizures.

The proposed provision will entail that the rules of the Administration of Justice Act on seizures in Chapter 74 of the Act shall apply when the Danish Safety Technology Authority, pursuant to the proposed Section 22a(1), seizes items, in such a way that the person against whom the action is directed makes a request to that effect, the Danish Safety Technology Authority shall submit the matter to the court as soon as possible and at the latest within 24 hours. It will then be for the public prosecutor to appear when hearings in the area of criminal procedure are involved. It will be the task of the Danish Safety Technology Authority to provide all the facts of the case for the public prosecution's addressing of the issue of maintenance.

It is also assumed by the proposed provision that, prior to the controls, where there may be grounds for seizing the covered items, the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business.

'Reasonable grounds' shall be understood in accordance with Section 9 of the Act on legal certainty in the administration's application of coercive measures and information obligations. In cases where the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business, coercive measures, etc. can only be carried out in accordance with the rules laid down in the Administration of Justice Act.

It is proposed in *Section 22b(1)* that the Customs and Tax Administration, on behalf of the Danish Safety Technology Authority, may detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

The proposed provision means that the Tax Administration will be able to detain products on behalf of the Danish Safety Technology Authority. The provision must be seen in conjunction with the fact that there may be situations in which the Tax Administration, in the course of their controls, finds products that are in breach of the penalties of this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act. In these cases, it is relevant that the Tax Administration may detain products on behalf of the Danish Safety Technology Authority, so that detention can take place regardless of whether the products are taxable and whether the tax has been paid.

The proposed provision is aimed at products that are left with producers, importers or dealers, etc.

It is proposed in *Section 22b(2)* that the Customs and Tax Administration, on behalf of the Danish Safety Technology Authority, may detain products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

The proposed provision means that the Tax Administration will be able to detain products on behalf of the Danish Safety Technology Authority. The provision must be seen in conjunction with the fact that there may be situations in which the Tax Administration, in the course of their controls, finds products that are in breach of the penalties of this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act. In these cases, it is relevant that the Tax Administration may detain products on behalf of the Danish Safety Technology Authority, so that detention can take place regardless of whether the products are taxable and whether the tax has been paid.

The proposed provision is aimed at products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU.

It is proposed in *Section 22b(3)* that the Danish Safety Technology Authority, on behalf of the Customs and Tax Administration to ensure customs duties and taxes, may detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Customs and Tax Administration.

The proposed provision means that the Danish Safety Technology Authority will be able to detain products on behalf of the Tax Administration. The provision should be seen in conjunction with the fact that there may be situations in which the Danish Safety Technology Authority, in the course of their controls, finds products where customs duties and taxes remain outstanding. In these cases, it is relevant that the Danish Safety Technology Authority may detain products on behalf of the Tax Administration, so that detention can take place regardless of whether the products are in breach of the rules laid down in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.

Re No 9

Section 30(1) of the Act on electronic cigarettes, etc. provides that the Minister of Industry, Business and Financial Affairs may lay down rules to the effect that written communication to and from the Danish Safety Technology Authority on matters covered by Chapters 3–5, Section 15(4), Sections 19–22 and Sections 25–28 and Chapter 10 or 11 or by rules laid down pursuant thereto, must take place digitally.

It is proposed to amend Section 30(1) so that ‘Section 15(4)’ shall be replaced by: ‘Section 15(3)’.

The proposed amendment will result in Section 30(1) referring to Section 15(3) instead of Section 15(4). The amendment should be seen in conjunction with Section 2, No 3, of the draft Act, where it is proposed to repeal Section 15(3) of the Act on electronic cigarettes, etc., as the requirement to ensure a more efficient age verification system is put into force, which is why Section 15(3) is no longer relevant. As a consequence, the applicable Section 15(4) becomes Section 15(3).

Re No 10

Section 33(1)(1) of the Act on electronic cigarettes, etc. provides that, unless a higher penalty is inflicted under other legislation, fines shall be imposed on anyone who infringes Section 3(1) and (4), Section 4, Section 9(1), Section 9a(1) and (2), Section 10(1), Section 11(1), Section 15(1–4), Section 16(1), Section 17, Section 18a(1) or Section 25a(1) and (2).

It is proposed to amend Section 33(1)(1) so that ‘Section 15(1–4)’ shall be replaced by: ‘Section 15(1–3)’.

The proposed amendment will result in Section 33(1)(1) referring to Section 15(1–3) instead of Section 15(1–4). The amendment should be seen in conjunction with Section 2, No 3, of the draft Act, where it is proposed to repeal Section 15(3) of the Act on electronic cigarettes, etc., as the requirement to ensure a more efficient age verification system is put into force, which is why Section 15(3) is no longer relevant. As a consequence, the applicable Section 15(1–4) becomes Section 15(1–3).

The proposed amendment does not intend to lead to amendments in terms of who has the obligation to comply with the requirements of Section 15(1–3). The proposed amendment also does not intend to lead to amendments to the applicable criminal penalties for infringements of Section 15, which are laid down in Section 33(1)(1) of the Act on electronic cigarettes, etc. In that respect, see the special comments on Section 2, No 10, of Act No 738 of 13 June 2023, where this is described in more detail.

Re No 11

Section 33(1)(1) of the Act on electronic cigarettes, etc. provides that, unless a higher penalty is inflicted under other legislation, fines shall be imposed on anyone who infringes Section 3(1) and (4), Section 4, Section 9(1), Section 9a(1) and (2), Section 10(1), Section 11(1), Section 15(1–4), Section 16(1), Section 17, Section 18a(1) or Section 25a(1) and (2).

It is proposed that in *Section 33(1)(1)*, the following shall be inserted after ‘Section 18a(1)’: ‘Section 18b(1)’.

The proposed amendment will result in the infringement of Section 18b(1) being punished by fines. The amendment is to be seen in continuation of Section 2, No 5, which proposes to insert Section 18b into the Act on electronic cigarettes, etc.

The penalty is imposed on anyone who imports, purchases, supplies, receives, manufactures, processes or possesses electronic cigarettes and refill containers with nicotine, which are covered by the prohibition in Section 25a(1) or exceeds the nicotine content limit in a nicotine-containing liquid as laid down pursuant to Section 7(2). This means that it is up to the individual who imports, purchases, possesses, etc. to decide whether the products are in breach of the relevant rules. The importer will be the person bringing the product into the country or the person on whose behalf the product is imported, e.g. the person who orders the product to Denmark. It is thus assumed that, in that context, no criminal liability can be imposed on the company dispatching the product or the transporter, etc. It should be noted in that regard that characterising flavours and nicotine content often appear in the online marketing of the product or the packaging and labelling of the products.

It is assumed that an infringement of Section 18b(1) is, in principle, punished by a fine of DKK 10 000 for first-time offences. For second-time and third-time offences, the fines are assumed to be DKK 20 000 and DKK 40 000 respectively. In connection with the determination of the level of the fine for infringements of Section 18b(1), the amount of the fine should, in view of the health consequences of the use of electronic cigarettes and refill containers with nicotine, be such that it acts as a preventive measure and sends a clear signal that the rules are effectively enforced. It is also the intention that the level of the fine should be in reasonable proportion to the infringement in question. Thus, the amount of the fine will have to be adjusted upwards if there are many different variants of the products, if the same product is both has an excessive nicotine content and an illegal characterising flavour or in the case of a larger amount of products. In this regard, it should be noted that the added Section 18b(1) is intended to target the supply chain and distributors so that the products, for example, do not reach the kiosks or are not sold from sports bags and luggage compartments. The focus is thus on taking action against the perpetrators and not private individuals, cf. also the exception in Section 18b(2)(2).

Infringements of Section 18b shall be equated with other infringements. This should be understood to mean that if there are infringements of both Section 18b and other provisions of the Act, there will be sanctions for both. For example, if a retailer infringes both a prohibition on the marketing of an illegal characterising flavour under Section 25a(1) and a prohibition of possession under Section 18b(1), it will have to be taken into account in connection with the determination of the level of the

penalty that several offences have been committed. No consecutive sentencing is envisaged.

The setting of the penalty will still depend on the court's actual assessment in the individual instance of all circumstances in the case and the specific penalty level may be departed from upwards or downwards if, in the actual case, there are aggravating or mitigating circumstances, cf. the general rules on setting the penalty in Chapter 10 of the Criminal Code.

It should also be noted that, in the event of infringements of Section 18b(1), the Danish Safety Technology Authority will be able to seize the products concerned, cf. Section 2, No 8, of the draft Act.

Re No 12

Section 33(2) of the Act on electronic cigarettes, etc. provides that in rules laid down pursuant to Section 7(2), Section 8, Section 9(2), Section 9a(3), Section 10(2), Section 12(3), Section 13(2), Section 15(5), Section 18 and Section 18a(4), fines for infringements of the provisions of the rules may be imposed.

It is proposed to amend Section 33(2) so that 'Section 15(5)' shall be replaced by: 'Section 15(4)'.

The proposed amendment will result in Section 33(2) referring to Section 15(4) instead of Section 15(5). The amendment should be seen in conjunction with Section 2, No 3, of the draft Act, where it is proposed to repeal Section 15(3) of the Act on electronic cigarettes, etc., as the requirement to ensure a more efficient age verification system is put into force, which is why Section 15(3) is no longer relevant. As a consequence, the applicable Section 15(5) becomes Section 15(4).

Re § 3

Re No 1

Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, provides that anyone who commercially markets tobacco products, tobacco substitutes or herbal products for smoking online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

It is proposed that *Section 2a(2)* shall be repealed.

The proposed amendment will mean that, in the future, there will be no requirement for anyone who professionally markets tobacco products, tobacco surrogates or herbal products for smoking online to require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

Section 2a(2) was introduced by Act No 738 of 13 June 2023 in order to lay down the requirements applicable to age verification for online sales of tobacco products, tobacco surrogates and herbal products for smoking until the Minister for the Interior and Health could put into force the provisions relating to requirements to operate a more effective age verification system. This requirement is inserted by Section 1, No 5, of the draft Act. As a consequence, it is proposed that Section 2a(2) shall be repealed.

The requirements for age verification for online sales – also known as distance sales – of tobacco products, tobacco surrogates and herbal products for smoking are from now on only laid down in Section 24(1) of the Tobacco Act, etc.

See Section 1, No 5, of the draft Act, where there is a description of the requirements applicable to age verification for online/distance sales of tobacco products, tobacco surrogates and herbal products for smoking.

See also point 2.3 in the general comments on the draft Act.

Re No 2

Section 2a(4) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, provides that anyone who commercially markets alcoholic beverages with an alcohol content of 1.2 % or more online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 16 years of age.

It is proposed that in *Section 2a(4)*, which becomes (3), ‘must require the customer, before the sale is made, to state unequivocally that he or she is at least 16 years of age’ shall be replaced by: ‘must operate an age verification system which verifies, at the time of sale, that the customer is 16 years of age’.

The proposed amendment will mean that, in the future, there will be requirements to operate an effective age verification system for the online

marketing of alcoholic beverages with an alcohol content of 1.2 % or more. The obligation will apply to all who are covered by the age limit for the sale of alcoholic beverages, cf. Section 2(1) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

‘Age verification system’ means an IT system that unambiguously confirms the consumer’s age electronically in accordance with the specified age limit. It is the same definition of ‘age verification system’ that applies to the Act on tobacco products, etc. and the Act on electronic cigarettes, etc., cf. Section 1, No 3 and Section 2, No 2, of the draft Act. The age verification system must confirm that the consumer has the relevant minimum age, the system does not necessarily have to confirm the exact age of the citizen. The IT system can, for example, mean the use of MitID or user creation with a passport or other valid identification. It should be noted that when using MitID, more information is provided than just whether the consumer has the relevant minimum age.

‘Time of sale’ means the time when the purchase is made. The age verification will thus have to be done when the customer seeks to complete the purchase on the respective website or app. If the customer’s age is not above the specified age limit, the request for purchase shall not be accepted for the product in question.

‘Placing on the market’ means making the products available to consumers, with or without payment.

The provision implies that in the future, for example, a pop-up window will not be sufficient to ask the purchaser to confirm that he or she is at least 16 years of age. The age of a purchaser must therefore be verified so as to ensure that persons under the age of 16 cannot purchase alcoholic products.

A central solution will not be developed that sellers can use for age verification for sales of alcoholic beverages. It will thus be the responsibility of the individual dealer to have an age verification system that can effectively verify the age of the purchaser in connection with a sale. An effective electronic age verification can, for example, be via the current national eID solution such as MitID or through user creation with a passport or other valid identification, as is done in the area of laughing gas. In order to ensure the freedom of methodology, there can also be other

verification solutions. These other solutions must also be able to effectively verify the purchaser's age.

The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser.

The requirement will not apply to online platforms as defined in Article 3(i) of the DSA, including online platforms that allow consumers to conclude distance contracts with economic operators, as the protection of minors, including measures on age verification, falls within the total harmonised scope of the Regulation.

An equivalent requirement for effective electronic age verification is introduced for sales of tobacco products, tobacco surrogates, herbal products for smoking with Section 1, No 5, of the draft Act, and for electronic cigarettes and refill containers with and without nicotine with Section 2, No 4, of the draft Act.

The requirement for an age verification system ensures better enforcement of the age limit for the sale of alcoholic beverages. The requirement does not include a specific verification method, but ensures a system that can effectively verify the purchaser's age. Thus, during the controls carried out by the authorities, dealers will have to be able to explain and document how the chosen method effectively verifies the purchaser's age.

It should be noted that the requirement for effective online age verification is proposed so as to allow reasonable time for retailers to implement an age verification system that effectively verifies the purchaser's age. Thus, Section 6(2) of the draft Act proposes that the requirement enters into force on 1 October 2024. See also the political agreement 'A prevention plan targeting children and adolescents – tobacco, nicotine and alcohol' of 14 November 2023, which provides that the percentage of sales of alcoholic products to adolescents is amended. This will be implemented with a later draft Act.

It will be the responsibility of the person or company, etc., that commercially markets the products on websites, profiles, apps, webshops, etc. to ensure that no alcoholic beverages are sold to children and adolescents under the age of 16 in breach of the rules laid down in Section

2(1) and the amended Section 2a(4) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

The proposed amendment does not intend to lead to amendments to the applicable criminal penalties for infringements of Section 2a, which are laid down in Section 5 of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

It should be noted that the age verification at the time of sale does not ensure that the commercial practice in question is not targeting children and adolescents, cf. Section 11(2) of the Marketing Practices Act. If the commercial practice in question is aimed at children and adolescents, other measures will have to be taken in order not to infringe the Danish Marketing Practices Act's prohibition of mentioning, displaying pictures of, or referring to alcohol to children and adolescents.

See also point 2.3 in the general comments on the draft Act.

Re No 3

Section 2a(6) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, provides that anyone who commercially markets alcoholic beverages with an alcohol volume of 16.5 % or more online must require the customer, before the sale is carried out, to state unequivocally that he or she is at least 18 years of age.

It is proposed that in *Section 2a(6)*, which becomes (5), 'must require the customer, before the sale is made, to state unequivocally that he or she is at least 18 years of age' shall be replaced by: 'must operate an age verification system which verifies, at the time of sale, that the customer is 18 years of age'.

The proposed amendment will mean that, in the future, there will be requirements to operate an effective age verification system for the online marketing of alcoholic beverages with an alcohol volume of 16.5 % or more. The obligation will apply to all who are covered by the age limit for the sale of alcoholic beverages, cf. Section 2(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

‘Age verification system’ means an IT system that unambiguously confirms the consumer’s age electronically in accordance with the specified age limit. It is the same definition of ‘age verification system’ that applies to the Act on tobacco products, etc. and the Act on electronic cigarettes, etc., cf. Section 1, No 3 and Section 2, No 2, of the draft Act. The age verification system must confirm that the consumer has the relevant minimum age, the system does not necessarily have to confirm the exact age of the citizen. The IT system can, for example, mean the use of MitID or user creation with a passport or other valid identification. It should be noted that when using MitID, more information is provided than just whether the consumer has the relevant minimum age.

‘Time of sale’ means the time when the purchase is made. The age verification will thus have to be done when the customer seeks to complete the purchase on the respective website or app. If the customer’s age is not above the specified age limit, the request for purchase shall not be accepted for the product in question.

‘Placing on the market’ means making the products available to consumers, with or without payment.

The provision implies that in the future, for example, a pop-up window will not be sufficient to ask the purchaser to confirm that he or she is at least 18 years of age. The age of a purchaser must therefore be verified so as to ensure that persons under the age of 18 cannot purchase alcoholic products.

A central solution will not be developed that sellers can use for age verification for sales of alcoholic beverages. It will thus be the responsibility of the individual dealer to have an age verification system that can effectively verify the age of the purchaser in connection with a sale. An effective electronic age verification can, for example, be via the current national eID solution such as MitID or through user creation with a passport or other valid identification, as is done in the area of laughing gas. In order to ensure the freedom of methodology, there can also be other verification solutions. These other solutions must also be able to effectively verify the purchaser’s age.

The age verification system shall be used for trade over the internet, including via an app function, and shall ensure that a requirement is made for the dealers to ensure a system that effectively verifies the age of the purchaser.

The requirement will not apply to online platforms as defined in Article 3(i) of the DSA, including online platforms that allow consumers to conclude distance contracts with economic operators, as the protection of minors, including measures on age verification, falls within the total harmonised scope of the Regulation.

An equivalent requirement for effective electronic age verification is introduced for sales of tobacco products, tobacco surrogates, herbal products for smoking in Section 1, No 5, of the draft Act and for electronic cigarettes and refill containers with and without nicotine in Section 2, No 4, of the draft Act.

The requirement for an age verification system ensures better enforcement of the age limit for the sale of alcoholic beverages. The requirement does not include a specific verification method, but ensures a system that can effectively verify the purchaser's age. Thus, during the controls carried out by the authorities, dealers will have to be able to explain and document how the chosen method effectively verifies the purchaser's age.

It should be noted that the requirement for effective online age verification is proposed so as to allow reasonable time for retailers to implement an age verification system that effectively verifies the purchaser's age. Thus, Section 6 of the draft Act proposes that the requirement enters into force on 1 October 2024. See also the political agreement 'A prevention plan targeting children and adolescents – tobacco, nicotine and alcohol' of 14 November 2023, which provides that the percentage of sales of alcoholic products to adolescents is amended. This will be implemented with a later draft Act.

It will be the responsibility of the person or company, etc., that commercially markets the products on websites, profiles, apps, webshops, etc. to ensure that no alcoholic beverages are sold to children and adolescents under the age of 16 in breach of the rules laid down in Section 2(1) and the amended Section 2a(6) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

The proposed amendment does not intend to lead to amendments to the applicable criminal penalties for infringements of Section 2a, which are laid down in Section 5 of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18.

It should be noted that the age verification at the time of sale does not ensure that the commercial practice in question is not targeting children and adolescents, cf. Section 11(2) of the Marketing Practices Act. If the commercial practice in question is aimed at children and adolescents, other measures will have to be taken in order not to infringe the Danish Marketing Practices Act's prohibition of mentioning, displaying pictures of, or referring to alcohol to children and adolescents.

See also point 2.3 in the general comments on the draft Act.

Re No 4

Section 2a(7) provides that shops where retail sales of alcoholic beverages take place, must, through visible signs drawn up by the Danish Health Authority, inform about the age limit requirements for the sale of alcoholic beverages, cf. (3–6).

It is proposed that in *Section 2a(7)*, which becomes (6), 'cf. (3–6)' shall be replaced by the following: 'cf. Section 2 and Section 2a(2–5)'.

The proposed amendment will result in Section 2a(7), which becomes (6), referring to Section 2 and Section 2a(2–5), instead of Section 2a(2–6). The amendment should be seen in conjunction with Section 3, No 1, of the draft Act, which proposes to repeal Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under 18 years of age, since the requirement to ensure a more effective age verification system is put into effect, which is why Section 2a(2) is no longer relevant. As a consequence, the applicable Section 2a(3–6) becomes Section 2a(2–5). In addition, a reference to Section 2 of the Act is added, where the age limits for the sale of alcoholic beverages are set out. There is no intention of changing the existing signs that are already available on the Danish Health Authority's website.

Re No 5

Section 2a(8) provides that signs indicating that the sale of tobacco products, tobacco surrogates and herbal products for smoking can take place only by complying with the age limit requirements for the sale of tobacco products, tobacco surrogates and herbal products for smoking, cf. (1) and (2), shall be drawn up by the Danish Health Authority.

It is proposed that in *Section 2a(8)*, which becomes (7), 'cf. (1) and (2)' shall be replaced by: 'cf. Section 1 and Section 2a(1)'.

The proposed amendment will result in Section 2a(8), which becomes (7), referring to Section 1 and Section 2a(1) instead of Section 2a(1) and (2). The amendment should be seen in conjunction with Section 3, No 1, of the draft Act, which proposes to repeal Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under 18 years of age, since the requirement to ensure a more effective age verification system is put into effect, which is why Section 2a(2) is no longer relevant. As a consequence, the applicable Section 2a(1–2) becomes Section 2a(1). In addition, a reference is added to Section 1 of the Act, which sets out the age limits for the sale of tobacco products, tobacco surrogates and herbal products for smoking. There is no intention of changing the existing signs that are already available on the Danish Health Authority's website.

Re No 6

Section 2a(9) provides that the Minister for Health shall lay down detailed rules on the design, installation, etc. of signs, cf. (7).

It is proposed that in *Section 2a(9)*, which becomes (8), 'cf. (7)' shall be replaced by: 'cf. (6)'.

The proposed amendment will result in Section 2a(9), which becomes (8), referring to Section 2a(6) instead of Section 2a(7). The amendment should be seen in conjunction with Section 3, No 1, of the draft Act, which proposes to repeal Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under 18 years of age, since the requirement to ensure a more effective age verification system is put into effect, which is why Section 2a(2) is no longer relevant. As a consequence, the applicable Section 2a(7) becomes Section 2a(6).

Re No 7

Section 2b(1) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that the Danish Safety Technology Authority monitors the compliance with the requirements of Sections 1–2a and rules issued pursuant to Section 2a(9). Section 2b(2) of the Act provides that the representatives of the Danish Safety Technology

Authority have, at any time and without showing identification, access to dealers' commercial premises in order to verify compliance with Sections 1–2a and rules issued pursuant to Section 2a(9).

Section 5(1) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that, for infringements of Sections 1–2a and rules issued pursuant to Section 2a(6), the shop owner, restaurant manager, hotel manager, canteen owner, person who commercially markets online, etc. shall be punished by fines. In determining the level of the penalty, it is considered to be an especially aggravating circumstance if the infringement of Sections 1–2a and regulations issued pursuant to Section 2a(6) are of a serious or repetitive nature. The provision in Section 23 of the Criminal Code shall not apply.

It is proposed that in *Section 2b(1) and (2)*, and *Section 5(1)*, *first and second sentences*, 'Section 2a(9)' shall be replaced by: 'Section 2a(8)'.

The proposed amendment will result in Section 2b(1) and (2) and Section 5(1), first and second sentences, referring to Section 2a(8) instead of Section 2a(9). The amendment should be seen in conjunction with Section 3, No 1, of the draft Act, which proposes to repeal Section 2a(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under 18 years of age, since the requirement to ensure a more effective age verification system is put into effect, which is why Section 2a(2) is no longer relevant. As a consequence, the applicable Section 2a(9) becomes Section 2a(8).

Re No 8

Section 2b of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that the Danish Safety Technology Authority monitors the compliance with the requirements of Sections 1–2a and rules issued pursuant to Section 2a(6), as well as the powers of the Danish Safety Technology Authority.

It is proposed that in *Section 2b*, the following shall be inserted as new (4) and (5).

It is therefore proposed that a new *Section 2b(4)* shall be inserted, according to which the Danish Safety Technology Authority in the period

from 1 July 2024 up to and including 30 June 2026 as part of the control of the requirements of Section 1(1), Section 2 and Section 2a(1), (2) and (4), as well as rules issued pursuant to Section 2a(8), may make use of young control purchasers with a hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the place of business.

The proposed amendment will mean that the Danish Safety Technology Authority will be able to use young control purchasers with a hidden identity during their controls of the age limits for the sale of tobacco products, tobacco surrogates, herbal products for smoking and alcoholic products in physical shops. This means that the Danish Safety Technology Authority will be able to employ adolescents under the age of 16/18 who, accompanied by a supervisor in kiosks and other retail stores, must be able to attempt to purchase tobacco products, tobacco substitutes, herbal products for smoking and/or alcoholic beverages that they are not old enough to purchase, in order to check whether the companies comply with the age limits. The purpose of the proposed provision is thus to control whether the age verification is respected at the place of business.

The proposed controls can only be carried out in cases where, prior to the controls, the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business. ‘Reasonable grounds’ shall be understood in accordance with Section 9 of the Act on legal certainty in the administration’s application of coercive measures and information obligations. In cases where the Danish Safety Technology Authority has reasonable grounds for suspecting that offences are being committed at the place of business, coercive measures, etc. can only be carried out in accordance with the rules laid down in the Administration of Justice Act.

The use of young control purchasers – like the rest of the Danish Safety Technology Authority’s controls – will have to be based on a risk-based approach with a particular focus on places where compliance is generally expected to be low.

It is assumed that the young purchaser must be at least 15 years old, bearing in mind, inter alia, that, in the event that the person concerned is required to testify in any criminal proceedings, he or she will be subject, inter alia, to Chapter 17 of the Criminal Code on false statements and false accusations.

In addition, the control under the proposed provision will have to be carried out in such a way that the supervisor accompanying the young purchaser can identify the infringement himself or herself by witnessing the purchase, for example because the person concerned is within the visual and hearing distance of the transaction.

The Danish Safety Technology Authority will be able to use young control purchasers for a period of 2 years. Before the end of the period, an evaluation will be carried out with a view to discussing whether the scheme should be extended, made permanent or discontinued.

In addition, it is proposed that a new *Section 2b(5)* shall be inserted, according to which the Danish Safety Technology Authority shall not, during controls in accordance with (4), affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the offence.

The use of young control purchasers shall not affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the infringement. Thus, the Danish Safety Technology Authority will only be able to purchase the minimum amount of tobacco products, tobacco substitutes, herbal products for smoking and/or alcoholic beverages in order to control whether an illegal sale is taking place. The young control purchaser must only attempt to purchase legal products.

Young control purchasers will only be able to be used in situations where the Danish Safety Technology Authority is positively aware that kiosks and other shops sell tobacco products, tobacco substitutes, herbal products for smoking and/or alcoholic beverages in accordance with the otherwise applicable rules.

In cases where the Danish Safety Technology Authority is not positively aware of the sale, the powers under the proposed provision will not be available for the purpose of determining whether a sale is taking place. Similarly, young control purchasers will not be available in cases where it is unclear whether tobacco products, tobacco surrogates, herbal products for smoking and/or alcoholic beverages are being sold, e.g. where the products are stored in an unusual manner, including in the premises, warehouses or similar. The fact that tobacco products, tobacco substitutes

and herbal products for smoking are subject to a display prohibition (i.e. that they are behind a protection or similar) does not mean that the provision cannot be applied when the products are otherwise present at a normal point of sale, e.g. behind the counter or cash register in a shop, and when the Danish Safety Technology Authority has other indications that tobacco products, tobacco substitutes and/or herbal products for smoking are being sold from the shop.

The proposed provision would mean that once the conditions for using the young control purchasers with a hidden identity are in place, the young control purchaser will be able to request legal products, even if these are not freely available to the person concerned. The control will have to be carried out in a manner that does not give rise to significant circumstances of the offence. Thus, a young control purchaser will not be able to take any further action than to request legal products. Thus, in the case of questions about ID or age, the person concerned may not lie about his age in order to complete the purchase.

The Danish Safety Technology Authority's controls under the proposed provision will be subject to the general requirements for public authorities on documentation, etc.

Re § 4

Re No 1

The heading to Chapter 7 of the Act on tobacco products etc. is 'Cross-border distance sales'.

Section 24(1) of the Act on tobacco products etc. provides that retailers of tobacco products registered under Section 23(1) must operate an age verification system.

Section 2, No 13, of Act No 2071 of 21 December 2020 provides that the heading of Chapter 7 of the Act on tobacco products, etc. shall be replaced by the following:

'Chapter 7
Distance sales'.

Section 2, No 14, of Act No 2071 of 21 December 2020 provides that in Section 24(1) of the Act on tobacco products, etc., the following shall be inserted after ‘tobacco products’: ‘, tobacco surrogates and herbal products for smoking’ and ‘registered in accordance with Section 23(1)’ shall be deleted.

Under the provision on entry into force in Section 7(7) of Act No 2071 of 21 December 2020, the Minister for the Interior and Health determines the date of entry into force of Section 2, Nos 13 and 14.

The amendments have not been put into effect, as it was necessary to ensure first that the right available solution for an age verification system can, for distance sales, be implemented by the dealers. As there is now a solution for an age verification system and there is a need for the requirements to be described in the explanatory notes, it is necessary to repeal the adopted – but not yet in force – provisions.

It is proposed that *Section 2, Nos 13 and 14*, shall be repealed.

Section 1, Nos 4 and 5, of the draft Act, together with its explanatory notes, proposes amendments to the heading of Chapter 7 and amendments to Section 24(1), which lay down and describe the requirements for the age verification system.

Re § 5

Re No 1

Section 15(4) of the Act on electronic cigarettes, etc. provides that retailers of electronic cigarettes or refill containers with nicotine registered under Section 13(1) must operate an age verification system, cf. (5).

Section 2, No 5, of Act No 738 of 13 June 2023 provides that in Section 15(4) of the Act on electronic cigarettes, etc., ‘Section 5a(1) or’ shall be inserted after ‘after’.

Under the provision on entry into force in Section 6(3) of Act No 738 of 13 June 2023, the Minister for the Interior and Health determines the date of entry into force of Section 2, No 5, of the Act.

The amendment has not been put into effect, as it must first be ensured that the right available solution for a more efficient age verification system can be implemented by the dealers. As there is now a solution for an age verification system and there is a need for the requirements to be described in the explanatory notes, it is necessary to repeal the adopted – but not yet in force – provisions.

It is proposed that *Section 2, No 5*, shall be repealed.

Section 2, No 4, of the draft Act, together with its explanatory notes, proposes an amendment to Section 15(4), which lays down and describes the requirements for the age verification system.

Re Section 6

(1) proposes that the Act shall enter into force on 1 July 2024, without prejudice to (2).

This means that the legal basis for the Danish Safety Technology Authority to carry out seizures as well as the legal basis for the Tax Administration and the Danish Safety Technology Authority to detain products on behalf of each other, as set out in Section 1, No 6, and Section 2, No 8, of the draft Act, will enter into force on 1 July 2024.

This also means that the prohibition on import, purchase, possession, etc. in the Act on electronic cigarettes, which is set out in Section 2, No 5, of the draft Act, will enter into force on 1 July 2024.

It further means that the Danish Safety Technology Authority's legal basis for using young control purchasers, as set out in Section 2, No 7, and Section 3, No 8, of the draft Act, will enter into force on 1 July 2024.

(2) proposes that Section 1, Nos 3–5, Section 2, Nos 2–4, 9–10 and 12, Section 3, Nos 1–7, Section 4 and Section 5 of the Act shall enter into force on 1 October 2024.

This means that the requirements for more effective age verification for online sales of tobacco, nicotine and alcoholic beverages will enter into force on 1 October 2024. The intention is to allow reasonable time for retailers to implement an age verification system that effectively verifies the purchaser's age.

(3) proposes that rules laid down pursuant to Section 15(5) of the Act on electronic cigarettes, etc., cf. Consolidation Act No 1876 of 20 September 2021, as amended by Act No 738 of 13 June 2023, remain in force until they are repealed or replaced by regulations issued pursuant to Section 15(4).

This means that rules in Order No 784 of 13 June 2023 on quality, labelling and age verification system, etc. of electronic cigarettes and refill containers, etc., laid down pursuant to Section 15(5) of the Act on electronic cigarettes, etc., remain in force until they are repealed or replaced by regulations issued pursuant to Section 15(4).

(4) proposes that rules laid down pursuant to Section 2a(9) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act No 583 of 26 March 2021, as amended by Section 3 of Act No 738 of 13 June 2023, remain in force until they are repealed or replaced by regulations issued pursuant to Section 2a(8).

This means that rules in Order No 782 of 13 June 2023 on the installation and placement of signs laid down pursuant to Section 2a(9) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 shall remain in force until they are repealed or replaced by regulations issued pursuant to Section 2a(8).

It is stated in § 49 of the Act on tobacco products etc. that the Act does not apply to the Faroe Islands and Greenland.

It is stated in § 42 of the Act on electronic cigarettes etc. that the Act does not apply to the Faroe Islands and Greenland.

It is stated in § 7 of the Act to prohibit the sale of tobacco and alcohol to persons under 18 years of age that the Act does not apply to the Faroe Islands and Greenland.

This Act will therefore not apply to the Faroe Islands and Greenland either.

This means that, in accordance with the territorial provisions of the Act on tobacco products, etc. and the Act on electronic cigarettes, etc., the Act does not apply to the Faroe Islands and Greenland, nor will it be possible to put it into application in these regions.

Annex 1

The draft Act compared to legislation currently in force

<i>Current wording</i>		<i>The draft Act</i>
		§ 1
		The Act on tobacco products, cf. Consolidation Act No 1489 of 18 June 2021, as amended through Section 2 of Act No 2071 of 21 December 2020, Section 2 of Act No 99 of 25 January 2022, and Section 1 of Act No 738 of 13 June 2023, shall be amended as follows:
Section 2. The following definitions apply for the purposes of this Act: 1–16) - - - 17) Manufacturer: Any natural or legal person who manufactures a tobacco product or a herbal product for smoking or has that product designed or manufactured, and markets that product under their name or trademark.		1. In <i>Section 2, No 17</i> , the following shall be inserted after ‘a tobacco product’: ‘, a tobacco surrogate’.
18) Importer: The owner of, or a natural or legal person having the right of disposal over, tobacco products or herbal products for smoking imported into the territory of the European Union. 19) Distributor: Any natural or legal person other than a manufacturer or importer who markets tobacco products or herbal products for smoking, with the		2. In <i>Section 2, Nos 18–21</i> , the following shall be inserted after ‘tobacco products’: ‘, tobacco surrogates’.

exception of sales to consumers. 20) Retailer: Any natural or legal person who markets tobacco products or herbal products for smoking to consumers. 21) Placing on the market: Making tobacco products or herbal products for smoking available to consumers, with or without payment. In the case of cross-border distance sales the product is deemed to be placed on the market in the country where the consumer is located		
Nos 22–31) - - -		3. In <i>Section 2</i> , the following shall be inserted as <i>No 32</i> : ‘32) Age verification system: An IT system that unambiguously confirms the consumer’s age electronically in accordance with the age limit.’
		4. <i>The heading of Chapter 7 shall be worded as follows:</i>
Chapter 7 <i>Cross-border distance sales Registration of tobacco products etc.</i>		‘Chapter 7 <i>Distance sales</i> ’.
Section 24. Retailers of tobacco products registered under Section 23(1) must operate an age verification system. (2) - - -		5. In <i>Section 24(1)</i> , the following shall be inserted after ‘tobacco products’: ‘, tobacco surrogates and herbal products for smoking’, and ‘registered under Section 23(1) must operate an age verification system’ shall be replaced by: ‘must operate, in the case of distance sales, an age verification system which verifies, at the time of sale, that the customer is at

		least 18 years of age’.
		<p>6. After Section 35, the following shall be inserted before the heading before Section 36:</p> <p>‘Section 35a. The Danish Safety Technology Authority may seize tobacco products, tobacco surrogates, herbal products for smoking and equipment intended to be used with these, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated.</p> <p>(2) Products that come into the Danish Safety Technology Authority’s possession as a result of seizures, must be recorded and labelled as soon as possible. The Danish Safety Technology Authority shall issue acknowledgement of receipt.</p> <p>(3) Seizures carried out pursuant to (1) shall be carried out in accordance with Chapter 74 of the Administration of Justice Act on seizures.</p>
		<p>Section 35b. The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this</p>

		<p>Act.</p> <p>(2) The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.</p> <p>(3) The Danish Safety Technology Authority may, on behalf of the Customs and Tax Administration to ensure customs duties and taxes, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Customs and Tax Administration.’</p>
		Section 2
		<p>The Act on electronic cigarettes, etc., cf. Consolidated Act No 1876 of 20 September 2021, as amended by Section 3 of Act No 2071 of 21 December 2020, Section 1 of Act No 99 of 25 January 2022 and Section 2 of Act No 738 of 13 June 2023, shall be amended as follows:</p>
Section 2. The following definitions		

<p>apply for the purposes of this Act: 1–5) - - - 6) Manufacturer: Any natural or legal person who manufactures an electronic cigarette or a refill container with nicotine or has that product designed or manufactured, and markets that product under their name or trademark. 7) Importer: The owner of, or a natural or legal person with a right of disposal over, electronic cigarettes or refill containers with nicotine imported into EU territory 8) Distributor: Any natural or legal person, other than a manufacturer or importer, who markets electronic cigarettes or refill containers with nicotine, with the exception of sales to consumers. 9) Retailer: Any natural or legal person who markets electronic cigarettes or refill containers with nicotine to the consumers. 10–11) - - -</p>	<p>1. In Section 2, Nos 6–9, the following shall be inserted after ‘refill container with’: ‘ and without’.</p>
	<p>2. In Section 2, the following shall be inserted as No 12: ‘12) Age verification system: An IT system that unambiguously confirms the consumer’s age electronically in accordance with the age limit.’</p>
<p>Section 15. - - - No 2. - - - (3) A person who commercially markets electronic cigarettes or refill containers with or without nicotine online must require the customer, before the sale is made, to state unequivocally that he or she is at least</p>	<p>3. Section 15(3) shall be repealed. (4) and (5) subsequently become (3) and (4).</p>

18 years of age.’		
<p>(4) Retailers of electronic cigarettes and refill containers with nicotine registered under Section 13(1) shall operate an age verification system, cf. (3).</p> <p>No 5. - - -</p>		<p>4. In <i>Section 15(4)</i>, which becomes (3), the following shall be inserted after ‘with’: ‘and without’ and ‘registered under Section 13(1), shall operate an age verification system, cf. (5)’ shall be replaced by: ‘must operate, in the case of distance sales, an age verification system which verifies, at the time of sale, that the customer is at least 18 years of age, cf. (4)’.</p>
		<p>5. The following shall be inserted after Chapter 7:</p>
		<p style="text-align: center;">‘Chapter 7a <i>Prohibition of import, purchase, possession, etc. of certain electronic cigarettes, etc.</i></p>
		<p>Section 18b. It is not permitted to import, purchase, supply, receive, manufacture, process or possess electronic cigarettes and refill containers with nicotine, which are covered by the prohibition in Section 25a(1) or exceed the nicotine content limit in a nicotine-containing liquid as laid down pursuant to Section 7(2).</p> <p>(2) The prohibition referred to in (1) shall not include:</p> <ol style="list-style-type: none"> 1) Luggage and possession of up to 10 units for personal consumption. 2) Import, purchase, supply, receipt, manufacture, processing or possession with a view to marketing in other countries or to consumers in countries other than Denmark. 3) Import, purchase, supply, receipt, manufacture, processing or possession for scientific or control purposes.

§ 19. The Danish Safety Technology Authority monitors the compliance with the rules in Chapters 3-6, § 25a and the rules determined pursuant to these chapters.		6. In <i>Section 19(1)</i> , the following shall be inserted after ‘3–6’: ‘, 7a’, and the following <i>second sentence</i> shall be inserted: ‘The Customs and Tax Administration shall assist with the control of the requirements of Chapter 7a.’
(2) The Danish Safety Technology Authority may require any person to be provided with all information necessary to exercise the control referred to in (1).		<p>7. In <i>Section 19</i> the following shall be inserted as (3) and (4):</p> <p>‘(3) The Danish Safety Technology Authority may, in the period from 1 July 2024 up to and including 30 June 2026 as part of the control of the requirements laid down in Section 15(1) and (2), make use of young control purchasers with a hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the place of business.</p> <p>(4) The Danish Safety Technology Authority shall not, during controls in accordance with (3), affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the offence.</p>
		<p>8. After Section 22, the following shall be inserted before the heading before Section 23:</p> <p>‘Section 22a. The Danish Safety Technology Authority may seize electronic cigarettes with or without nicotine, refill containers with or without nicotine, as well as equipment and flavourings intended to be used together, if there is reason to believe that they are covered by the penalties of this Act,</p>

	<p>penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act, and there is reason to believe that the item may serve as evidence or should be confiscated.</p> <p>(2) Products that come into the Danish Safety Technology Authority's possession as a result of seizures, must be recorded and labelled as soon as possible. The Danish Safety Technology Authority shall issue acknowledgement of receipt.</p> <p>(3) Seizures carried out pursuant to (1) shall be carried out in accordance with Chapter 74 of the Administration of Justice Act on seizures.</p>
	<p>Section 22b. The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.</p> <p>(2) The Customs and Tax Administration may, on behalf of the Danish Safety Technology Authority, detain products that are being transported into the Danish customs territory from other parts of the EU customs territory or from a country outside the EU with a view to transferring the products to the Danish Safety Technology Authority, if there is reason to believe that they are covered by</p>

		<p>penalties in this Act, penalties laid down pursuant to this Act or penalties in Regulations relating to the scope of this Act.</p> <p>(3) The Danish Safety Technology Authority may, on behalf of the Customs and Tax Administration to ensure customs duties and taxes, detain products that are left with manufacturers, importers or dealers, etc., with a view to transferring the products to the Customs and Tax Administration.’</p>
<p>Section 30. The Minister of Industry, Business and Financial Affairs may lay down rules to the effect that written communication to and from the Danish Safety Technology Authority on matters covered by Chapters 3–5, Section 15(4), Sections 19–22 and Sections 25–28 and Chapters 10 or 11 of rules laid down pursuant thereto, must take place digitally.</p>		<p>9. In <i>Section 30(1)</i>, ‘Section 15(4)’ shall be replaced by: ‘Section 15(3)’.</p>
<p>§ 33. Unless higher penalties are stipulated under other legislation, fines will be imposed on those who:</p> <p>1) infringe Section 3(1) and (4), Section 4, Section 9(1), Section 9a(1) and (2), Section 10(1), Section 11(1), Section 15(1–4), Section 16(1), Section 17, Section 18a(1) or Section 25a(1) and (2);</p> <p>2–) - - -</p>		<p>10 In <i>Section 33(1)(1)</i>, ‘Section 15(1–4)’ shall be replaced by: ‘Section 15(1–3)’</p>
		<p>11. In <i>Section 33(1)(1)</i>, the following shall be inserted after ‘Section 18a(1)’: ‘Section 18b(1)’.</p>
<p>(2) In rules laid down pursuant to Section 7(2), Section 8, Section 9(2), Section 9a(3), Section 10(2), Section</p>		<p>12. In <i>Section 33(2)</i>, ‘Section 15(5)’ shall be replaced by: ‘Section 15(4)’.</p>

12(3), Section 13(2), Section 15(5), Section 18 and Section 18a(4), fines for infringements of the provisions of the rules may be imposed.		
		Section 3
		The Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act No 583 of 26 March 2021, as amended by Section 3 of Act No 738 of 13 June 2023, shall be amended as follows:
<p>Section 2a. - - -</p> <p>(2) The marketing of tobacco products, tobacco surrogates or herbal products for smoking on a professional basis online must require the customer, before the sale is made, to state unequivocally that he or she is at least 18 years of age.’</p> <p>(3) - - -</p>		<p>1. <i>Section 2a(2)</i> shall be repealed. (3–9) subsequently become (2–8).</p>
<p>(4) A person who commercially markets alcoholic beverages with an alcohol volume of 1.2 % or more online must require the customer, before the sale is made, to state unequivocally that he or she is at least 16 years of age.’</p> <p>(5) - - -</p>		<p>2. In <i>Section 2a(4)</i>, which becomes (3), ‘must require the customer, before the sale is made, to state unequivocally that he or she is at least 16 years of age’ shall be replaced by: ‘must operate an age verification system which verifies, at the time of sale, that the customer is at least 16 years of age’.</p>
<p>(6) A person who commercially markets alcoholic beverages with an alcohol volume of 16.5 % or more online must require the customer, before the sale is made, to state unequivocally that he or she is at least 18 years of age.’</p>		<p>3. In <i>Section 2a(6)</i>, which becomes (5), ‘must require the customer, before the sale is made, to state unequivocally that he or she is at least 18 years of age’ shall be replaced by: ‘must operate an age verification system which verifies, at the time of sale, that the customer is at least 18</p>

	years of age’.
(7) Shops where retail sales of alcoholic beverages take place, must, through visible signs drawn up by the Danish Health Authority, inform about the age limit requirements for the sale of alcoholic beverages, cf. (3–6).	4. In <i>Section 2a(7)</i> , which becomes (6), ‘cf. (3–6)’ shall be replaced by: ‘cf. Section 2 and Section 2a(2–5)’.
(8) Signs containing information that the sale of tobacco products, tobacco surrogates and herbal products for smoking can only take place by complying with the age limit requirements for the sale of tobacco products, tobacco surrogates and herbal products for smoking, cf. (1) and (2), shall be drawn up by the Danish Health Authority.	5. In <i>Section 2a(8)</i> , which becomes (7), ‘cf. (1) and (2)’ shall be replaced by: ‘cf. Section 1 and Section 2a(1)’.
(9) The Minister for Health shall lay down detailed rules on the design, installation, etc. of signs, cf. (7).	6. In <i>Section 2a(9)</i> , which becomes (8), ‘cf. (7)’ shall be replaced by: ‘cf. (6)’.
Section 2b. The Danish Safety Technology Authority monitors the compliance with the requirements of Sections 1–2a and rules issued pursuant to Section 2a(9). (2) The representatives of the Danish Safety Technology Authority have, at any time and without showing identification, access to dealers’ commercial premises in order to verify compliance with Sections 1–2a and rules issued pursuant to Section 2a(9). (3) - - -	7. In <i>Section 2b(1)</i> and (2), and <i>Section 5(1)</i> , <i>first</i> and <i>second</i> sentences, ‘Section 2a(9)’ shall be replaced by: ‘Section 2a(8)’.
	8. In <i>Section 2b</i> , the following shall be inserted as (4) and (5):

	<p>‘(4) In the period from 1 July 2024 up to and including 30 June 2026 as part of the control of the requirements laid down in Section 1(1), Section 2 and Section 2a(1), (2) and (4), as well as rules issued pursuant to Section 2a(8), the Danish Safety Technology Authority may make use of young control purchasers with a hidden identity when there are no reasonable grounds for suspecting that offences are being committed at the place of business.</p> <p>(5) The Danish Safety Technology Authority shall not, during controls in accordance with (4), affect significant circumstances in relation to the offence, in particular an increase in the extent or seriousness of the offence.</p>
<p>Section 5. For infringements of Section 1, Section 2 or Section 2a and rules issued pursuant to Section 2a(9), the shop owner, restaurant manager, hotel manager, canteen owner, etc. shall be punished by fines. In determining the level of the penalty, it is considered to be an especially aggravating circumstance if the infringements of Section 1, Section 2 or Section 2a and regulations issued pursuant to Section 2a(9) are of a serious or repetitive nature. The provision in Section 23 of the Criminal Code shall not apply.</p>	<p>7. In <i>Section 2b(1) and (2), and Section 5(1), first and second sentences</i>, ‘Section 2a(9)’ shall be replaced by: ‘Section 2a(8)’.</p>
	Section 4
	Act No 2071 of 21 December 2020 amending the Act on the prohibition of tobacco advertising etc., the Act on

		tobacco products etc., the Act on electronic cigarettes etc. and various other acts (Implementation of the national action plan against smoking among children and adolescents) shall be amended as follows:
13. The heading of Chapter 7 shall be replaced by the following:		1. Section 2, Nos 13–14, shall be repealed.
‘Chapter 7 <i>Distance sales</i> ’.		
14. In Section 24(1), the following shall be inserted after ‘tobacco products’: ‘, tobacco surrogates and herbal products for smoking’ and ‘registered in accordance with Section 23(1)’ shall be deleted.		
		Section 5
		Act No 738 of 13 June 2023 amending the Act on tobacco products, etc. and various other acts (Implementation of parts of the Delegated Directive on heated tobacco products, etc.) shall be amended as follows:
5. In Section 15(2), which becomes (4), the following shall be inserted after ‘after’: ‘Section 5a(1), or’.		1. Section 2, No 5, shall be repealed.