



EUROPEAN COMMISSION

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**Subject: Notification No 2024/610/AT**

**On the draft Ordinance specifying prohibited substances in tobacco products and e-cigarette liquids**

**Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535**



On 7 November 2024, within the framework of the notification procedure laid down in Directive (EU) 2015/1535<sup>1</sup>, the Austrian authorities notified to the Commission the draft ***Ordinance specifying prohibited substances in tobacco products and e-cigarette liquids*** (hereinafter ‘the notified draft’).

According to the notification message, the notified draft aims to lay down a list of prohibited substances in tobacco products and electronic cigarettes. According to the notification message, this list was already published in 2023 for information purposes on the websites of the competent authorities and is now notified as an implementing ordinance.

The examination of the notified draft has prompted the Commission to issue the following comments.

The notified draft lays down, by way of example, the list of prohibited substances in tobacco products and electronic cigarette liquids. According to the notified draft, the list

<sup>1</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (codification), OJ L 241, 17.9.2015, p. 1.

is not exhaustive. Substances that are not included in the list laid down in the notified draft should still be considered prohibited insofar as they fall within the scope of sections 8b and 10b of the base act<sup>2</sup>.

The Commission notes that Article 7(6) of Directive 2014/40/EU<sup>3</sup> provides the following:

*‘Member States shall prohibit the placing on the market of tobacco products containing the following additives:*

*(a) vitamins or other additives that create the impression that a tobacco product has a health benefit or presents reduced health risks;*

*(b) caffeine or taurine or other additives and stimulant compounds that are associated with energy and vitality;*

*(c) additives having colouring properties for emissions;*

*(d) for tobacco products for smoking, additives that facilitate inhalation or nicotine uptake; and*

*(e) additives that have CMR properties in unburnt form’.*

The Commission notes that Article 20(3) of Directive 2014/40/EU also provides the following:

*‘3. Member States shall ensure that:*

*[...] (c) the nicotine-containing liquid does not contain additives listed in Article 7(6);*

*[...] (e) except for nicotine, only ingredients are used in the nicotine-containing liquid that do not pose a risk to human health in heated or unheated form; [...].’*

Furthermore, the Commission would like to bring to the attention of the Austrian authorities that the regulation of ingredients is a harmonised area under Directive 2014/40/EU and should be in line with Articles 7(6) and 20(3) of Directive 2014/40/EU.

In order to ensure the correct application of Articles 7(6) and 20(3) of Directive 2014/40/EU and to avoid prohibiting additives which are not covered by Articles 7(6) and 20(3), the Commission would like to remind the Austrian authorities that they should be in a position to clearly justify, and provide adequate evidence, that the additives listed and any other additional additives which are to be prohibited, fall within one, or several, of the categories listed in Articles 7(6) and 20(3) of Directive 2014/40/EU.

The Austrian authorities are invited to take these comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.

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<sup>2</sup> Tobacco and Non-Smokers Protection Act.

<sup>3</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ L 127, 29.4.2014, p. 1.



For the Commission

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