

**Draft**

Act amending the Act on tobacco products etc. and various other acts<sup>1</sup>  
(Part II of the implementation of the prevention plan targeting children and  
adolescents – tobacco, nicotine and alcohol)

*Ministry of the Interior and Health*

**§ 1**

The following amendments are made to the Act on tobacco products, etc.,  
cf. Consolidation Act No. 1489 of 18 June 2021, as amended by § 2 in Act  
No. 2071 of 21 December 2020, § 2 in Act No. 99 of 25 January 2022, § 1  
of Act No. 738 of 13 June 2023, § 8 of Act No. 333 of 9 April 2024 and §  
1 of Act No. 651 of 11 June 2024:

**1.** In the *footnote* the title of the Act shall be inserted as *Point 5*:

The Act 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 regula-  
tions and of rules on Information Society services (codification).

**2.** In § 2, no. 10, the following is inserted after ‘smoke-free tobacco prod-  
ucts’: ‘and tobacco surrogates’.

**3.** In § 2, *the following is inserted after no. 11 as a new paragraph*:

‘12) Aroma: A smell or taste resulting from an additive or combination  
of additives, including fruit, spices, herbs, alcohol, sweets, menthol or  
vanilla, and which is framed or tasted before or during consumption of the  
tobacco surrogate.’

Nos 12-32 subsequently become nos. 13-33.

**4.** In § 2 no. 17, which becomes no. 18, the following is inserted after  
‘herbal product for smoking’: ‘etc.’.

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<sup>1</sup> [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 in-  
formation in the field of technical regulations and of rules on Information Society services  
(codification).]

5. In § 2 nos. 18-21, which become nos. 19-22, the following is inserted after ‘herbal products for smoking’: ‘etc.’

6. In § 2, the following shall be inserted as *No 34*:

‘34) Communications platform: Online platform which, seeking profits, offers visitors the opportunity to create a profile and explore other profiles and whose primary function is to enable users of the platform to join and share messages or presentations with content in the form of characters, words, writing, audio, images or video.’

7. The heading of Chapter 3 shall be drawn up as follows:

‘Chapter 3

*Maximum emission levels for tobacco products, methods for measuring emission levels and limit values for tobacco surrogates, etc.’*

8. After § 10, the following shall be inserted before the heading before § 11:

‘§ 10a. Manufacturers and importers shall ensure that tobacco surrogates that they place on the market comply with the nicotine content limit referred to in paragraph 2.

(2) The Minister for the Interior and Health shall lay down rules on maximum nicotine content in tobacco surrogates.’

9. The heading of Chapter 4 shall be drawn up as follows:

‘Chapter 4

*Prohibition on the placing on the market of certain tobacco products, tobacco surrogates, etc.’*

10. The following is inserted after § 15 a:

‘§ 15b. Tobacco surrogates and flavourings for use in flavoured tobacco surrogates shall not be marketed in Denmark. However, the prohibition shall not apply to a flavour of tobacco or menthol.

(2) Devices used in connection with tobacco surrogates which make it possible to alter the smell or taste of such substitute tobacco shall not be placed on the market in Denmark.

(3) The Danish Health and Medicines Authority may lay down detailed rules on the prohibition referred to in paragraph 1, including rules on whether a specific product is covered by the prohibition and on maximum

levels for the content in products of additives or combinations of additives that impart a flavour.’

**11.** In § 17(1) the following is inserted after ‘tobacco products’: ‘and tobacco surrogates’.

**12.** In § 17(1) no. 1 the following is inserted after ‘tobacco product’: ‘or a tobacco surrogate’.

**13.** The following shall be inserted after Chapter 4:

‘Chapter 4a

*Prohibition on the import, purchase, possession, etc. of certain tobacco surrogates, etc.*

**§ 18a.** It is not permitted to import, purchase, supply, receive, manufacture, process or possess tobacco surrogates covered by the prohibition in § 15b (1) or exceed the nicotine content limit for a tobacco surrogate laid down pursuant to § 10a.

(2). The prohibition laid down in paragraph 1 shall not apply to the following:

- 1) Luggage of up to ten units for personal consumption and possession of up to ten 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.’

**14.** The following is inserted as *paragraphs 2-5* in § 21:

‘(2) The Danish Health Authority shall lay down detailed rules on requirements for the appearance of cigarettes and roll-your-own tobacco, including paper, filters, etc.

(3) The Danish Health Authority shall lay down detailed rules on ingredients in relation to unit packets of chewing tobacco.

(4) The Danish Health Authority shall lay down detailed rules on requirements for the appearance of tobacco surrogates.

(5) The Danish Health Authority shall lay down detailed rules on ingredients in relation to unit packets of tobacco surrogates.’

**15.** In § 21a, the following is inserted as a new paragraph after paragraph 1:

‘(2) The person placing technical equipment used with heated tobacco products on the market in Denmark shall ensure that each unit packet and any outside packaging is standardised.’

Paragraph 2 then becomes paragraph 3.

**16.** In § 21a (2), which becomes paragraph 3, the following inserted after ‘design’: ‘within the meaning of paragraphs 1 and 2’

**17.** After § 22c, the following is inserted in *Chapter 6*:

**‘§ 22d.** The person marketing tobacco surrogates in Denmark shall ensure that each unit packet and any outside packaging is standardised.

(2) The Minister for the Interior and Health shall lay down detailed rules on the design of standardisation.’

**18.** In § 32a, the following is inserted as *paragraph 3*:

‘(3) The Customs and Tax Administration shall assist in checking that the rules laid down in Chapter 4a are complied with.’

**19.** In § 35a(1), and § 35b(1)-(3), insert after ‘equipment’: ‘and flavourings’.

**20.** After § 35b, the following shall be inserted before the heading before § 36:

**‘Paragraph 35c.** In cases involving an offence which is deemed not to result in a penalty higher than a fine, the perpetrator of the offence may, upon notification by the Danish Safety Technology Authority, order the extra-judicial confiscation of illegal tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used with them. The adoption of extra-judicial confiscation pursuant to paragraph 1 shall require the perpetrator of the offence to declare himself guilty of the offence and to accept the extra-judicial confiscation.

(2) The rules of the Administration of Justice Act on requirements concerning the content of an indictment and the absence of an obligation on the accused person to make a statement shall apply *mutatis mutandis* to the adoption of confiscation under paragraph 1.’

**21.** In § 36(1), *no. 1*, ‘§ 21a(1)’ is replaced by: ‘§ 21a(1) and (2), § 22’ and ‘§ 21 or § 21a(2)’ are amended to read: ‘§ 21(1) - (3) or § 21a(3),’

**22.** In § 36(1), no. 1, ‘§ 8(2), § 9(2)’ is replaced by: ‘§ 8(1) and (2), § 9(1) and (2),’

**23.** In § 36(2), no. 1, ‘§ 19a(1)’ is replaced by: ‘§ 10a(1), § 19a(1), § 22d(1)’ and ‘§ 19a(2) or § 22c’ are amended to: ‘§ 10a(2), § 19a(2), § 21(4) and (5), § 22c or 22d(2)’

**24.** The following is inserted after § 38b:

‘**§ 38c.** The Danish Safety Technology Authority may order a communication platform to modify or remove content referring to a product which does not comply with rules of this Act, rules laid down pursuant to this Act or regulations relating to the scope of this Act.’

**25.** § 45(1), no. 1 is worded as follows:

‘(1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1), 21a(1), 22a, 24(1), 28(2), 30(1), or 30a(1),’

**26.** § 45(1), no. 1 is worded as follows:

‘(1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1), or 30a(1),’

**27.** § 45(1), no. 1 is worded as follows:

‘(1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 18a(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1), or 30a(1),’

**28.** § 45(1), no. 1 is worded as follows:

‘(1) infringes §§ 4(1), 5(1), 10, 13, 14(1) and (3), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 18a(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1), or 30a(1),’

**29.** In § 45(1) no. 4, ‘§§ 36 or 37’ is replaced by ‘§ 36 or § 37’

**30.** In § 45(1) no. 5, ‘or § 38’ is replaced by ‘§ 38 or § 38c’;

**31.** § 45(2) is worded as follows:

‘(2) In rules laid down pursuant to §§ 8(1) and (2), 9(1) and (2), 19(2), 19a(2), 21a(2), 22c, 24(2), 30(2) or 30a(2), fines may be imposed for infringement of the provisions of the rules.’

**32.** § 45(2) is worded as follows:

‘(2) In rules laid down pursuant to §§ 8(1) and (2), 9(1) and (2), 10a(2), 19(2), 19a(2), 21, 21a(3), 22c, 22d(2), 24 (2), 30(2) (30) or 30a(2), fines may be imposed for infringement of the provisions of the rules.’

**33.** In § 45, the following shall be inserted as a new paragraph after (2):

‘(3) In the case of particularly serious or repeated infringements of §§ 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24 (1), 30(1), 30a(1) or 36-38 and rules issued pursuant to § 19(2), § 19a(2), § 21a(2), § 22c, § 24(2), § 30(2) or § 30a(2) the right shall be removed for a period of time to place tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavourings used with them.’

(3) subsequently becomes (4);

**34.** § 45(3) is amended as follows:

‘(3) In case of particularly serious or repeated infringements of §§ 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22d(1), 24(1), 30(1), 30(1), or 36-38, and rules issued pursuant to §§ 10a(2), 19a(2), 21(3), 22c, 22d(2), 24(2), 30(2) or 30a(2), the right shall be removed for a period of time to place on the market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavours used with them.’

**35.** After § 45, the following shall be inserted before the heading before § 46:

‘**§ 45a.** The Minister for the Interior and Health may, following negotiations with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 45 (1), or rules laid down pursuant to the Act, which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case may be decided without legal proceedings if the perpetrator of the infringement declares himself guilty of the infringement and declares his willingness to pay a fine as specified in the application for a fine within a specified period.

(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply mutatis mutandis to orders for fines.

(3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.

**§ 2**

The Act on Electronic Cigarettes etc. (see Consolidation Act No. 1876 of 20 September 2021), as amended by § 3 of Act No. 2071 of 21 December 2020, § 1 of Act No. 99 of 25 January 2022, § 2 of Act No. 738 of 13 June 2023, and § 2 of Act No. 651 of 11 June 2024, is amended as follows:

1. In § 2 *no.* 5, the reference to ‘Characterising flavour’ is replaced by: ‘flavour’ and ‘prominent’ and ‘other than tobacco’ are deleted.

2. I § 2 *nos.* 6-9; the following is inserted after ‘nicotine’: ‘etc.’.

3. In § 2, the following shall be inserted as *No 13*:

‘13) Communications platform: Online platform which, with a view to making a profit, offers visitors the opportunity to create a profile and explore other profiles and whose primary function is to enable users of the platform to join and share messages or presentations with content in the form of characters, words, writing, audio, images or video.’

4. *Chapter 2* is repealed.

5. In § 15 (1), replace ‘versus’ with the following: ‘to’.

6. After § 22b, the following shall be inserted before the heading before § 23:

‘§ 22c. In cases involving an offence which is deemed not to result in a penalty higher than a fine, the perpetrator of the offence may, upon notification by the Danish Safety Technology Authority, order the extra-judicial confiscation of illegal electronic cigarettes with or without nicotine, refill containers with or without nicotine, and equipment and flavourings intended to be used with them. The adoption of extra-judicial confiscation pursuant to paragraph 1 shall require the perpetrator of the offence to declare himself guilty of the offence and to accept the extra-judicial confiscation.’

(2) The rules of the Administration of Justice Act on requirements concerning the content of an indictment and the absence of an obligation on the accused person to make a statement shall apply *mutatis mutandis* to the adoption of confiscation under paragraph 1.’

7. § 23 is deleted.

8. In § 25a (1), the words ‘Electronic cigarettes, refill containers’ are replaced by the following: ‘Electronic cigarettes and refill containers’; and in two places, ‘characterising flavour’ is replaced by: ‘flavouring’:

9. I § 25a (3), ‘characterising flavour’ is replaced by: ‘flavouring’:

10. In § 26, the following is inserted after ‘§ 25, nos. 1 and 2’: ‘or where the products are covered by § 25a 1) and (2),’.

11. The following is inserted after § 27 b:

‘§ 27c. The Danish Safety Technology Authority may order a communication platform to modify or remove content referring to a product which does not comply with rules of this Act, rules laid down pursuant to this Act or regulations relating to the scope of this Act.

(2) The Danish Safety Technology Authority may order a communication platform to modify or remove content relating to the marketing of electronic cigarettes or refill containers with or without nicotine to persons under the age of 18.’

12. § 33(1) no. 1 is to be worded as follows:

‘(1) infringes the provisions in § 9(1), 9a(1) and (2), 10(1), 11(1), 15(1) – (3), 16(1), 17, 18b(1) or 25a(1) and (2).’

13. In § 33(1) no. 4, ‘prohibition’ is replaced by: ‘prohibitions which are’.

14. In § 33(1) no. 5, ‘§ 11(2) or (3), § 12(1), § 19(2), or § 26,’ is replaced by: ‘§§ 11(2) or (3), 12(1), 19(2), 26 or 27c’.

15. In § 33(2), ‘which’ is changed to: ‘that’.

16. In § 33, the following shall be inserted as a new paragraph after (2):

‘(3) In the event of particularly serious or repeated infringements of §§ 9a(1), 15(1)-(3), 18b(1), 25, 25a(1) and (2), 26 or 27(1) and rules issued pursuant to §§ 9a (3) and 15(4), the right to market electronic cigarettes and refill containers with and without nicotine, tobacco products, tobacco surrogates and herbal smoking products, and equipment and flavourings used together with them shall be deprived for a period of time.’

(3) subsequently becomes (4);

17. The following is inserted in *Chapter 12* after § 33:

‘§ 33a. In the event of an infringement of § 18a (1) of the Act and rules laid down pursuant to paragraph 4, where the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay the fine within a specified period specified in the application for a fine, the Consumer Ombudsman may indicate that the case can be decided without legal proceedings..

(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply *mutatis mutandis* to orders for fines.

(3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.

§ 33b. The Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 33 (1), or rules laid down pursuant to the Act, which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case may be decided without legal proceedings if the perpetrator of the infringement declares himself guilty of the infringement and declares his willingness to pay a fine as specified in the financial notice within a specified period.

(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply *mutatis mutandis* to orders for fines.

(3) If the fine is accepted, further proceedings shall cease. The adoption of the same reoffending effect as a judgement.’

### § 3

The Act prohibiting 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 § 3 of Act No. 738 of 13 June 2023 and § 3 of Act No. 651 of 11 June 2024, is amended as follows:

1. In § 2(1) and (2): delete ‘from retail shops’.

2. In § 2(2) ‘of 16.5 or more’ is replaced by the following: ‘over 6’.

3. In § 2, the following is inserted as *paragraph 3*:

‘(3) In night-life zones, alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be sold or delivered to persons under 18 years of age from 22.00 to 08.00.’

4. In § 2a(4) and (5) ‘equal to or greater than 16.5’ is replaced by the following: ‘over 6’.

5. In § 2b(1) and (2), the following is inserted after ‘§§ 1-2a’: ‘, § 4a’.

6. In § 3(2), ‘16.5’ is replaced by: ‘6’.

7. In § 3(3), ‘of 16.5 or more’ is replaced by the following: ‘over 6’.

8. The following is inserted after § 3:

‘§ 4. The Danish Safety Technology Authority may order a communication platform to modify or remove content relating to the labelling of tobacco products, tobacco surrogates or herbal products for smoking to persons under 18 years of age.

(2) The Danish Safety Technology Authority may order a communication platform to amend or remove content relating to the marketing of alcoholic beverages with an alcoholic strength by volume of 1.2 % or more to persons under 16 years of age.

(3) The Danish Safety Technology Authority may order a communication platform to amend or remove content relating to the marketing of alcoholic beverages with an alcoholic strength of more than 6 % by volume to persons under 18 years of age.

§ 4a. In brick-and-mortar shops where retail sales are made, the location of alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be directed towards or linked to a context aimed at children and adolescents.

(2) In complying with the prohibition set out in paragraph 1, the following are prohibited:

- 1) juice, soft drinks, chips, sweets and similar products intended for children and adolescents are placed on the same shelf as the alcoholic beverages or adjacent shelf;
- 2) alcoholic beverages are placed at the entrances;
- 3) the impression is given that alcoholic beverages are associated with active sporting activities or events for children and adolescents; or

- 4) alcoholic beverages are emphasised or alcoholic beverages are made to seem particularly urgent, provocative or otherwise particularly appealing to children and adolescents, including visual and textual content.

(3) The requirement in paragraph 2, no. 1 shall not apply to refrigerators with beverages and pre-packed gift baskets.

(4) The requirement laid down in paragraph nos. 1 and 2 shall not apply to brick-and-mortar shops specialised in the sale of alcoholic beverages.'

**9.** In § 5(1), (1) and (2), '§ 1, § 2 or § 2a and rules issued pursuant to § 2a (8)' is replaced by: '§§ 1-2a or § 4a(1) and rules issued pursuant to § 2a(8)'.

**10.** § 5(2) is worded as follows:

'(2) In the event of particularly serious or repeated infringements of §§ 1 and 2a (1), the right to place tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them, shall be withdrawn for a period of time.'

**11.** In § 5, the following is inserted as a new paragraph after paragraph 2:

'(3) Unless higher penalties are stipulated under other legislation, fines will be imposed on those who:

(1) fails to grant access to the Danish Safety Technology Authority in accordance with § 2b(2), or

(2) infringes or fails to comply with an order issued by the Danish Safety Technology Authority pursuant to § 4.'

(3) subsequently becomes (4).

**12.** The following is inserted after § 5:

'§ 5a. The Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 5 (1) or rules laid down pursuant to the Act, concerning infringements of the provisions of this Act which are deemed not to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case can be decided without legal proceedings if the perpetrator of the offence declares himself guilty of the offence and declares that he is prepared to pay a fine as specified in the financial notice within the specified period.'

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(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply *mutatis mutandis* to orders for fines.

(3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.’

### § 4

The Act on prohibition of tobacco advertising, etc. (cf. Consolidation Act No. 586 of 26 May 2021 as amended by § 1 of Act No. 2071 of 21 December 2020) is amended as follows:

1. In *paragraph 7(1)* ‘§§ 3, 5, 4 and 5a’ is replaced by: ‘§§ 3-5a’.

2. After § 7, the following shall be inserted before the heading before § 8:

‘§ 7a. In the event of an infringement of § 5a (1) of the Act and rules laid down pursuant to § 5a (4), and where the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay the fine within a specified period specified in the application for a fine, the Consumer Ombudsman may declare that the case can be decided without legal proceedings.

(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply *mutatis mutandis* to orders for fines.

(3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.’

### § 5

The Act on smoke-free environments, cf. Consolidation Act No. 1632 of 18 June 2021, as amended by § 4 of Act No. 738 of 13 June 2023, is amended as follows:

1. § 1(1) is worded as follows:

‘The purpose of the Act is to ensure that environments are secured where there is no smoking or use of other tobacco products or electronic cigarettes with or without nicotine. The purpose of the Act is also to ensure that children and adolescents are not confronted during school hours with

smoking or other use of tobacco products, electronic cigarettes with or without nicotine, tobacco surrogates or herbal products for smoking.’

**2.** In § 1, the following shall be inserted as new paragraphs after (3):

‘(4) For the purposes of this Act, heated tobacco products are a novel category of tobacco products heated to produce an emission containing nicotine and other chemicals which are then inhaled by the user or users and which, depending on their characteristics, are smokeless tobacco products or smoking tobacco products.

(5) For the purposes of this Act, electronic cigarettes with or without nicotine shall mean a product that can be used for consumption of either a nicotine-containing or non-nicotine-containing steam through a mouth-piece, or parts of such a product, including a cartridge, a refillable tank and a device without a cartridge or refillable tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a refillable tank, or rechargeable with single-use cartridges.’

Paragraphs 4 and 5 subsequently become paragraphs 6 and 7.

**3.** In § 4, § 6(1) and (2), § 7(4), § 10, § 11(2), § 12, § 15(1), § 16(2), § 18(1) and § 21(1), insert after ‘smoking’: ‘or use heated tobacco products or electronic cigarettes with or without nicotine’.

**4.** In § 5(2) *no. 1*, and § 11(1), insert after ‘smoked’: ‘or heated tobacco products or electronic cigarettes with or without nicotine are used’.

**5.** In § 6(3) and (4), § 13. § 17. § 18(2). § 19, § 20(2), § 21(3), § 22 and § 26(2), insert after ‘smoking’: ‘or the use of heated tobacco products or electronic cigarettes with or without nicotine’.

**6.** In § 7(1), § 7a(1). § 7b(1) and § 7c(1), the following is inserted after ‘tobacco products’: ‘, electronic cigarettes with or without nicotine’.

**7.** In § 7(2) and (3), insert after ‘smokes’: ‘or use heated tobacco products or electronic cigarettes with or without nicotine’.

**8.** In § 15(2), insert after ‘smoke-free’: ‘and free from heated tobacco products and electronic cigarettes with or without nicotine’.

**9.** In § 20(1), insert after ‘smoking’: ‘or use heated tobacco products or electronic cigarettes with or without nicotine’ and ‘indoors, cf. § 4’ is deleted.

**10.** The following shall be inserted in *Chapter 4* after § 20:

‘§ 20a. In outdoor stadia intended for major sporting events, there shall be zones where smoking or the use of heated tobacco products or electronic cigarettes with or without nicotine is prohibited.

(2) The management of a stadium covered by paragraph 1 shall be responsible for announcing the requirement and for determining and disclosing the consequences of any breach thereof. It will also be the responsibility of the management to enforce the requirement.

§ 20b. The municipal council may decide that smoking or the use of heated tobacco products or electronic cigarettes with or without nicotine shall not be permitted in outdoor municipal playgrounds.

(2) The municipal council will be responsible for providing information on the prohibition in paragraph 1 and on the consequences of infringement of this prohibition. It will also be the responsibility of the municipal council to enforce the ban.’

**11.** In § 23 the following shall be inserted after the word ‘smoking’: ‘and the use of heated tobacco products and electronic cigarettes with or without nicotine’.

**12.** In § 25 the following shall be inserted after the words ‘smoking ban’: ‘or the ban on the use of heated tobacco products or electronic cigarettes with or without nicotine’.

## **§ 6**

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 of children and young people), as amended by § 5 of Act No. 738 of 13 June 2023 and § 4 of Act No. 651 of 11 June 2024, is hereby amended as follows:

**1.** § 2, *No 21*, shall be repealed.

**2.** In *paragraph 7 (7)*, the words ‘and 21’ are deleted.

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### *Ministry of Industry, Business and Financial Affairs*

#### **§ 7**

The Act on Marketing, cf. Consolidation Act No. 866 of 15 June 2022, as amended by § 343 of Act No. 718 of 13 June 2023 and § 2 of Act No. 732 of 13 June 2023, shall be amended as follows:

1. In § 25, the following shall be inserted as a new paragraph after (2):

‘(3) When monitoring commercial practices under § 11 (2), the Consumer Ombudsman may make use of a hidden identity.’

Paragraphs 3-5 shall henceforth be paragraphs 4-6.

2. In § 39, ‘§ 25 (5)’ is replaced by ‘§ 25 (6)’.

#### **§ 8**

The Act on safety at sea, cf. Consolidation Act No. 221 of 11 February 2022, as amended by § 3 of Act No. 243 of 7 March 2023 and § 1 of Act No. 1773 of 28 December 2023, is hereby amended as follows:

1. In § 20a (1) and (3), “and Chapter 2 of the Act on electronic cigarettes, etc.” is deleted.

### *Ministry of Employment*

#### **§ 9**

The Working Environment Act, cf. Consolidation Act No. 2062 of 16 November 2022, as amended by § 2 of Act No. 2588 of 28 December 2021, in Act No. 566 of 10 May 2022, § 9 of Act No. 893 of 21 June 2022, § 2 of Act No. 324 of 28 March 2023 and § 1 of Act No. of Act No. 1540 of 12 December 2023, is amended as follows:

1. In two locations in § 79a(1), ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted.

#### **§ 10**

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The following amendments are made to the Offshore Safety Act, see Consolidation Act No. 125 of 06 February 2018, as amended by § 34 of Act No. 1436 of 29 June 2021:

1. In two locations in § 66 a (1), ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted.

### *Department for Transport*

#### **§ 11**

The Aviation Act, cf. Consolidation Act No. 118 of 31 January 2024, is amended as follows:

1. In § 150 f (1), point 1 ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted and in § 150 f (1), point 2 ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted.

### *Entry into Force*

#### **§ 12**

(1) The Act shall enter into force on 1 January 2025, without prejudice to paragraphs 2-4.

(2) § 1, nos. 3, 7-12, 14-17, 19, 21, 23, 26, 32 and 34 shall enter into force on 1 April 2025.

(3) § 1, nos. 13, 18 and 27 shall enter into force on 1 July 2025.

(4) The Minister for the Interior and Health lays down the date of entry into force of § 1, No 28.

(5) For tobacco surrogates manufactured before 1 April 2025, § 1, nos. 8, 10, 14 and 17 of the Act shall apply from 1 July 2025.

(6) For equipment used in connection with tobacco surrogates manufactured before 1 April 2025, § 1 no. 10 shall apply from 1 July 2025.

(7) For flavourings for use in tobacco surrogates produced before 1 April 2025, § 1( no. 10 shall apply from 1 July 2025.

(8) For cigarettes and roll-your-own tobacco, including paper, filters, etc. and chewing tobacco produced before 1 April 2025, § 1 no. 14 shall apply from 1 July 2025.

(9) For technical equipment used with heated tobacco products manufactured before 1 April 2025, § 1 no. 15 of the Act shall apply from 1 July 2025.

*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.

Almost 36 per cent of children and adolescents aged 15-29 use at least one tobacco or nicotine product, in which, in particular, the use of new nicotine products has been increasing since 2020. 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 has also been the case for nicotine products that are illegal to market in Denmark, such as the so-called ‘puff bars’ with sweet flavours.

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 first parts of the agreement were implemented by Act No. 651 of 11 June 2024 in the area of the Ministry of the Interior and Health and Act No. 331 of 9 April 2024 in the area of the Ministry of Taxation.

The Act in the area of the Ministry of Taxation, which entered into force on 1 June 2024, increased the tax on nicotine products and smokeless tobacco.

The Act in the area of the Ministry of the Interior and Health, which entered into force on 1 July 2024, prohibits the importation, purchase, supply, receipt, manufacture, processing and possession of electronic cigarettes and nicotine refill containers with illegal characterising flavours or

excessive nicotine content. In addition, the Danish Safety Technology Authority has been given a legal basis to seize illegal tobacco and nicotine products, and age checks for tobacco and nicotine products and alcoholic beverages have been strengthened.

This legislative proposal sets out the remaining elements of the agreement which require legislation.

The draft law proposes to introduce a ban on the import, purchase, supply, reception, manufacture, processing and possession of tobacco surrogates with illegal flavourings or excessive nicotine content. Rules on flavour and nicotine content in tobacco surrogates are proposed to be introduced in parallel with this legislative proposal, see below. The initiative reflects the ban on electronic cigarettes containing nicotine introduced by Act No. 651 of 11 June 2024. The initiative should allow authorities to intervene before the illegal products are actually marketed to consumers.

The legislative proposal also proposes to give the Danish Safety Technology Authority and the Consumer Ombudsman more powers to carry out effective checks. Among other things, it is proposed to give the Danish Safety Technology Authority a legal basis for the extra-judicial adoption of confiscation of illegal tobacco and nicotine products and to authorise the Danish Safety Technology Authority to issue administrative penalty notices.

In addition, the legislative proposal proposes, through a number of initiatives, to tighten the regulation for the sale of alcoholic beverages. It aims to limit the availability of products and thus create an environment where children and adolescents are less tempted and inclined to make purchases on impulse. It is proposed to introduce requirements for the placement of alcoholic beverages with an alcoholic strength by volume of 1.2 % or more in the retail trade, and that alcoholic beverages should not be sold to 16-17 year-olds if the alcoholic strength by volume is greater than 6 %. It is also proposed that alcoholic beverages may not be sold to persons under 18 years of age between 22.00 and 08.00 in night-life zones.

Furthermore, the legislative proposal proposes to clarify that all sales of tobacco and nicotine products and alcoholic beverages to minors are prohibited. It therefore applies both to retail sales and to sales between private individuals.

The legislative proposal proposes to ban flavourings in tobacco surrogates, with the exception of tobacco and menthol flavour. According to the Dan-

ish Health Authority, flavourings are a leading reason for young people to try nicotine products. It is also proposed that the Minister for the Interior and Health be empowered to lay down rules on maximum nicotine content in tobacco surrogates. At the same time, it is proposed to introduce standardised packaging requirements for tobacco surrogates and technical equipment used with heated tobacco. It is also proposed that the Health Authority be empowered to lay down requirements for the appearance of the cigarette itself and for roll-your-own tobacco, including paper, filters, etc., and to lay down rules on the appearance of tobacco surrogates. Standardisation should limit the advertising effect of the packets and products and make them less attractive and appealing to children and young people. The regulation will largely reflect the product regulation that already applies to cigarettes and electronic cigarettes.

In addition, the draft Act proposes to tighten penalties for infringements of the rules on tobacco and nicotine products, so that the level of fines for the marketing of tobacco and nicotine products that are illegal to market in Denmark and the illegal marketing of tobacco, nicotine and alcohol to minors should start from the outset at DKK 50 000. In addition, it is proposed that in the future it should be possible to withdraw the right to market tobacco and nicotine products after the repeated marketing of tobacco and nicotine products which are illegal in Denmark as well as after the repeated illegal marketing of tobacco and nicotine to minors.

Finally, the legislative proposal proposes to introduce more smoke- and vapour free environments, including the application of electronic cigarettes and heated tobacco products in the rules on smoking of cigarettes in the Act on smoke-free environments.

Together, the initiatives set out in the prevention plan will contribute to reducing the consumption of tobacco, nicotine and alcohol by children and adolescents – and support more extensive and inclusive communities.

## **2. Main points of the draft Act**

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

#### 2.1.1. 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.

§ 18b of the Act on electronic cigarettes, etc., cf. Consolidation Act No. 1876 of 20 September 2021, as amended, states that it is not permitted to import, purchase, deliver, receive, manufacture, process or hold electronic cigarettes and nicotine refill containers covered by the prohibition in § 25a (1) prohibiting characterising flavours with the exception of tobacco and menthol, or exceed the nicotine content limit in a nicotine-containing liquid laid down pursuant to § 7(2).

The current rules in the Act on tobacco products etc. do not provide for the possibility of prohibiting the import, purchase, delivery, receipt, manufacture, processing or possession of tobacco products, tobacco surrogates and herbal products for smoking.

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

§ 1, nos. 7-10 of the draft Act propose to regulate tobacco surrogates as regards the prohibition of flavourings, with the exception of tobacco and menthol, and to authorise the Minister for the Interior and Health to lay down rules on maximum nicotine levels.

When similar rules were implemented for electronic cigarettes and nicotine refill containers, an increasing illegal market was observed, in which in particular electronic cigarettes with illegal flavours and very high nicotine concentrations were nevertheless available to children and adolescents.

In order to avoid a similar situation, and to ensure equivalent rules for tobacco surrogates as for nicotine electronic cigarettes, it is proposed to insert a new Chapter 4a with an § 18a of the Tobacco Products Act, etc., whereby it will not be permitted to import, purchase, deliver, receive, manufacture, process or possess tobacco surrogates covered by the ban in the Act on tobacco products, etc. as regards the prohibition of flavourings and nicotine content limits.

The proposed provisions are limited to infringements of the rules on banning flavourings and nicotine content limits. The demarcation was made in order to cover only matters relating to the contents of the products. At the same time, the content of flavourings and nicotine content will often appear on the online marketing of the product or the product's packaging and labelling, and it is therefore considered possible for consumers, retailers, etc. to determine whether it has been complied with.

The proposal will involve addressing the supply chain and distributors so that products, for example, do not reach kiosks or otherwise become available. However, up to 10 units may be brought and held for own consumption.

The draft will thus provide for an exception for luggage and possession of up to 10 units for personal consumption. 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. Rules for tobacco surrogates are set at national level, 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 ban on imports, purchases, possession, etc. has been introduced for certain electronic cigarettes and nicotine refill containers.

## **2.2. More powers for the Danish Safety Technology Authority**

### **2.2.1. Existing law**

The Act on tobacco products etc., the Act on electronic cigarettes, etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 lay down the control powers which the Danish Safety Technology Authority has in relation to tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine and the sale of alcoholic beverages.

It is laid down in paragraph 35a of the Act on tobacco products, etc., cf. Consolidation Act No. 1486 of 18 June 2021, as amended, that the Danish Safety Technology Authority may confiscate tobacco products, tobacco surrogates and herbal products for smoking, and equipment used together with them, if it has reason to believe that they are contrary to the rules of this Act, rules subject to penalty laid down pursuant to this Act or rules subject to penalty in regulations relating to the scope of this Act and there is reason to believe that the product may serve as evidence or should be confiscated.

§ 36 of the Act states that the Danish Safety Technology Authority may, for a number of specific provisions, prohibit the placing on the market of tobacco products and tobacco surrogates. 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 § 45(1) and (2) of the Act, the Danish Safety Technology Authority may report it to the police.

§ 22a of the Act on electronic cigarettes, etc., cf. Consolidation Act No. 1876 of 20 September 2021, as amended, states that the Danish Safety Technology Authority may confiscate electronic cigarettes with or without nicotine and refill containers with or without nicotine, as well as equipment and flavourings intended to be used together if the Agency has reason to believe that they are covered by criminalised rules in this Act, criminalised rules laid down pursuant to this Act or criminalised rules in regulations relating to the scope of this Act and there is reason to believe that the product may serve as evidence or should be confiscated.

§ 25 of the Act states that the Danish Safety Technology Authority may, for a number of specific provisions, prohibit the placing on the market 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 § 33(1) and (2) of the Act, the Danish Safety Technology Authority may report it to the police.

The Act on tobacco products, etc., the Act on electronic cigarettes, etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 do not lay down provisions allowing the Danish Safety Technology Authority to issue administrative penalty orders, make extra-judicial decisions on confiscation or give orders to social media.

#### 2.2.2. Considerations of the Ministry of the Interior and Health and the proposed scheme

The Danish Safety Technology Authority monitors tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and sales of alcoholic beverages. The parties behind the prevention plan targeting tobacco, nicotine and alcohol use by children and adolescents agree that the Danish Safety Technology Authority's checks can be strengthened with additional powers.

The need to strengthen the Danish Safety Technology Authority's checks must be seen, *inter alia*, in the light of the fact that in recent years there have been many new tobacco and nicotine products on the Danish market, which are widely available to children and adolescents under the age of 18, some of which, for example, puff bars with high nicotine content and sweet taste, are illegal to market in Denmark.

It is therefore proposed that, after consultation with the Minister for Justice, the Minister for the Interior and Health may lay down rules to the effect that the Danish Safety Technology Authority may, in specified cases concerning infringements that are not deemed to result in a more severe penalty than a penalty payment order, state in a financial order that the case can be decided without criminal proceedings. This presupposes that the perpetrator of the infringement declares himself guilty in accordance with the charge contained in the penalty notice, that its adoption is other-

wise unobjectionable and that he is prepared to pay, within a specified period, a fine as set out in the notice of the fine. If the person refuses to plead guilty or is inactive, the case will have to be conducted in the courts as ordinary criminal proceedings.

The aim of the proposal is therefore to make the Danish Safety Technology Authority's checks more effective and to aim for a shorter period of time from infringement to effect.

In addition, it is proposed that, in cases concerning offences which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may indicate that the perpetrator of the offence may accept extra-judicial confiscation of tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes with or without nicotine and refill containers with or without nicotine, and equipment and flavourings used with them that are illegally placed on the market in Denmark, cf. the Act on tobacco products, etc. and the Act on electronic cigarettes, etc.

Confiscation involves the permanent withdrawal of illegal products. Thus, in certain cases concerning illegal tobacco and nicotine products, which do not entail a penalty higher than a fine, the Danish Safety Technology Authority will be able to confiscate the illegal products if the perpetrator of the offence declares himself guilty of the offence and decides to accept the confiscation of the illegal products out of court. As the rules are currently in place, the prosecution service will have to refer the case to the court before the illegal products can be confiscated.

Confiscation of illicit tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes with or without nicotine and refill containers with or without nicotine, as well as equipment and flavourings used with them, could be carried out in accordance with § 75 (2) of the Criminal Code. The confiscation of these illegal products is done in order to prevent further offences and to prevent them flourishing on the Danish market.

Confiscation without the involvement of the police and the courts, and therefore the possibility of determining fines and confiscation at the same time, is considered essential for the efficient and smooth handling of cases. The issuing of an administrative penalty should thus be able to be accompanied by the extra-judicial confiscation of the illegal products concerned.

However, the extra-judicial adoption of confiscation presupposes in all cases that the factual and legal circumstances of the case are deemed to

have been clarified and that the perpetrator of the offence declares himself guilty of the offence and accepts the extra-judicial confiscation.

The authorisation is also to be seen in conjunction with the Danish Safety Technology Authority's authorisation for seizure, cf. § 35a of the Act on tobacco products, etc. and § 22a of the Act on electronic cigarettes, etc., and is intended to make the Agency's checks in this area more effective and to support faster execution of the cases.

It is also envisaged that the authorisation for the extra-judicial adoption of confiscation of tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes with or without nicotine and refill containers with or without nicotine, as well as equipment and flavourings used with them. that are illegally placed on the Danish market, should also be conferred on the Public Prosecutor's Office pursuant to Order No 1297 of 18 November 2010 on the extra-judicial adoption of confiscation.

Finally, it is proposed that the Danish Safety Technology Authority's checks on social media be strengthened with the power to order communication platforms to modify or remove content referring to products that do not comply with the rules laid down in or pursuant to the Act on tobacco products, etc., the Act on electronic cigarettes, etc. or the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18. This relates to content referring to tobacco and nicotine products that are non-compliant with the rules or relating to the marketing of alcoholic beverages and tobacco and nicotine products to persons below age limits.

The proposal is to be seen in the light of the fact that the sale of tobacco and nicotine products no longer takes place only from brick-and-mortar shops and webshops, but has also moved to social media, in which children and young people in particular are active.

### **2.3. More powers for the Consumer Ombudsman**

#### **2.3.1. Existing law**

The Act on electronic cigarettes etc. and the Act on the prohibition of tobacco advertising etc. lay down the rules on advertising of electronic cigarettes and refill containers with or without nicotine, tobacco products, tobacco surrogates and herbal products for smoking.

§ 18a of the Act on electronic cigarettes, etc., cf. Consolidation Act No. 1876 of 20 September 2021, as amended, states that the visible display and display of electronic cigarettes and refill containers with and without nicotine at points of sale, including on the internet, is prohibited. The same ap-

plies to goods intended to be used with those products. It follows from paragraph 2 that the prohibition does not apply to the sale of electronic cigarettes and refill containers with and without nicotine and goods intended to be used with those products at physical sales points specialised in the sale of those products. It follows from paragraph 3 that points of sale, including on the internet, may, at the request of the purchaser, provide the purchaser with a list of neutral information on which electronic cigarettes and refill containers with and without nicotine are sold at the point of sale and the price of the goods. At physical points of sale, the list of neutral information can be set up by a sales counter operated by a clerk. It follows from paragraph 4 that the Minister for Health may lay down rules on the prohibition under paragraph 1, on which products and sales outlets are covered by paragraph 2, on advertising at those points of sale and on the presentation by the point of sale of neutral information under paragraph 3. The relevant rules are laid down in Order No 65 of 15 January 2021 prohibiting the advertising, visible placement and display, etc. of electronic cigarettes and refill containers with and without nicotine.

§ 24 of the Act states that the Consumer Ombudsman is to supervise compliance with the rules in Chapter 7 and rules issued pursuant thereto, which concern the advertising of electronic cigarettes and refill containers with or without nicotine, and that the supervision is carried out in accordance with the rules laid down in the Marketing Practices Act.

Under § 33(1) of the Act, infringements of § 18a(1) are punishable by a fine, unless a higher penalty is required under any other Act. Paragraph 2 provides that, in rules laid down pursuant to § 18a(4), a fine may be imposed for infringement of the provisions of the rules.

§ 5a of the Act on the prohibition of tobacco advertising, etc., cf. Consolidation Act No. 586 of 26 March 2021, states that the visible display and display of tobacco products, tobacco surrogates and herbal products for smoking at points of sale, including on the internet, is prohibited. It follows from paragraph 2 that the prohibition does not apply to the sale of pipes on the internet and to the sale of pipes, pipe tobacco and cigars at physical outlets specialised in the sale of those products. It follows from paragraph 3 that points of sale, including on the internet, may, at the request of the purchaser, provide the purchaser with a list of neutral information on which tobacco products, tobacco surrogates and herbal products for smoking are sold at the point of sale and the price of the products. At physical points of sale, the list of neutral information can be set up by a sales counter operated by a clerk. It follows from paragraph 4 that the Minister

for Health may lay down rules on the prohibition under paragraph 1, on which products and sales outlets are covered by paragraph 2, on advertising at those points of sale and on the presentation by the point of sale of neutral information under paragraph 3. The relevant rules are laid down in Order No 570 of 11 February 2021 prohibiting the visible location and display, etc. of tobacco products, tobacco surrogates and herbal products for smoking.

§ 6 of the Act states that the Consumer Ombudsman supervises compliance with the Act and that the supervision is carried out in accordance with the rules laid down in the Marketing Practices Act.

According to § 7 of the Act, infringements of § 5a are punishable by a fine. Paragraph 2 provides that, in rules laid down pursuant to § 5 a(4), a fine may be imposed for infringement of the provisions of the rules.

§ 11(2) of the Marketing Act, cf. Consolidation Act No. 866 of 15 June 2022, as amended, states that commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, images of or references to intoxicants, including alcohol or other products unsuitable for children and adolescents under the age of 18.

§ 25 of the Act states that the Consumer Ombudsman is to monitor compliance with the Act and rules issued pursuant to the Act, in particular in the interests of consumers.

Under § 37 (3) of the Act, infringements of the provisions of §§ 9-11 are punishable by a fine, unless a higher penalty is required under § 279 of the Criminal Code or other legislation. When setting fines for infringements of § 11 (2), weight shall be given to the duration or extent of the infringement, cf. § 37(6) no. 4.

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

The Consumer Ombudsman oversees the rules on advertising of tobacco, nicotine and alcohol. The parties behind the prevention plan targeting the use of tobacco, nicotine and alcohol by young people agree that the Consumer Ombudsman's supervision needs to be strengthened with additional powers.

It is therefore proposed that the Consumer Ombudsman should be authorised to issue administrative penalty orders for infringements of the prohibition on the visible placing and display of electronic cigarettes and refill

containers with or without nicotine, tobacco products, tobacco surrogates and herbal products for smoking.

Administrative penalty notices should be understood as meaning that the Consumer Ombudsman may, in cases involving an offence concerning visible placement and display in accordance with the Act on electronic cigarettes, etc. and the Act on the prohibition of tobacco advertising, etc. and rules laid down in related orders, in which the accused person declares himself guilty and declares himself ready to pay the fine within a specified time limit, make use of administrative penalty notices and thus settle the case without legal proceedings.

The proposal is thus intended to make the Consumer Ombudsman's supervision more effective and to support a shorter time from infringement to consequences.

In addition, it is proposed that the Consumer Ombudsman should be able to use a hidden identity in the context of supervision under § 11(2) of the Marketing Act, according to which commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, pictures or references to, inter alia, alcohol.

Hidden identity means that the Consumer Ombudsman does not come forward or identify itself as a supervisory authority through inspections. The use of hidden identity takes place under the responsibility of the authority and the Consumer Ombudsman may never incite illegal actions.

The aim of the proposal is that the Consumer Ombudsman can carry out effective checks and ensure that there is no illegal marketing targeting children and young people under the age of 18. The proposal will provide better conditions for detecting – and subsequently sanctioning – infringements.

The proposals for additional powers for the Consumer Ombudsman should also be seen in the context of the political agreement on a prevention plan targeting the use of tobacco, nicotine and alcohol by children and adolescents, which is reflected inter alia in this draft law, with a view to strengthening the Consumer Ombudsman's existing supervision.

## **2.4. Proxy sales ban**

### 2.4.1. Existing law

Age limits for the sale of tobacco and nicotine products and alcoholic beverages are laid down in the Act on electronic cigarettes etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18.

§ 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.

Under § 1(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, tobacco products, tobacco surrogates 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 alcoholic strength by volume of 1.2 % or more may not be sold to persons under the age of 16 years from shops where retail sale takes place.

Under § 2(2) of the Act, alcoholic beverages with an alcoholic strength by volume of 16.5 % or more may not be sold to persons under the age of 18 years from shops where retail sale takes place.

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

With the existing age limits for the sale of tobacco and nicotine products and alcoholic beverages, it is not clear whether the rules also apply to proxy sales where persons above the age limit buy the products for payment on behalf of others who are below the age limits.

The parties behind the prevention plan targeting tobacco, nicotine and alcohol use by children and adolescents agree that proxy sales should be unequivocally banned for tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with or without nicotine, and alcoholic beverages.

A ban on proxy sales means that adult persons are not allowed to buy the products on behalf of others who are below age limits and pay for them.

§§ 2 no. 5 and 3 no. 1 of the draft Act propose amendments to clarify that the age limits for the sale of tobacco and alcohol do not apply only in retail outlets.

The proposed ban means that adult persons may not buy the products on behalf of minors and receive payment for them.

The proposed amendments to the Act on electronic cigarettes etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 are thus intended to remove the ambiguity that has hitherto existed in this area. The proposed amendments with regard to the sale of alcoholic beverages do not affect the rules of the Act on the prohibition of dispensing alcohol to persons under the age of 18, cf. Consolidation Act No. 692 of 5 July 2019 on restaurant services and alcohol licences, etc.

The proposed provisions will cover situations where an economic transaction takes place. Thus, the purchase of tobacco and nicotine products or alcoholic beverages for children and adolescents below age limits will continue to be allowed as long as they are not paid for. This may be, for example, in situations where parents buy alcohol for their children without paying for it.

No need was seen for an amendment to § 1 of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, as the current wording of the provision clearly considers that all cases in which tobacco products, tobacco surrogates and herbal products are sold to persons under the age of 18 are illegal.

## **2.5. Regulating the sale of alcoholic beverages, etc.**

### 2.5.1. Existing law

The Act prohibiting the sale of tobacco and alcohol to persons under 18 and the Marketing Act lay down rules on the sale and marketing of alcoholic beverages.

§ 2(1) of the Act prohibiting 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 alcoholic beverages with an alcoholic volume strength of 1.2 % or more may not be sold to persons under the age of 16 years from shops where retail sale takes place. Paragraph 2 of that provision provides that alcoholic beverages with an alcoholic volume strength of 16.5 % or more may not be sold to persons under the age of 18 years from shops where retail sale takes place.

In addition, § 29 of the Catering Act provides that it is not permitted to serve or let alcohol be served to young people under the age of 18 at licensed premises.

§ 11(2) of the Marketing Act, cf. Consolidation Act 866 of 15 June 2022, as amended, states that commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, images or ref-

erences to intoxicants, including alcohol or other products unsuitable for children and adolescents under the age of 18.

There are currently no rules on specific requirements for the placement of alcoholic beverages in retail outlets, as well as rules on specific times of day, during which alcoholic beverages may not be sold to children and adolescents.

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

To support a reduction in the extent to which children and adolescents are confronted with, tempted by and make impulse purchases of alcoholic beverages, a number of initiatives are proposed to limit the visibility and availability of these products.

It is proposed to change the rules for the sale of alcohol to 16-17 year-olds, so that in future alcoholic products with an alcohol volume percentage of more than 6 may not be sold to 16-17 year-olds. Young people aged 16 or over will thus continue to be able to buy an ordinary beer, but with the proposed amendment it will no longer be possible to buy stronger alcoholic products, such as shots and wine. It will continue to be the case that alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be sold to people under 16 years of age.

In addition, it is proposed to impose requirements on the location of alcoholic beverages in brick-and-mortar shops, so that the placement of the products is not aimed at or linked to a context aimed at children and adolescents. It provides, *inter alia*, that products may not be placed on the same shelf as sweets, chips, soft drinks, juices and similar products aimed at children and adolescents.

Finally, it is proposed to introduce a ban on the sale of alcoholic beverages to young people under the age of 18 between 22.00 and 08.00 in the retail sector in night-life areas. It aims to reduce the availability of alcohol in the outer hours of the day to children and adolescents who are active in night-time life and who are not allowed to buy alcohol at catering establishments, cf. § 29 of the Catering Act. In addition, it is intended to prevent young people from buying spontaneously and consuming large quantities of alcohol, which may be associated with violence, conflicts, accidents, etc.

The initiatives should be seen in combination with other relevant initiatives in the prevention plan, both in terms of increased control and en-

forcement, and that, for example, between 2025 and 2028, DKK 2 million has been allocated annually to support initiatives at local level in civil society that promote inclusive communities for young people where alcohol is not in the focus.

## **2.6. Regulation of tobacco surrogates**

### 2.6.1. Existing law

Under the applicable law, tobacco surrogates are regulated in the Act on tobacco products, etc., cf. Consolidation Act No. 1489 of 18 June 2021, as amended, the Act on the prohibition of tobacco advertising, etc., cf. Consolidation Act No. 586 of 26 March 2021, the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act No. 583 of 26 March 2021, as amended, and the Act on smoke-free environments, cf. Consolidation Act No. 1632 of 18 June 2021, as amended. Tobacco surrogates are regulated in line with tobacco products in terms of advertising rules, sponsorship, prohibition of visible placement and display, age limit, smoke-free school timetables and smoke-free school hours, as well as requirements for health warnings on packages similar to those on electronic cigarettes.

Thus, tobacco surrogates are not covered by the prohibition of characterising flavours and the requirements for additives, and there is no limit on nicotine that may be present in tobacco surrogates.

The applicable rules on flavourings in tobacco products are regulated in the Act on tobacco products, etc., cf. Consolidation Act No. 1489 of 18 June 2021. Under § 14(1) of the Act, cigarettes, heated tobacco products and roll-your-own tobacco with a characterising flavour may not be marketed in Denmark. Pursuant to paragraph 2 of the provision, the Danish Health Authority may lay down detailed rules on the prohibition in paragraph 1, including rules on whether a specific cigarette, heated tobacco product or type of roll-your-own tobacco is covered by the prohibition in paragraph 1 and on maximum levels for cigarettes, heated tobacco products and roll-your-own tobacco of additives or combinations of additives that produce a characterising flavour.

Act No. 2071 of 21 December 2020 introduced additional provisions on characterising flavours with a paragraph 3 and 4 in § 14. Under § 14(3), tobacco products which are not covered by § 14(1) and herbal products for smoking with a characterising flavour other than tobacco and menthol may not be marketed in this country. However, this does not apply to pipe tobacco and cigars. Under § 14(4), the Danish Health Authority may lay

down detailed rules on the prohibition in (3), including rules on whether a specific tobacco product or a specific herbal product for smoking is covered by the ban, and on maximum levels for the content of tobacco products or herbal products of additives or combinations of additives that give a characterising flavour. However, § 14(3) and (4) have not yet entered into force, as they can only be put into effect when and if EU law so permits.

Under § 15 of the Act on tobacco products, cigarettes and roll-your-own tobacco which contain flavourings in their components, such as filters, papers, packaging, capsules or any technical function that makes it possible to change the smell or taste of the tobacco product in question or change its smoke intensity may not be placed on the market in this country.

§ 25a(1) of the Act on electronic cigarettes etc., cf. Consolidation Act No. 1876 of 20 September 2021, as later amended, states 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. It follows from paragraph 2 of that provision that equipment used in connection with electronic cigarettes which makes it possible to alter the smell or taste of the electronic cigarettes concerned may not be marketed in Denmark.

Under § 17 of the Act on tobacco products etc., tobacco products containing the following additives may not be placed on the market in Denmark:

- 1) Vitamins or other additives which give the impression that a tobacco product has a health benefit or presents a limited risk to health.
- 2) Caffeine, taurine or other additives and stimulant compounds.
- 3) Additives having colouring properties for emissions.
- 4) Additives that have carcinogenic, mutagenic or toxic to reproduction properties in unburned form.

§ 8 of the Act on tobacco products etc. states that the Minister for Health shall lay down rules on maximum tar, nicotine and carbon monoxide content in emissions from cigarettes marketed or manufactured in Denmark. It follows from paragraph 2 of that provision that the Minister for Health may lay down rules on limit values for emissions other than those referred to in paragraph 1 and for emissions from tobacco products other than cigarettes.

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.

§ 2 of the Order on limit values, health warnings and age verification system, etc. of tobacco products, etc., states that the emission levels of cigarettes marketed or manufactured in Denmark may not exceed:

- 1) 10 mg of tar per cigarette.
- 2) 1 mg nicotine per cigarette.
- 3) 10 mg of carbon monoxide per cigarette

The provisions in this regard follow from the Tobacco Products Directive (2014/40/EU).

§ 7 of the Act on electronic cigarettes, etc. states that manufacturers and importers who have set out notifications under § 5(1) shall ensure that electronic cigarettes and nicotine refill containers which they place on the market are of satisfactory quality, composition and safety, cf. paragraph 2. It follows from paragraph 2 of that provision that the Minister for Health shall lay down rules on the quality, composition and safety of electronic cigarettes and nicotine refill containers, including requirements for ingredients and measures to protect against damage and fluid leakage. 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.

§ 3 of the Order on the quality, labelling and age verification system, etc. of electronic cigarettes and refill containers etc. states that nicotine-containing liquid may have a nicotine content of at most 20 mg/ml. The provisions in this regard follow from Article 20 of the Tobacco Products Directive (2014/40/EU).

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

The Danish Health Authority states that nicotine is a highly addictive toxicant that has a strong impact on the brain and the nervous system. Children and young people's immature brains are particularly sensitive to nicotine and young people become more quickly nicotine-dependent than adults.

Furthermore, the Danish Health Authority states that flavourings are a leading reason for young people to test nicotine products, while research has shown that tobacco and nicotine products containing flavours have an appealing effect which increases the risk of starting to use the products, which is particularly the case for children and adolescents, as flavours with flavour such as fruit and sweets can create a recognisability, which may, among other things, reduce the propensity to consider the health consequences of the use of the products.

Studies show that children and adolescents are more likely to use tastes of tobacco and nicotine products compared to other age groups, and that products with a taste are often the first products to be tested by young people. Furthermore, studies show that the use of smokeless flavoured nicotine products is strongly associated with the use of other tobacco and nicotine products, such as cigarettes, which thus can create multiple consumption.

Against this background, it is proposed to increase the regulation of tobacco surrogates, so that in future tobacco surrogates are regulated on an equal footing with electronic cigarettes in a number of areas.

It is proposed to introduce a ban on the placing on the market of tobacco surrogates with a flavour and flavourings for use in flavoured tobacco surrogates, with the exception of a tobacco or menthol flavour. The ban means that tobacco surrogates, such as nicotine bags, sold in Denmark may not taste or smell of, for example, fruit or sweets. Similarly, equipment used in connection with tobacco surrogates which makes it possible to alter the smell or taste of the substitute tobacco must not in future be placed on the market.

The proposed regulation of flavourings in tobacco surrogates would thus correspond to the regulation for electronic cigarettes.

In addition, it is proposed that the Minister for the Interior and Health be authorised to lay down rules for limit values of maximum nicotine content in tobacco surrogates marketed in this country. This will mean, for example, that a limit on the maximum nicotine content of nicotine bags can be set, but the authorisation also includes the possibility of setting different nicotine limits depending on the specific tobacco surrogate, given that tobacco surrogate is an umbrella term capable of containing a variety of types of nicotine product. As a result of further knowledge of harmfulness, it may be necessary to adjust the limits set.

The nicotine content of tobacco surrogates is proposed to be regulated in order to reduce the risks associated with nicotine. A safe limit for nicotine cannot be set from a health or dependency perspective. Regardless of the nicotine threshold level in tobacco surrogates, these will therefore be addictive products.

Finally, it is proposed that additives contained in tobacco surrogates be regulated, as certain additives may be harmful or may be appealing to consumers, so additives are also regulated in relation to tobacco products. It is proposed that the requirements should be similar to those applicable to tobacco products today, which would mean, inter alia, that tobacco surrogates must not contain vitamins or other additives that could give the impression that the product has a health advantage or poses a limited health risk.

In addition to the above, it will also be required that each unit packet and any outside packaging of tobacco surrogates should not refer to taste, smell, flavourings or other additives, or state that the product does not contain them, with the exception of tobacco and menthol. The requirements will follow similar rules for tobacco products, cf. § 20 (1) of the Act on tobacco products etc. This is expected to be implemented in Order No 462 fa of 18 March 2021 on labelling and health warnings on tobacco surrogates. The proposal follows on from the proposed ban on flavourings in tobacco surrogates, with the exception of a tobacco or menthol flavour.

## **2.7. Standardisation, etc.**

### **2.7.1. Existing law**

Under the current legislation, packaging and labelling of tobacco products and electronic cigarettes and refill containers with and without nicotine are regulated respectively in the Act on tobacco products, etc., cf. Consolidation Act No. 1489 of 18 June 2021, as amended, and the Act on electronic cigarettes, etc., cf. Consolidation Act No. 1876 of 20 September 2021.

Under the applicable rules in the Act on tobacco products etc., it is regulated what elements and features unit packets and outer packaging of tobacco products may contain, cf. § 20 (1). In particular, there must be no reference to taste, smell, flavouring substances or other additives or information that the product does not contain them. Similarly, there must be no elements or features that give a false impression of the risks of the product, that the product is less harmful, etc.

§ 21a of the Act on tobacco products states that a person who places tobacco products on the market in Denmark must ensure that each unit

packet and any outside packaging is standardised, except for cigars and pipe tobacco. It follows from paragraph 2 of that provision that the Minister for Health shall lay down detailed rules on the format of standardisation.

Pursuant to the enabling provision in question, Order No 781 of 13 June 2023 on the standardisation of tobacco packages and herbal products for smoking was issued. The Order lays down, inter alia, requirements for colours and packaging elements on unit packets, outer packaging and wrapping materials, and labelling, etc., and on marking etc. of unit packets and outside packaging of tobacco products and herbal products for smoking.

For electronic cigarettes and refill containers, anyone who places electronic cigarettes and refill containers with and without nicotine in Denmark on the national market must ensure that each unit packet and any outside packaging has a standardised format. See § 9a(1) of the Act on electronic cigarettes, etc. It follows, inter alia, from paragraph 3 of that provision that the Minister for Health shall lay down detailed rules on the format of the standardisation in accordance with paragraph 1.

Pursuant to the enabling provision at issue, Order No 699 of 19 April 2021 on the standardisation of electronic cigarettes and refill containers with and without nicotine was issued, which lays down, inter alia, requirements for colours and packaging elements on unit packets, outer packaging and wrapping material on unit packets and outer packaging of electronic cigarettes and refill containers with and without nicotine.

The applicable law also provides for requirements relating, inter alia, to the size and components of unit packets of cigarettes and roll-your-own tobacco. It follows from § 21 of the Act on tobacco products etc. that the Danish Health Authority lays down more detailed regulations on requirements for size, form, functionality and components for unit packets of cigarettes and roll-your-own tobacco.

Pursuant to the enabling provision in question, Order No 1064 of 4 July 2016 on the testing of specific additives in tobacco products and detailed requirements for the labelling and packaging of cigarettes and roll-your-own tobacco etc. was adopted. The Order was subsequently amended by Order No 69 of 7 January 2022 amending the Order on the testing of specific additives in tobacco products and more detailed requirements for the labelling and packaging of cigarettes and roll-your-own tobacco, etc.

§ 7(3) of the Order on the testing of specific additives in tobacco products and detailed requirements for the labelling and packaging of cigarettes and roll-your-own tobacco etc. states that unit packets of cigarettes must contain 20 cigarettes, neither more nor less.

§ 7(2) of the Act on electronic cigarettes etc. states that the Minister for Health shall lay down rules on the quality, composition and safety of electronic cigarettes and nicotine refill containers, including requirements for ingredients and measures to protect against damage and fluid leakage. 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.

§ 3 of the Order on the quality, labelling and age verification system, etc. of electronic cigarettes and refill containers, etc. states that nicotine-containing liquid may have a nicotine content of not more than 20 mg/ml.

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

Standardised presentation requirements imply, inter alia, that the goods do not have logos or other types of branding elements and have the same colour and the same standard font. This should help to avoid that different brands and symbols are given special characteristics or are associated with models, etc., which may promote their attractiveness, especially in children and adolescents, or give a false impression of the product. Children and adolescents are more sensitive to branding elements and therefore standardisation can help to reduce advertising and attractiveness for children and young people.

The evidence that the appearance of tobacco packages affects smoking is extensive. A review study has shown that standardised tobacco packages prevent the start of smoking among people who have not started smoking. In addition, a survey carried out by The Danish Cancer Society (Kræftens Bekæmpelse) in 2021 shows that the design of the tobacco product itself serves as an effective marketing tool that helps to influence consumers' perception of the quality, strength and harmfulness of the products.

There are concerns that the same negative effect may apply, for example, to tobacco surrogates, where the packaging of products can act as an op-

portunity to promote the products. The proposal to include more products in the standardised format is therefore not targeted at those who are already consumers, but in particular children and adolescents who have not yet used the products and are thus more sensitive to branding elements, characteristics, etc.

On the grounds of increased protection for children and adolescents in particular, it is proposed that standardisation and product requirements be extended to a number of tobacco and nicotine products.

It is proposed that the person who markets tobacco surrogates in Denmark should ensure that each unit packet and any outside packaging is standardised and that the Minister for the Interior and Health is empowered to lay down detailed rules on the format of standardisation. In addition, it is proposed that the person who places on the market technical equipment used with heated tobacco products in Denmark must ensure that each unit packet and any outside packaging is standardised and that the Minister for the Interior and Health will be authorised to lay down detailed rules on the format of standardisation. The regulation will align with existing standardisation requirements and thus include rules on colour, shape, appearance, text, symbols/logos, material and labelling, etc. In addition, the packaging of tobacco surrogates will be required to include information on the Stopline, which is also reflected in, inter alia, the combined health warnings for cigarettes, roll-your-own tobacco, water-pipe tobacco and heated tobacco products that are smoking tobacco products. It will help to raise awareness of where advice can be obtained to overcome nicotine addiction.

In addition, it is proposed that the Danish Health Authority be empowered to lay down detailed rules on requirements for the appearance of cigarettes and roll-your-own tobacco and requirements for the appearance of tobacco surrogates. A few countries in Europe have introduced standardisation requirements for conventional cigarettes, including the Netherlands and Norway. The proposal to standardise the appearance of the cigarette itself in this legislative proposal will be based on standardisation requirements already introduced in these two countries.

Nicotine bags and chewing tobacco are often sold in cans with around 20 bags. However, nicotine bags packed in 5 pieces per unit packet have also been found. Based on the knowledge of cigarettes, there is reason to believe that smaller packs can help to make the product more accessible to consumers, including children and young people, by maintaining (lower)

prices. Conversely, unit packets with many bags can potentially affect the number of nicotine bags consumed.

It is therefore proposed that the Danish Health Authority be authorised to lay down detailed rules on ingredients in relation to unit packets of chewing tobacco and tobacco surrogates. When determining the quantity requirements of a product, it shall, as far as possible, reflect the quantity requirement for cigarettes.

In addition to the above, there will also be more stringent product requirements for electronic cigarettes and nicotine refill containers, so that each unit packet and any outside packaging must not refer to taste, smell, flavourings or other additives or be informed that the product does not contain them, although there will be an exception for tobacco and menthol. The requirements will follow similar rules for tobacco products, cf. § 20 (1) of the Act on tobacco products etc. This is expected to be implemented in Order No 784 fa of 13 June 2023 on the quality, labelling, age verification system, etc. of electronic cigarettes and refill containers, etc. The proposal is to be seen in line with existing rules under which electronic cigarettes, refill containers with and without nicotine and flavourings for use in electronic cigarettes with a characterising flavour other than tobacco and menthol may not be placed on the market in Denmark, cf. § 25a of the Act on electronic cigarettes, etc.

## **2.8. Higher fines and the possibility of depriving the right to sell products**

### **2.8.1. Existing law**

The Act on tobacco products etc. and the Act on electronic cigarettes, etc. lay down a number of requirements for tobacco products, tobacco surrogates, herbal products for smoking and electronic cigarettes and refill containers with and without nicotine. The Act on electronic cigarettes etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 also set the age limits for the sale of alcoholic beverages, tobacco products, tobacco surrogates, herbal products for smoking and electronic cigarettes and refill containers with and without nicotine.

§ 45(1) of the Act on tobacco products etc., cf. Consolidation Act No. 1486 of 18 June 2021, as amended, states that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes or fails to comply with a number of provisions of the Act. In accordance with (2) of the provision, fines for infringements of rules issued pursuant to a number of provisions may be imposed.

For a number of the provisions, the expectations regarding the level of fines for infringements are not described in detail in the comments. In the cases where this is described, expectations regarding the amounts of fines are generally expressed as DKK 10 000 in the first case, DKK 20 000 in the second case and DKK 40 000 in third cases. However, the actual amount of the fine may vary upwards or downwards depending on the specific case.

§ 33 (1) of the Act on electronic cigarettes etc., cf. Consolidation Act No. 1876 of 20 September 2021, as amended, states that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes or fails to comply with a number of provisions of the Act. In accordance with (2) of the provision, fines for infringements of rules issued pursuant to a number of provisions may be imposed.

For a number of the provisions, the expectations regarding the level of fines for infringements are not described in detail in the comments. In the cases where this is described, expectations regarding the amounts of fines are generally expressed as DKK 10 000 in the first case, DKK 20 000 in the second case and DKK 40 000 in third cases. For the marketing of electronic cigarettes and refill containers with and without nicotine to persons under the age of 18, it should be noted that Act No. 2071 of 21 December 2020 stated that the expected levels of fines for infringements of the ban on the sale of tobacco, tobacco surrogates and herbal products for smoking to persons under the age of 18 were DKK 25 000 for first offences and DKK 40 000 for second offences, cf. Folketingstidende 2020-21, Appendix A, L 61 as set out, page 60.

Furthermore, the Act on tobacco products etc. and the Act on electronic cigarettes etc. do not lay down provisions allowing the Danish Safety Technology Authority to withdraw the right to market tobacco products, tobacco surrogates, herbal products for smoking and electronic cigarettes and refill containers with and without nicotine for a period of time.

§ 5(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, cf. Consolidation Act No. 583 of 26 March 2021, as amended, states that, for infringement of a number of provisions of the Act and rules issued pursuant to the Act, the shop owner, the restaurateur, the hotel host, the canteen owner, the professional marketing by means of distance selling, etc., is punishable by a fine. For the purposes of determining the penalty, it must be regarded as a particularly aggravating circumstance where the infringement of the rules is serious or repeated in nature. The

provision in § 23 of the Criminal Code shall not apply. Paragraph 2 of that provision deprives, in the event of a particularly serious or repeated infringement of a number of provisions, the right to market tobacco, tobacco surrogates and herbal products for smoking for a period of time.

The expectation of the level of fines in the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 for infringements of the rules related to alcoholic beverages is DKK 10 000 in first cases, DKK 20 000 in second time and DKK 40 000 in third cases. For tobacco products, tobacco surrogates and herbal products for smoking, the expected level of fines is DKK 25 000 in the first case and DKK 40 000 in the second case, and, in the case of particularly serious or repeated infringements of the rules on sales to minors, removal of the right to market tobacco products, tobacco surrogates and herbal products for a period of at least 6 months. However, the actual amount of the fine may vary upwards or downwards depending on the specific case.

As regards the withdrawal of the right to market tobacco, tobacco surrogates and herbal products for a period of time, it is a prerequisite, cf. Folketingstidende 2020-21, Appendix A, L 61, as set out, page 60, that the distributor has sold the products twice in the past to minors. It is additionally envisaged that on the third occasion that a violation takes place, there will be a temporary withdrawal of the right to sell tobacco for at least 6 months, if it is less than 2 years since the first offence was committed. It is envisaged that if there is a fourth violation, there will be a temporary withdrawal of the right to sell tobacco, tobacco surrogates and herbal smoking products for 8 months, if it is less than 1 year since the last quarantine period expired. Finally, it is envisaged that if there is a fifth violation, there will be a temporary withdrawal of the right to sell tobacco, tobacco surrogates and herbal smoking products for 12 months, if it is less than 1 year since the last quarantine period expired. The withdrawal of the right to place tobacco, tobacco surrogates and herbal smoking products on the market will only apply to the sales outlet which has violated the prohibition, even if its owner has several sales outlets. If the sales outlet is part of a chain of shops, the withdrawal of the right will therefore not be directed at the entire chain of shops but only that sales outlet that has violated the prohibition.

Currently, nobody has been temporarily deprived of the right to market tobacco products, tobacco surrogates and herbal products for a period of time.

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

In order to strengthen action, it is proposed to indicate expectations of a higher level of fines for the marketing of tobacco and nicotine products that are illegal to market in Denmark and for illegal marketing of tobacco, nicotine and alcohol to minors.

It is therefore proposed that the penalty provisions 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 be amended in order to provide that the level of fines is expected to start in the future at DKK 50 000 for the marketing of tobacco, nicotine and alcohol to persons below the age limits and for the marketing of tobacco and nicotine products that are illegal to market in Denmark, for example in the event of infringement of the requirements for flavourings, health warnings, labelling, standardisation, etc.

The starting point for the level of fines to start at DKK 50 000 is based on the Product Act. The level of fines for operators in the Laughing Gas Act is also aligned with the Product Act. Similarly, the amount of the fine will initially be influenced by four different parameters: Imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances. It follows from the comments to Folketingstidende 2019-2020, Appendix A, L 179, as set out on pages 97 and 98, what is to be understood by the four parameters. It follows from the comments to Folketingstidende 2023-2024, Appendix A, L 120, as set out on pages 17-18, what is meant by repeated infringement and aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of fine is proposed in each individual case, taking into account the relevant parameters, aggravating and mitigating circumstances and taking into account the relevant case-law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able to make a profit in reality from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is

such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be waived upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

There is also provision for the extension of the rules relating to the temporary withdrawal of the right of retailers to market tobacco products, tobacco surrogates and herbal products for smoking. The withdrawal must therefore henceforth be possible not only in the case of particularly serious or repeated infringements of the age limits and the absence of a request for image identification for the marketing of tobacco products, tobacco surrogates and herbal products for smoking; it must also apply to the marketing of tobacco and nicotine products which are illegal on the market and to cover electronic cigarettes and refill containers with and without nicotine.

It is therefore proposed that new provisions be added to the Act on tobacco products, etc. and to the Act on electronic cigarettes, etc., whereby, in the case of particularly serious repeated infringements of the marketing of tobacco and nicotine products that are illegal to market in Denmark, the right to market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them is withdrawn for a period of time. The same applies in the case of particularly serious repetition of age verification requirements and age limits for sales.

It is also envisaged that the rules on temporary withdrawal will be tightened in such a way that the withdrawal will be for a longer period in the future. Thus, the temporary withdrawal of the right to market tobacco and nicotine products will occur in the event of the third infringement and will henceforth have to apply for one year. Any subsequent infringement would result in a new temporary withdrawal of the right to sell tobacco and nicotine products, starting from one year.

The calculation of when three infringements have taken place is made over a period of 10 years. The repeat infringement effect thus ceases if it is

more than 10 years since the last infringement was committed. The three infringements may have been detected during different inspections, but may also have been detected under the same supervision. Thus, three infringements found at the same time would have the effect of depriving the right to market the products, with the proviso that there must be an infringement of three different provisions and not, for example, that three products infringe the same provision.

The calculation of when three infringements have occurred will be across products and withdrawal of the right will also apply across the products. This means that there is no distinction between whether the infringement concerns tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them for a period of time. In addition, the calculation of when three infringements have taken place must be seen across the rules. Thus, for example, the marketing of electronic cigarettes containing nicotine with an illegal characterising flavour will count on the same basis as the sale of tobacco products to persons under 18 years of age when determining whether or not to withdraw the right to sell the products.

## **2.9. More smoke- and vapour free environments**

### 2.9.1. Existing law

The Act on electronic cigarettes etc. and the Act on smoke-free environments lay down rules on where, respectively, electronic cigarettes with and without nicotine and tobacco products, tobacco surrogates and herbal products for smoking may and may not be used.

The current rules on the use of electronic cigarettes with and without nicotine follow from Chapter 2 of the Act on electronic cigarettes, etc., cf. Consolidation Act No. 1876 of 20 September 2021, as amended.

Under § 3 no. 1 of the Act on electronic cigarettes, etc. it is not permitted to use electronic cigarettes with or without nicotine in or on the premises of children's institutions, schools, boarding schools, 'efterskoler' (residential secondary schools), institutions offering 3-year secondary school youth education, living areas and the like who engage children and young people, except as provided for in paragraphs 2 and 3. It follows from no. 2 of the provision that the use of electronic cigarettes with or without nicotine in or in day-care homes and other premises for the purpose of day care included in municipal day care and pool schemes is not permitted, cf. § 21 (2), §§ 101 and 102 of the Early Childcare Act, for the period of time

where children are in care. See, however, paragraph 4. It follows from nos.3 and 4 of the provision that it is not permitted to use electronic cigarettes with and without nicotine in or on collective means of transport, including Danish passenger ships and Danish and foreign-registered passenger aircraft operating under Danish operating licence, irrespective of whether the vessel or aircraft is outside Danish territory, subject to paragraphs 5 and 6, and taxis.

Under §§ 3a and 3b of the Act, pupils may not use electronic cigarettes with or without nicotine during school hours in schools, boarding schools and secondary schools which have taken children and adolescents under the age of 18.

§ 3c of the Act on electronic cigarettes, etc. states that it is not permitted to sell electronic cigarettes and refill containers with and without nicotine in schools, boarding schools and secondary schools covered by § 3a(1) and in educational establishments covered by § 3b(1).

In addition, § 4 of the Act provides that the manager or employer in educational establishments and workplaces not covered by § 3(1) and in places accessible to the public must draw up a written policy on the use of electronic cigarettes. The policy shall be accessible for users, staff and visitors. It follows from paragraph 2 of that provision that the policy referred to in paragraph 1 must at least specify whether and, if so, where electronic cigarettes may be used.

Current rules on the use of tobacco products, tobacco surrogates and herbal products for smoking follow from the Act on smoke-free environments, cf. Consolidation Act No. 1632 of 18 June 2021, as amended.

The purpose of the Act, cf. § 1, is to extend smoke-free environments in order to prevent the harmful effects of passive smoking on health and to prevent any person from being involuntarily exposed to passive smoking. The purpose of the Act is additionally to ensure that children and young people are not confronted with smoking or other use of tobacco products, tobacco surrogates and herbal smoking products during school hours.

§ 2 of the Act states that the Act applies to:

- 1) workplaces, including offshore installations;
- 2) institutions and schools for children and young people;
- 3) other educational establishments;
- 4) indoor premises accessible to the public;
- 5) public transport and taxis; and

6) catering establishments.

§ 1(2) states that paragraph 1 covers Danish vessels, Danish-registered aircraft and foreign-registered aircraft operated under Danish operating licence, regardless of whether the vessel or aircraft is outside Danish territory. However, this Act shall not apply to vessels based in the Faroe Islands or Greenland or to aircraft of air carriers based in the Faroe Islands or Greenland.

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

It is proposed that Chapter 2 of the Act on electronic cigarettes, etc., which includes §§ 3-4 on the use of electronic cigarettes with and without nicotine, be repealed in order to cover the use of electronic cigarettes with and without nicotine in the Act on smoke-free environments, as it seeks to harmonise the rules for the use of electronic cigarettes with smoking so that the requirements for where smoking is permitted also apply to electronic cigarettes.

The proposal to repeal Chapter 2 of the Act on electronic cigarettes etc. means that the rules on where electronic cigarettes with and without nicotine may be used are henceforth not regulated in the Act on electronic cigarettes, etc. It is instead proposed, cf. 5, nos. 1-11 of the draft Act, that the rules on where electronic cigarettes may be used are regulated in the Act on smoke-free environments. In addition, it is proposed to align the rules on smoking and the use of electronic cigarettes with and without nicotine. Both smoking and the use of electronic cigarettes release particles into the air which may be harmful to other people nearby.

In addition, it is proposed that heated tobacco products should be subject to the current rules on where smoking is permitted. As the law currently stands, it is not clear whether heated tobacco products are subject to the same requirements as for smoking cigarettes. The proposed amendments are thus intended to remove these doubts.

In addition, it is proposed to introduce an obligation for outdoor stadia to establish zones where smoking or the use of heated tobacco products or electronic cigarettes with or without nicotine is prohibited, for example in family zones. 'Stadia' refers to large outdoor installations consisting of a sports space surrounded by a large number of rows with spectators, often arranged in stands. For details, reference is made to the comments on § 5 no. 10 of the draft Act.

In addition, it is proposed that municipalities shall have the possibility to introduce requirements for outdoor playgrounds where smoking, heated tobacco products or electronic cigarettes with or without nicotine are prohibited.

The proposed amendments all aim to make it easier for children in particular to circulate in environments where they are not exposed to air contaminated by tobacco and e-cigarettes. If the use of tobacco products and electronic cigarettes is a visible part of everyday life, this can help to encourage and normalise consumption.

### **3. Implications for the achievement of the UN Sustainable Development Goals**

This legislative proposal contains a wide range of proposals to strengthen the control of existing legislation, as well as tighter regulation of tobacco and nicotine products and the rules on the sale of alcoholic products.

Tobacco, nicotine and alcohol are particularly harmful to children and adolescents as their brains are not fully developed. Nicotine is highly addictive and can, among other things, harm brain development and learning capacity, help to induce symptoms of anxiety and depression in children and adolescents, and nicotine increases the likelihood of becoming dependent on both cigarettes and other intoxicants. Binge-drinking (when drinking five or more objects on the same occasion) is associated with an increased risk of depressive symptoms and there is a strong link between alcohol and crime.

It is considered that the legislative proposal can help reduce the consumption of tobacco, nicotine and alcohol by children and adolescents – and support more inclusive and inclusive communities.

Against this background, it is considered that the legislative proposal could support the UN Sustainable Development Goal No 3 on Health and Well-being and No 10 on the reduction of inequality, as a reduction in the consumption of tobacco and nicotine products, as well as a healthier alcohol culture, could contribute to the health and well-being of the population, especially among children and adolescents.

### **4. Economic and administrative impact on trade and industry, etc.**

The legislative proposal is deemed to have financial and administrative implications. The aim of the draft law is to limit the consumption of tobacco, nicotine and alcohol by children and adolescents and it is therefore expected that the sales rate will decrease.

However, there is no basis for further assessing the secondary consequences of the legislative proposal's initiatives. This is the case, in particular, in terms of possible reductions in turnover and revenue and the impact on the overall business case of operators selling products covered by the draft law. This also applies generally to the decline in consumption. For example, data are not available on the consumption of specific products in combination with purchase times, as well as the impact on the consumption patterns of existing consumers, where there is no knowledge of whether these may switch to other product categories offered by the same operator.

§ 1 no. 1) of the draft Act proposes that it is not permitted to import, purchase, supply, receive, manufacture, process or possess tobacco surrogates covered by the prohibition in § 15b(1) or exceed the nicotine content limit for a tobacco surrogate laid down pursuant to § 10a. The documentation requirement in connection with an exception to the provision may have consequences for business. 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.

§ 3 no. 8 of the draft Act proposes that, in brick-and-mortar shops where retail sales are made, the placement of alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be directed or linked to a context aimed at children and adolescents. This restricts shops in the way that alcoholic beverages can be placed in the shop. It should be noted, however, that under § 11(2) of the Marketing Practices Act, commercial practices aimed at children and adolescents under the age of 18 shall not contain any reference to, pictures or references to intoxicants, including alcohol. In addition, the Alcohol Advertising Board's guidelines are to be expected to be complied with by the retail trade, all other things being equal. At the same time, it is considered that, in shops, goods are being reassigned or redeployed on an ongoing basis, and the proposal has been designed with the greatest possible freedom of method for each retailer, with the result that the costs of the provision is considered to be limited.

§ 1 no. 10 of the draft Act also proposes to prohibit the placing on the market of tobacco surrogates with a flavour other than tobacco and menthol. At the same time, a number of provisions of the legislative proposal propose that the Minister for the Interior and Health and the Danish Health Authority be empowered to lay down detailed requirements for product regulation and standardisation of tobacco and nicotine products. Imple-

mentation will, as far as possible, build on the existing market and requirements for the standardisation of packaging. The requirements are translated into notices.

It is considered that there will be administrative consequences as a result of § 3 no. 2 of the draft Act, in which it is proposed that alcoholic beverages with an alcoholic strength of more than 6 % of volume may henceforth not be sold to persons under the age of 18. As a result of the proposal, the Danish Health Authority shall update their signs, as required by § 2a(6) and rules laid down pursuant to § 2a(8) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18. The updated signs will be available on the Danish Health Authority's website from 1 December 2024, after which shops selling alcoholic beverages can order or print the updated statutory signs. The administrative consequences are considered to be below the de minimis threshold and are therefore not further quantified.

In general, the provisions of the legislative proposal have been designed with a view to maximum freedom of method, and several initiatives are aimed at producers and manufacturers who are already expected to have a production plant capable of changing and varying the design of the products, etc.

## **5. Administrative impact on citizens**

The draft law places greater responsibility on citizens to assess whether tobacco surrogates contain illegal flavourings and/or an excessive nicotine content before possible importation, purchase, possession, etc., as they may be penalised for this in the future. The regulation of flavourings and nicotine content is laid down in this legislative proposal. In this connection, it is required that unit packets and any outside packaging of tobacco surrogates must indicate nicotine content. In addition, it is assumed that flavourings will often appear on the packaging of the products and that flavourings and nicotine content will also often appear on the online marketing of the products. There is also an exception for luggage and possession for private consumption in order not to criminalise private individuals.

In addition, it is proposed with the legislative proposal to introduce more environments without electronic cigarettes and unambiguously include heated tobacco products under the Act on smoke-free environments. With respect to where electronic cigarettes with or without nicotine may be used, they shall be treated in the same way as the rules applicable to smok-

ing. This places greater responsibility on citizens who use the products in question when it comes to knowing the new rules.

The Bill is considered to entail no other administrative impact on citizens.

## **6. Climate impact**

The draft Act is deemed to have no climactic impact.

## **7. 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). In total, a total of almost half a billion DKK was allocated in 2024-2028 and then, on a permanent basis, DKK 85 million per year to finance the initiatives of the agreement.

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 covers expenditure relating to the enforcement of the ban on the import, purchase, possession, etc. of tobacco surrogates with illegal flavourings and excessive nicotine content proposed in this legislative proposal, and to control the same ban on electronic cigarettes with illegal flavourings and excessive nicotine content as adopted by the Act on 4 June 2024.

As regards the element of more powers for the Danish Safety Technology Authority, funds have been allocated in connection with the agreement on the prevention plan for the Danish Safety Technology Authority's implementation and increased checks. DKK 0.3 million have been allocated in 2024 and DKK 4.0 million per year from 2025 onwards for the Danish Safety Technology Authority to issue administrative fines in future. DKK 2.6 million have been allocated in 2025 and DKK 3.2 million annually from 2026 onwards to enable the Danish Safety Technology Authority to

order communication platforms to amend or remove content. DKK 0.3 million have been allocated in 2024 and DKK 0.6 million annually from 2025 to the Danish Safety Technology Authority's checks on the requirement to place alcoholic beverages in retail outlets.

The Danish Safety Technology Authority's market surveillance of tobacco and nicotine products is currently financed through fees charged to the industry. The new control tasks resulting from the elements of this legislative proposal on increased product regulation, including regulation of tobacco surrogates and extension of standardisation requirements, will be financed through this fee system. Specifically, it covers the requirements for banning flavourings, with the exception of tobacco and menthol, in tobacco surrogates, on additives and maximum limits for nicotine in tobacco surrogates, on components in relation to unit packets of chewing tobacco and tobacco substitute tobacco, on standardisation of the packaging of tobacco surrogates and the electronic unit used with heated tobacco, as well as requirements on the appearance of the cigarette itself and for roll-your-own tobacco, including paper, filters, etc., and for tobacco surrogates. In the next evaluation of the fee scheme, the Danish Safety Technology Authority shall decide whether and, if so, how much fees are to be increased as a result of the legislative proposal. The Danish Safety Technology Authority evaluates annually, cf. the Budget Guide, the individual fee schemes, during which resource efforts and fee level are assessed in relation to ensuring financial balance in the schemes. Specifically, the elements of the legislative proposal concerning increased regulation of tobacco surrogates and increased standardisation requirements, etc., are assessed to result in increased control costs of DKK 7.8 million in 2025, DKK 7.0 million in 2026 and DKK 6.3 million annually from 2027 onwards.

As regards the element of more powers for the Consumer Ombudsman, DKK 2.0 million has been allocated annually from 2025 in connection with the agreement on the prevention plan to strengthen the Consumer Ombudsman's existing supervision of tobacco, nicotine and alcohol. The funds are intended for supervision of the Act on the prohibition of tobacco advertising, the Act on electronic cigarettes, etc. and § 11(2) of the Marketing Practices Act. The Ministry of the Interior and Health notes that the Consumer Ombudsman is independent of instructions and has priority access in relation to which cases are dealt with.

In addition, DKK 1.6 million in 2024, DKK 13.2 million in 2025, DKK 13.1 million in 2026, DKK 13.0 million in 2027 and 2028 and DKK 11.0

million annually from 2029 were allocated in connection with the prevention plan initiatives to the police, the public prosecutor's office and the courts. Expenditure on the police, the prosecution service and the courts relates to increased costs for investigations, case handling, etc. as a result of an expected increase in the number of police reports and, consequently, more cases before the courts.

As regards the element that in future alcoholic products with an alcoholic strength of more than 6 per cent to 16-17 year-olds may not be sold, it is estimated with considerable uncertainty in the context of the agreement on the prevention plan that this will lead to a lower annual revenue of approximately DKK 5 million after recovery and behaviour from 2025.

To the extent that consumption of tobacco, nicotine and alcohol is reduced as a result of the other elements of the legislative proposal, there will be negative revenue consequences for 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. The Danish Safety Technology Authority will be empowered to proceed to extra-judicial adoption of confiscation and to issue administrative penalty orders so that fewer authorities are involved. The same is considered to apply in connection with the fact that the Consumer Ombudsman is also given the power to issue administrative penalty orders.

The proposal that municipal councils may decide not to allow smoking or use of tobacco products, heated tobacco products or electronic cigarettes with or without nicotine in outdoor municipal playgrounds is not considered to have negative implementation consequences, as the decision, including the decision on possible checks and consequences of infringement, is left to the individual municipal council.

In addition, it is considered that the draft law does not have financial consequences or implementation implications for 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.

## **8. Impact on the environment and nature**

It is the opinion of the Ministry of the Interior and Health that the initiatives taken in the draft legislation can, in combination, contribute to reduc-

ing the consumption of tobacco and nicotine products by children and adolescents. A reduction in the consumption of tobacco and nicotine products can have positive environmental impacts in terms of reduced waste, such as packaging, cigarette butts and nicotine bags. According to the 2022 WHO publication ‘Tobacco: Poisoning our planet ’, tobacco products are the object on the planet that are thrown most into nature and on streets, and they contain more than 7000 toxic chemicals that leak into the environment when they are thrown into nature. There is also concern about waste from e-cigarettes and smokeless tobacco, such as nicotine bags, where the products and packaging contain plastic.

### **9. Relationship to EU law**

Tobacco and nicotine products benefit from the free movement of goods under the FEU Treaty. 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 can be restricted in consideration of, among other things, public health, which is the consideration that is sought to be protected with the current Bill.

The legislative proposal concerns, inter alia, the regulation of tobacco surrogates, tobacco products and electronic cigarettes and refill containers with or without nicotine.

As regards tobacco surrogates, the Ministry of the Interior and Health notes that tobacco surrogates are not regulated by the Tobacco Products Directive (2014/40/EU) and are currently subject to more limited regulation in Denmark. The draft Act foresees that the regulation of tobacco surrogates should reflect the corresponding regulation of electronic cigarettes resulting from, respectively, the Act on tobacco products etc. and the Act on electronic cigarettes etc. The proposed initiatives will be an obstacle to the free movement of goods, but on public health grounds it is judged appropriate and necessary. It should also be borne in mind that the Member States have a particularly wide discretion to lay down national rules for the protection of public health under Article 36 TFEU. It should be noted that, following notification to the EU, Belgium has adopted a ban on nicotine bags.

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 regulation on increased standardisation requirements, including for technical equipment used with heated tobacco products, as well as regulation of the appearance of cigarettes and roll-your-own tobacco, including paper, filters, etc., reference is made to recital 53 and Article 24(2) of the Tobacco Products Directive, which state, inter alia, that in view of the different levels of harmonisation achieved by the Directive, Member States should, in certain circumstances, retain the power to impose additional requirements in certain respects in order to protect public health, and that this applies to aspects other than health warnings in relation to the presentation and packaging of tobacco products, including colours, for which the Directive contains a first set of basic common rules.

In particular, with regard to the proposed provision that the Danish Safety Technology Authority must be able to order a communication platform to amend or remove content referring to a product that does not comply with the rules of the Act on tobacco products etc. and the Act on electronic cigarettes, etc., reference is made to the Tobacco Advertising Directive, which aims, inter alia, to approximate the laws and administrative provisions of the Member States on the advertising of tobacco products and the promotion of their sale through the use of information society services. Further reference is made to Article 20(5) of the Tobacco Products Directive, which states that Member States must ensure that commercial communications intended to promote or have as a direct or indirect effect the sale of electronic cigarettes and nicotine refill containers are prohibited in the context of information society services, in the press and in the other printed publications.

It is the opinion of the Ministry of the Interior and Health that the proposed initiatives comply with EU law.

The other proposed provisions of the draft law on, inter alia, increased powers for control authorities, higher fines, the possibility to withdraw the right to market tobacco and nicotine products, and more smoke- and vapour free environments are not considered relevant in relation to 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 17 June 2024 to 19 August 2024:

Advokatrådet, Alkohol og Samfund, Akademikernes Centralorganisation (AC), Arbejdsgiverforeningen KA, Arbejdsmiljørådet (AMR), Arbejdstilsynet, Astma-Allergi Forbund, Becig, Blå Kors, BrancheDanmark, British American Tobacco, Bryggeriforeningen, Børnerådet, Børns Vilkår, Center for Hjerneskade, Coop Danmark, Dagrofa, Danmarks Apotekerforening, Danmarks Farmaceutiske Selskab, Danmarks Idrætsforbund (DIF), Danmarks Lungeforening, Danmarks Restauranter og Cafeer (DRC), Dansk Arbejdsgiverforening (DA), Dansk e-Damper Forening (DADAFO), Dansk Erhverv, Dansk Industri, Dansk Lungemedicinsk Selskab, Dansk Psykiatrisk Selskab, Dansk Selskab for Almen Medicin, Dansk Selskab for Distriktpsykiatri, Dansk Selskab for Folkesundhed, Dansk Selskab for Patientsikkerhed, Dansk Sygeplejeråd, Dansk Transport og Logistik (DTL), Danske Fysioterapeuter, Danske Gymnasieelevers Sammenslutning, Danske Handicaporganisationer (DH), Danske Patienter, Danske Regioner, Danske Seniorer, Danske Skoleelever, Danske Tandplejere, Danske Ældreråd, Dataetisk Råd , Datatilsynet, De Samvirkende Købmænd, Den Danske Dommerforening, Det Ethiske Råd, DGI, Diabetesforeningen, Efuma, Erhvervsskolernes Elevorganisation, Fag og Arbejde (FOA), Fagbevægelsens Hovedorganisation, Fagligt Fællesforbund – 3F, Farmakonomforeningen, Finans Danmark, 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, 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, Landsorganisationen for sociale tilbud, Landssammenslutningen af Handelsskoleelever, Lægeforeningen, Lægemedielindustriforeningen, 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, Punktum dk A/S, Rigsrevisionen , Røgfri Fremtid, Rådet for Socialt Udsatte, Salling Group, Skole og Forældre, Smoke Solution, SSP-Samrådet, Sund By Netværket, Sundhed Danmark - Foreningen af danske sundhedsvirksomheder, Sundhedskartellet, Swedish Match, Sygeforsikringen ”Danmark”, Søfartsstyrelsen, Tandlægeforeningen, Tobaksindustrien, Tobaksproducenterne, Veterinærmedicinsk Industriforening (VIF), Vin- & Spiritus Organisationen Danmark, Ældresagen 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 expenditure for The Danish Safety Technology Authority, the Consumer Ombudsman, the Danish Customs Agency, the Danish Tax Agency, the police, the public prosecutor’s office and the courts.  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. In the context of the prevention plan, it has been estimated with significant uncertainty that the proposal to the effect that alcoholic products with an alcoholic strength by volume of more than 6 to people aged 16 to 17 may not be sold in future will lead to a lower annual revenue of approximately DKK 5 million after return and behaviour

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		<p>from 2025 onwards.</p> <p>Beyond this, there are no detailed studies, evaluations, etc. that would allow further revenue calculations to be made.</p>
<p>Implementation impact on the State, municipalities, and regions</p>	<p>The Danish Safety Technology Authority may issue administrative penalty orders, take extra-judicial confiscation orders and may order communication platforms to modify or remove content.</p> <p>The Consumer Ombudsman may issue administrative penalty orders.</p> <p>Municipal councils may decide not to allow smoking or use of tobacco products, heated tobacco products or electronic cigarettes with or without nicotine in outdoor municipal playgrounds.</p>	<p>None</p>
<p>Financial impact on trade and industry, etc.</p>	<p>None</p>	<p>It is considered that a number of provisions of the legislative proposal will have an economic impact on business.</p> <p>There is currently no evidence or knowledge that could help to quantify the possible economic impact.</p>
<p>Administrative impact on trade and industry, etc.</p>	<p>None</p>	<p>It is considered that there will be no significant administrative impact on business as a result of the provisions of the legislative proposal.</p>

Administrative impact on citizens	None	<p>Expected to have administrative consequences for citizens, as they will have to consider whether tobacco surrogates comply with the rules as regards flavourings and nicotine content.</p> <p>In addition, more environments without electronic cigarettes and heated tobacco products are introduced. This gives citizens greater responsibility to know the new rules.</p>
Climate impact	None	None
Impact on the environment and nature	A reduction in the consumption of tobacco and nicotine products can have positive environmental impacts in terms of reduced waste, such as packaging, cigarette butts and nicotine bags.	None
Relationship to EU law	<p>Tobacco and nicotine products benefit from the free movement of goods under the FEU Treaty. 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 can be restricted in consideration of, among other things, public health, which is the consideration that is sought to be protected with the current Bill.</p> <p>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. The aim of this Directive is, inter alia, to promote the proper functioning of the internal market for tobacco and related products, taking as a base a high level of health protection, especially for young people. In particular</p>	

	<p>in relation to the proposed regulation on increased standardisation requirements, including technical equipment used with heated tobacco products, as well as regulation of the appearance of the cigarette and roll-your-own tobacco, including paper, filters, etc., reference is made to recital 53 and Article 24(2) of the Tobacco Products Directive. In particular, with regard to the proposed provision that the Danish Safety Technology Authority must be able to order a communication platform to amend or remove content referring to a product that does not comply with rules in the Act on tobacco products etc. and the Act on electronic cigarettes, etc., reference is made to the Tobacco Advertising Directive and Article 20(5) of the Tobacco Products Directive.</p> <p>Tobacco surrogates are not regulated by the Tobacco Products Directive (2014/40/EU) and are currently subject to more limited regulation in Denmark. A number of the proposed requirements for product regulation of tobacco surrogates will be an obstacle to the free movement of goods, but are assessed on public health grounds as appropriate and necessary. The Member States have a particularly wide discretion to lay down national rules for the protection of public health under Article 36 TFEU.</p>	
<p>[Is contrary to of the five principles for implementing commercial EU regulation] / [goes beyond minimum requirements in EU regulation] (mark with X)</p>	<p>Yes</p> <p>X</p>	<p>No</p>

## DRAFT

### *Explanatory notes on the individual provisions of the draft Act*

#### *Re Section 1*

##### Re No 1

It is stated in the footnote to the Act on tobacco products, etc. that the Act contains provisions transposing parts of 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 2014 L 127, p. 1) as well as provisions transposing parts of Commission Implementing Regulation (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products, OJ 2018 L 96, p. 57. Furthermore, the Act contains provisions transposing parts of Commission Delegated Directive (EU) 2022/2100 of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products, OJ 2022 L 283, p. 4-6. The Act includes certain provisions of Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products, OJ 2018 L 96, p. 7. Under Article 288 of the Treaty on the Functioning of the European Union, regulations apply immediately in every Member State. The reproduction of these provisions in the Act is thus exclusively for practical reasons and does not affect the immediate validity of the regulations in Denmark.

It is proposed that in the *footnote* to the title of the Act shall be inserted as *point 5*, that the Act contains provisions notified as 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).

The proposed amendment would imply that, in addition to the transposed EU legal framework, the law has been notified as a draft in accordance with Directive (EU) 2015/1535 of the European Parliament and of the Council (the Information Procedures Directive).

##### Re No 2

§ 2 of the Act on tobacco products etc. states how a number of terms in the Act are defined.

§ 2 no. 10 states that emissions are defined as substances released when tobacco or a herbal product for smoking is used as intended, such as substances present in smoke or substances released in connection with the use of smokeless tobacco products.

It is proposed that: § 2 no. 10, after ‘smokeless tobacco products’. ‘and tobacco surrogates’ is inserted.

The proposed amendment will bring tobacco surrogates into the definition of emissions in future. The sole purpose of that provision is therefore to add several products to the definition.

Re No 3

§ 2 of the Act on tobacco products etc. states how a number of terms in the Act are defined.

§ 2 no. 11 states that characterising flavour is defined as a prominent smell or taste other than tobacco, resulting from an additive or combination of additives, including fruit, spices, herbs, alcohol, sweets, menthol or vanilla, and which is smelled or tasted before or during consumption of the tobacco product or herbal product for smoking.

It is proposed that in § 2 the following shall be inserted after no. 11 as a no. 12, under which flavour is defined as a smell or taste resulting from an additive or combination of additives, including fruit, spices, herbs, alcohol, sweets, menthol or vanilla, and which is smelled or tasted before or during consumption of the tobacco surrogate.

The proposed amendment will result in both a definition of characterising flavours relating to tobacco products and herbal products for smoking, as well as a definition of flavourings relating to tobacco surrogates.

The definition of characterising flavour in the proposed § 2 no. 11 reflects Article 2 no. 25 of the Tobacco Products Directive. The definition is used in relation to tobacco products, as it is necessary to use additives that impart a flavour in the manufacture of tobacco products. Therefore, the use of specific additives is not excluded, but manufacturers are required to reduce the amount of the additive or combination of additives to such an extent that the additives no longer produce a characterising flavour. The same consideration is not relevant for tobacco surrogates.

The proposed provision shall be read in conjunction with § 1 no. 10 of the draft Act, to which it refers, and which proposes that tobacco surrogates and flavourings intended for use in tobacco surrogates with a flavour may not be marketed in Denmark, with the exception of a tobacco or menthol flavour.

Re No 4

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

§ 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 § 2 *no. 17*, which becomes No 18 after ‘herbal product for smoking’ ‘etc.’ be inserted.

The proposed amendment would mean that the definition of manufacturer also includes manufacturers of, for example, flavourings for use in tobacco surrogates and devices used in tobacco products, herbal products for smoking and tobacco surrogates. The sole purpose of that provision is therefore to add several products to the definition.

The proposed provision shall, *inter alia*, be read in conjunction with § 1 no. 10 of the draft Act, to which reference is made, and where it is proposed that flavours intended for use in tobacco surrogates with a flavour may not be marketed in Denmark, except for a tobacco or menthol flavour, and that equipment used in connection with tobacco surrogates which makes it possible to alter the smell or taste of the substitute tobacco products concerned may not be marketed in Denmark.

Re No 5

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

§ 2, no 18, provides that ‘importer’ means the owner of, or a natural or legal person with a right of disposal over, tobacco products tobacco surrogates or herbal products for smoking imported into the territory of the European Union. § 2, no 19, provides that ‘distributor’ means any natural or legal person other than a manufacturer or importer who markets tobacco products, tobacco surrogates or herbal products for smoking, with the ex-

ception of sales to consumers. § 2, no 20, provides that ‘retailer’ means any natural or legal person who markets tobacco products, tobacco surrogates or herbal products for smoking to consumers. § 2, no 21, provides that ‘placing on the market’ means making tobacco products, tobacco surrogates 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 proposes that in § 2 nos. 18-21, which become nos 19-22, the words ‘etc.’ should be inserted after ‘herbal products for smoking’.

The proposed amendment would mean that the definition of importer, distributor, retailer and placing on the market also includes importers, distributors, retailers and the placing on the market of, for example, flavourings for use in tobacco surrogates and equipment used in connection with tobacco products, herbal products for smoking and tobacco surrogates. The sole purpose of that provision is therefore to add several products to the definition.

The proposed provision shall, inter alia, be read in conjunction with § 1 no. 10 of the draft Act, to which reference is made, and where it is proposed that flavours intended for use in tobacco surrogates with a flavour may not be marketed in Denmark, except for a tobacco or menthol flavour, and that equipment used in connection with tobacco surrogates which makes it possible to alter the smell or taste of the substitute tobacco products concerned may not be marketed in Denmark.

Re No 6

§ 2 of the Act on tobacco products etc. states how a number of terms in the Act are defined.

It is proposed that a *No 34* be inserted in § 2 according to which a communication platform is to be understood as an online platform which, for profit purposes, offers the visitor to create a profile and explore other profiles and whose primary function is to enable users of the platform to connect to and share messages or presentations with content in characters, words, writing, sound, images or video.

The fact that the platform is online means that interaction on the platform takes place via the internet. Online platforms vary in format and the number of features designed and maintained by a service provider, but they can

usually be accessed via a website from both desktop and laptop computers and via an app on mobile devices, such as tablets and smartphones. Platforms offered by means of, for example, fax or telex are excluded.

The fact that a communications platform is to be offered by a service provider seeking profits is to be understood as meaning that the communications platform has a commercial purpose, which includes all activities of an economic nature or carried out for payment. Payment does not necessarily have to be made by the user, i.e. a communications platform may well have a commercial purpose within the meaning of the law, even if the service provider's activities are not generally described as commercial. The communications platform shall aim at generating revenue. For example, a service provider may offer services or products in exchange for payment to other natural and legal persons wishing to promote their services or products on the communications platform. This payment may also represent access to data. Service providers can, for example, make profit by allowing enterprises to buy media placement with advertisements and in-app purchases, etc. In addition, service providers can make profit by offering their users, who have access to the communications platform free of charge, the possibility to purchase premium memberships for e.g. a weekly, monthly or annual amount.

The platform shall offer the visitor the opportunity to create a profile and explore other profiles. Thus, after registration on the platform, the user is able to create social relationships by connecting with other users who also have profiles on the website or app, either reciprocally or by other users following their user profile. The 'friend' or 'follow' network on the platform is typically visible to other users, and the main social interaction on the platform consists of a public, partially public, or private continuous stream of content generated by other users or oneself. In that regard, it should be noted that, in order to fall within the definition of a communications platform, it is not necessary for users to associate themselves with other users.

It is proposed that the prerequisite for inclusion in the definition of a communication platform is that a primary function of the platform should be to enable users to connect, share messages or presentations with content in characters, words, writing, sound, images or video. This should be understood in a broad sense so that, for example, a connection does not necessarily have to be in writing, but can be done by pressing a "like" button on another user's content on the platform. User-generated content is typically made easily accessible to users in general, without the user providing the

information having to do more to give those persons access to that information.

The primary function requirement means that the definition covers only the part of a given communication platform that meets this requirement. If, in connection with its communication platform, a service provider also offers a separate service where, for example, it is possible for users to trade in goods or use an individual communication service, this part is not governed by the Act.

It has become more common for websites that are subject to a high level of user traffic to also offer an interactive communication option that allows registered users to interact and share content on their website through, for example, a chat function. The draft Act is not intended to include interactive means of communication between users, which form a minor and purely ancillary part linked to a website that offers, for example, journalistic or editorial content, etc. The commentary section of an online newspaper will, for example, constitute such an ancillary function to the main service, namely the publication of news under the editorial responsibility of the publisher. For example, in some cases, enterprises offer the sale of products on their website as the main feature, but also allow users to communicate and exchange opinions about the products on the website through an interactive means of communication. The part of the website used by users as an interactive means of communication shall be regarded as an ancillary part of the website which is not covered by the concept of communications platform.

The definition is similar to that in the Act on the sale and marketing of laughing gas to consumers, cf. Folketingstidende 2022-23, Appendix A, L 89, as set out on page 13.

Re No 7

Chapter 3 of the Tobacco Products Act, etc. is entitled ‘Limit values for the emission levels of tobacco products and methods for measuring emissions’.

It is proposed that the *heading* of chapter 3 be worded as follows: ‘Maximum emission levels for tobacco products, methods for measuring emission levels and limit values for tobacco surrogates, etc.’.

This will ensure that the chapter heading reflects the fact that new provisions on limit values in tobacco surrogates are proposed in the chapter, cf. § 1 no. 8 of the draft Act, to which reference is made.

Re No 8

§ 8(1) of the Act on tobacco products etc. states that the Minister for Health shall lay down rules on maximum levels of tar, nicotine and carbon monoxide in emissions from cigarettes marketed or manufactured in Denmark. Paragraph 2 of the provision states that the Minister for Health may lay down rules on limit values for emissions other than those referred to in paragraph 1 and for emissions from tobacco products other than cigarettes.

It is proposed that the following *paragraph 10a* be inserted after § 10.

According to the proposed § 10a(1), manufacturers and importers shall ensure that tobacco surrogates that they place on the market comply with the nicotine content limit.

It is proposed by *paragraph 2* of the provision that the Minister for the Interior and Health lays down rules on maximum nicotine content in tobacco surrogates.

The proposed amendment will require manufacturers and importers to ensure that tobacco surrogates that they place on the national market comply with the nicotine content limit and that the Minister for the Interior and Health will be empowered to lay down rules on the maximum nicotine content in tobacco surrogates.

Tobacco surrogates are an umbrella name for products containing nicotine but which are not a tobacco product, electronic cigarette or a medicinal product, cf. the definition in § 2, no. 25 of the Act on Tobacco Products, etc. The Authority allows for more nicotine limits to be set if several types of tobacco surrogates are registered in Denmark.

The limit on nicotine content is proposed to reduce the risks associated with nicotine. The limit could, for example, be set on the basis of evolving knowledge of harmfulness, requirements for other tobacco and nicotine products, nicotine uptake and use, and market developments. It is noted that there is no safe limit for nicotine from a health or dependency perspective. For nicotine bags, which are a form of tobacco surrogate, the limit will be set in terms of mg nicotine per bag.

Re No 9

Chapter 4 of the Act on tobacco products etc. is entitled ‘Prohibition on the placing on the market of certain tobacco products, etc.’.

It is proposed that the *heading* of chapter 4 be worded as follows: ‘Prohibition on the placing on the market of certain tobacco products, tobacco surrogates, etc.’.

This will ensure that the chapter heading reflects the fact that new provisions on flavourings in tobacco surrogates are proposed in the chapter, cf. § 1 no. 10 of the draft Act, to which reference is made.

Re No 10

§ 14(1) of the Act on tobacco products etc. states that cigarettes, heated tobacco products and roll-your-own tobacco with a characterising flavour may not be marketed in Denmark. Paragraph 2 of that provision states that the Danish Health Authority may lay down detailed rules on the prohibition referred to in paragraph 1, including rules on whether a specific cigarette, heated tobacco product or type of roll-your-own tobacco is covered by the prohibition in paragraph 1 and on maximum levels for cigarettes, heated tobacco products and roll-your-own tobacco of additives or combinations of additives that produce a characterising flavour.

§ 15a of the Act on tobacco products, etc. states that equipment used in connection with tobacco products and herbal products for smoking which makes it possible to alter the smell or taste of the tobacco products and herbal products concerned or their smoke intensity may not be placed on the market in Denmark.

It is proposed that the following § 15a be inserted: § 15b(1) - (3).

According to the proposed *Paragraph 15b(1)*, tobacco surrogates and flavourings for use in flavoured tobacco surrogates shall not be placed on the market in Denmark. However, the prohibition shall not apply to a flavour of tobacco or menthol.

The proposed amendment will prohibit the future marketing of tobacco surrogates and flavourings for use in tobacco surrogates with a flavour in Denmark. The same regulation is envisaged as in § 25a(1) of the Act on electronic cigarettes, etc., with the amendments proposed in § 2 no. 8 of this bill.

The proposed exemption for a tobacco flavour covers only a pure tobacco flavour, and not, for example, tobacco flavour with hints of vanilla,

caramel, etc. This will follow the Danish Safety Technology Authority's existing practice of currently controlling flavours in electronic cigarettes.

In order to make the provision future-proof, it is proposed that flavourings for use in tobacco surrogates should be covered by the ban. Where appropriate, flavourings which are not explicitly marketed for use in tobacco surrogates may fall under the prohibition. This may be the case, for example, if the flavour is placed on the market at a point of sale which sells tobacco surrogates and where it is considered that purchasers of the link are given the understanding that the flavour can be used in tobacco surrogates.

However, the marketing of tobacco surrogates and flavourings for use in tobacco surrogates with a tobacco or menthol flavour will continue to be allowed. The delineation of menthol follows the current practice as regards menthol in electronic cigarettes. As a result of the draft law, a possible further definition of menthol will have to be considered.

According to the proposed *Paragraph 15b(2)*, equipment used in connection with tobacco surrogates which makes it possible to modify the smell or taste of such substitute tobacco shall not be placed on the market in Denmark.

As a result of the proposed amendment, not only the marketing of tobacco surrogates and flavourings for use in flavoured tobacco surrogates would be prohibited, cf. the proposed § 15b(1), but also equipment used in connection with tobacco surrogates that allow the smell or taste of the products to be altered. The term 'equipment' is to be understood broadly.

The proposed provision aims to ensure that the prohibition in the proposed § 15b(1) of certain flavourings is not attempted to be circumvented by the addition of flavourings to any equipment used in connection with tobacco surrogates rather than directly in the products or any ingredients. The intention is to make regulation future-proof in relation to future tobacco surrogates.

The same regulation is envisaged as under § 25a(2) of the Act on electronic cigarettes, etc.

According to the proposed § 15b(3), the Danish Health Authority may lay down detailed rules on the prohibition referred to in paragraph 1, including rules on whether a specific product is covered by the prohibition and on maximum levels for the content in products of additives or combinations of additives that impart a flavour.

Under the proposed provision, the Danish Health Authority will be able to lay down regulations on, among other thing, whether specific products are included in the prohibition in paragraph 1 and the limit values for additives.

The provision corresponds to § 25a(3) of the Act on electronic cigarettes, etc., with the amendment proposed in § 2 no. 9 of this bill.

Re No 11

§ 17(1) of the Act on tobacco products, etc. states that tobacco products containing the following additives may not be placed on the market in Denmark:

- 1) Vitamins or other additives which give the impression that a tobacco product has a health benefit or presents a limited risk to health.
- 2) Caffeine, taurine or other additives and stimulant compounds.
- 3) Additives having colouring properties for emissions.
- 4) Additives that have carcinogenic or mutagenic properties or properties toxic to reproduction in unburned form.

It is proposed that in *Paragraph 17 (1)*, ‘and tobacco surrogates’ is inserted after tobacco products. The proposed amendment will mean that tobacco surrogates may not be placed on the market in Denmark if the product contains vitamins or other additives that give the impression that a tobacco surrogate has a health benefit or poses a limited health risk, caffeine, taurine or other additives and stimulant compounds, or additives that have carcinogenic, mutagenic or reproductive properties in unburned form.

The proposed provision would thus put the regulation of additives in tobacco surrogates on an equal footing with that of additives in tobacco products.

Reference is also made to § 1 no. 2 of the draft Act, which proposes to include tobacco surrogates in the definition of emissions.

Re No 12

§ 17(1) of the Act on tobacco products, etc. states that tobacco products containing the following additives may not be placed on the market in Denmark:

- 1) Vitamins or other additives which give the impression that a tobacco product has a health benefit or presents a limited risk to health.
- 2) Caffeine, taurine or other additives and stimulant compounds.
- 3) Additives having colouring properties for emissions.
- 4) Additives that have carcinogenic or mutagenic properties or properties toxic to reproduction in unburned form.

It is proposed that in § 17(1) no. 1, after tobacco product, ‘or a tobacco surrogate; is inserted.

The proposed amendment is to be seen in conjunction with § 1 no. 11 of the draft Act, where it is proposed that tobacco surrogates be covered by § 17(1) of the Act, so that the requirements for additives in tobacco products will also apply to tobacco surrogates.

Re No 13

The Act on tobacco products etc. does not contain any rules prohibiting the import, purchase, delivery, receipt, manufacture, processing or possession of tobacco surrogates.

It is proposed that a new chapter 4a be inserted after Chapter 4 with a new § 18a.

It is proposed in § 18a (1) that it is not permitted to import, purchase, supply, receive, manufacture, process or possess tobacco surrogates covered by the prohibition in § 15b(1) or exceed the nicotine content limit laid down pursuant to § 10a.

The proposed provision will mean that in future it will not be permitted to import, purchase, supply, receive, produce, process or possess tobacco surrogates with a non-tobacco and menthol flavour.

The proposed provision would also mean that in future it will not be permitted to import, purchase, supply, receive, manufacture, process or possess tobacco surrogates that exceed the limits on nicotine content applicable at any time.

The proposed provision must be read in conjunction with § 1, nos. 8 and 10 of the draft Act, which proposes that the Minister for the Interior and Health lay down rules on maximum nicotine content in tobacco surrogates marketed in Denmark and that tobacco surrogates and flavourings for use

in flavoured tobacco surrogates, with the exception of tobacco and menthol, may not be marketed in Denmark.

The rules on flavourings and nicotine content are matters relating to the content of the products. At the same time, flavourings and nicotine content will often appear in the online marketing of the product or the product's packaging and labelling, and it is therefore considered possible for consumers, retailers, etc. to determine whether it has been complied with.

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. The undertaking dispatching the product or the carrier, etc. cannot be held liable for any infringement of this provision unless they have independently incurred criminal liability, for example by knowing that illegal products or similar goods are being transported.

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 by means of distance selling.

It should be noted that possession means situations in which persons have products physically or the products are easily accessible to them, for example as part of their travel luggage, in bags or in pockets. It will also cover situations where the products are stored, for example in the context of a retailer. It will also cover situations where products are stored in commercial locations or in commercial vehicles at the disposal of the retailer. Possession may also be in a car or by other means where the products are easily accessible to the person concerned.

It is proposed in § 18a(2) that the prohibition laid down in paragraph 1 does not cover three specific cases.

It is proposed in § 18a(2) no. 1 that the prohibition does not apply to luggage of up to 10 units for personal consumption and to 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. The calculation of up to 10 units will be across tobacco surrogates and electronic cigarettes

and nicotine refill containers. The proposed provision must therefore be read in conjunction with § 18b of the Act on electronic cigarettes, etc., which lays down similar rules for the import, purchase, possession, etc. of electronic cigarettes and nicotine refill containers which are covered by the prohibition in the Act on electronic cigarettes, etc. as regards characterising flavours or exceeding the nicotine content limit in a nicotine-containing liquid.

For nicotine bags that are one type of tobacco surrogate, one unit will correspond to one can.

‘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 therefore does not concern cross-border distance sales.

Luggage and possession of up to 10 units are covered by the exemption only if they are also 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 and repeated manner, 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 larger cash amounts or other types of products that suggest that a sale took place.

It should be noted that the prohibition laid down in paragraph 1 applies to tobacco surrogates with illegal flavourings and 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 § 18a(2) no. 2 that the prohibition does not cover importation, purchase, delivery, receipt, manufacture, processing or possession with a view to marketing in other countries or marketing 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 § 18b(2) no. 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 14

It follows from § 21 of the Act on tobacco products etc. that the Danish Health Authority lays down more detailed regulations on requirements for size, form, functionality and components for unit packets of cigarettes and roll-your-own tobacco.

The authorisation was used in Order 1064 of 4 July 2016 on the testing of specific additives in tobacco products and more detailed requirements for the labelling and packaging of cigarettes and roll-your-own tobacco, etc., as subsequently amended.

§ 7(3) of the Order states that unit packets of cigarettes must contain 20 cigarettes, neither more nor less.

§ 8(2) of the Order provides that unit packets of roll-your-own tobacco must contain a minimum of 30 grams of tobacco.

It is proposed that new *paragraphs 2-5* be inserted in § 21.

According to the proposed *paragraph 2*, the Danish Health Authority lays down detailed rules on requirements for the appearance of cigarettes and roll-your-own tobacco, including paper, filters, etc.

The proposed provision will mean that the Danish Health Authority will be able to lay down rules to the effect that cigarettes and roll-your-own tobacco may not display logos or other types of branding elements. The Danish Health Authority will also be able to lay down rules on colour, shape, appearance, text, weight, material and labelling of cigarettes and roll-your-own tobacco. The rules will be based, as far as possible, on existing requirements.

The authorisation also covers paper, filters, etc. used for roll-your-own tobacco.

According to the proposed *paragraph 3* the Danish Health Authority shall lay down detailed rules on ingredients in relation to unit packets of chewing tobacco.

The proposed amendment will have the effect of empowering the Danish Health Authority to lay down rules on the number of units or weight that may be in each unit packet of chewing tobacco.

The requirement for unit packets for chewing tobacco shall, as far as possible, reflect the quantity requirement for cigarettes and roll-your-own tobacco set out in §§ 7 (3) and 8 (2) of Order No 1064 of 4 July 2016, as amended.

The purpose of the regulation is that the industry cannot speculate in different package sizes and prevent price increases, for example by increases in charges, from being camouflaged by putting a smaller quantity into the package.

According to the proposed *paragraph 4* the Danish Health Authority shall lay down detailed rules on requirements for the appearance of tobacco surrogates.

The proposed provision will mean that the Danish Health Authority will be able to lay down rules to the effect that tobacco surrogates may not contain logos or other types of branding elements. The Danish Health Authority will also be able to lay down rules on the colour, shape, appearance, text, weight, size, material and labelling of tobacco surrogates, for example for the nicotine bag itself. The rules will be based, as far as possible, on existing requirements.

According to the proposed *paragraph 5* the Danish Health Authority shall lay down detailed regulations on ingredients in relation to unit packets of tobacco surrogates.

The proposed amendment will have the effect of empowering the Danish Health Authority to lay down rules on the number of units or weight that may be in each unit packet of tobacco surrogates.

Tobacco surrogates are an umbrella term for products that contain nicotine but are not a tobacco product, electronic cigarette or a medicinal product, cf. the definition in § 2 no. 25 of the Tobacco Products Act, etc. The amendment allows the requirements on the contents of the unit packet to differentiate according to the specific type of tobacco surrogate. Thus, possible future forms of tobacco surrogates can be taken into account.

The requirement for unit packets of tobacco surrogates shall, as far as possible, reflect the quantity requirement for cigarettes and roll-your-own tobacco set out in §§ 7(3) and 8(2) of Order No 1064 of 4 July 2016, as amended.

The purpose of the regulation is that the industry cannot speculate in different package sizes and prevent price increases, for example by increases in charges, from being camouflaged by putting a smaller quantity into the package.

Re No 15

§ 21a(1) of the Act on tobacco products etc. states that anyone who places tobacco products on the market in Denmark must ensure that each unit packet and any outside packaging have a standardised format. This does not however apply to cigars and pipe tobacco. It follows from paragraph 2 of the provision that the Minister for Health shall lay down detailed rules on the form of standardisation.

It is proposed that in § 21a, a new *paragraph 2* shall be inserted after paragraph 1.

The proposed *paragraph 2* states that anyone, placing technical equipment used with heated tobacco products on the market in Denmark, shall ensure that each unit packet and any outside packaging is standardised.

The proposed amendment would mean that the requirement for standardised unit packets and packaging applies not only to heated tobacco products but also to technical equipment used with heated tobacco products. Technical equipment means the device or hardware used with heated tobacco. It may also include any future technical equipment which, as in the case of heated tobacco, forms part of the use of a tobacco product.

As in the case of tobacco products, standardisation means that packages must not have logos or other types of branding elements, but only the brand name, the product name, the name of the manufacturer and the other elements, including health warnings deriving from the legislation. Thus, all packs will have to have the same colours and the same standard font.

Re No 16

§ 21a(1) of the Act on tobacco products etc. states that anyone who places tobacco products on the market in Denmark must ensure that each unit packet and any outside packaging have a standardised format. This does not however apply to cigars and pipe tobacco. It follows from paragraph 2 of the provision that the Minister for Health shall lay down detailed rules on the form of standardisation.

It is proposed that in *paragraph 21a (2)*, which becomes paragraph 3. ‘in accordance with paragraphs 1 and 2’ shall be inserted after ‘presentation’.

The proposed amendment is to be seen in conjunction with § 1 no. 15 of the draft Act, in which it is proposed to insert a new paragraph 2 into § 21a of the Act on tobacco products, etc., whereby the person who places on the market technical equipment used with heated tobacco products in Denmark must ensure that each unit packet and any outside packaging has a standardised format.

The proposed amendment will mean that the Minister for Health also lays down more detailed rules on the format of standardisation with regard to the proposed § 21a (2).

Under the proposed provision, the Minister for Health may, inter alia, lay down rules on colour, shape, appearance, text, material and labelling. The rules will be based, as far as possible, on existing requirements.

Re No 17

§ 21a(1) of the Act on tobacco products etc. states that anyone who places tobacco products on the market in Denmark must ensure that each unit packet and any outside packaging have a standardised format. This does not however apply to cigars and pipe tobacco. Paragraph 2 of the provision states that the Minister for Health shall lay down detailed rules on the format of standardisation.

§ 30a(1) of the Act on tobacco products etc. states that anyone who markets herbal products for smoking in Denmark must ensure that each unit packet and any outside packaging has a standardised format. Paragraph 2 of the provision states that the Minister for Health shall lay down detailed rules on the format of standardisation.

It is proposed to insert: § 22d as a new provision in *Chapter 6*.

It is proposed in § 22d (1) that a person placing tobacco surrogates on the market in Denmark must ensure that each unit packet and any outside packaging is standardised.

The proposed provision would mean that requirements for the standardised design of unit packets and any outside packaging will continue to apply to tobacco surrogates in the future.

Tobacco surrogates are an umbrella term for products that contain nicotine but are not a tobacco product, electronic cigarette or a medicinal product, cf. the definition in § 2 no. 25 of the Tobacco Products Act, etc. The Authority allows standardisation requirements to differentiate according to the specific type of tobacco surrogate. In this way, future forms of tobacco surrogates can be taken into account.

As in the case of tobacco products, standardisation means that packages must not have logos or other types of branding elements, but only the brand name, the product name, the name of the manufacturer and the other elements, including health warnings deriving from the legislation. Thus, all packs will have to have the same colours and the same standard font.

It is proposed in § 22d(2) that the Minister for the Interior and Health shall lay down more detailed rules on the design of standardisation.

The proposed amendment will result in the Minister for the Interior and Health laying down more detailed rules on the format of standardisation with regard to the proposed § 21c(1).

Under the proposed provision, the Minister for the Interior and Health will be able, inter alia, to lay down rules on colour, shape, appearance, text, material and labelling. The rules will be based, as far as possible, on existing requirements.

Re No 18

§ 32(1) of the Act on tobacco products etc. states that the Danish Safety Technology Authority shall monitor compliance with the requirements laid down in this Act and in rules laid down pursuant thereto.

§ 32a(1) of the Act states that the Customs and Tax Administration shall check that unit packets of tobacco products bear safety stamps, cf. § 31b(1) and (2).

It is proposed that a new *paragraph 3* be inserted in *paragraph 32a*:

According to the proposed *paragraph 3* the Customs and Tax Administration will assist in verifying compliance with the rules set out in Chapter 4a.

The proposed amendment will mean that it is provided that the Danish 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. by § 1, no 13, of the draft Act. Specifically, it will be the Customs Agency, which is part of the Danish Tax Administration, which will assist in the checks.

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 § 18a.

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 19

§ 35a(1) of the Act on tobacco products, etc. states that the Danish Safety Technology Authority may proceed with seizures of tobacco products, tobacco surrogates and herbal products for smoking and equipment used together with them if the Authority has reason to believe that they are contrary to penalised rules in this Act, penalised rules laid down pursuant to this Act or penalised rules in regulations relating to the scope of this Act and there is reason to believe that the product can serve as evidence or should be confiscated.

§ 35b(1) of the Act states that the Customs and Tax Administration may detain tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used with them which are held by manufacturers, importers or retailers, etc., with a view to their transfer to the Danish Safety Technology Authority with a view to their seizure, if the administration has reason to believe that they are contrary to penalised rules of this Act, penalised rules laid down pursuant to this Act or penalised rules in regulations relating to the scope of this Act.

Paragraph 2 of that provision states that the Customs and Tax Administration may detain tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used with them, which are being transported into the Danish customs territory from other parts of the customs territory of the European Union or from a country outside the EU, with a view to their transfer to the Danish Safety Technology Authority, if the administration has reason to believe that they are contrary to the penalised rules of this Act, penalised rules laid down pursuant to this Act or penalised rules in regulations relating to the scope of this Act.

Paragraph 3 of the provision states that the Danish Safety Technology Authority may in order to ensure customs duties and charges detain tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used with them, which are held by manufacturers, importers or retailers, etc., in order to transfer the products to the Customs and Tax Administration.

It is proposed that: in § 35a(1), and § 35b(1)-3, the following is inserted after ‘equipment’: ‘and flavourings’.

As a result of the proposed provision, the Danish Safety Technology Authority’s power of seizure and the power of the Danish Tax Administration to retain products also include flavourings used with tobacco products, tobacco surrogates and herbal products for smoking.

The proposed amendment is to be seen in the context of § 1 no. 10 of the draft Act, where it is proposed to prohibit the marketing of, inter alia, flavourings for use in tobacco surrogates with a flavour with the exception of tobacco and menthol.

Re No 20

The Act on Tobacco Products etc. does not contain any rules on the extra-judicial adoption of confiscation of tobacco products, tobacco surrogates and herbal products for smoking, and equipment and flavourings used with them.

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: § 35c as new provisions in Chapter 10.

It is proposed in § 35c (1) that in cases involving an offence which is deemed not to result in a penalty higher than a fine, the perpetrator of the offence may, upon notification by the Danish Safety Technology Authority, order the extra-judicial confiscation of illicit tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used with them. The adoption of extra-judicial confiscation pursuant to paragraph 1 shall require the perpetrator of the offence to declare himself guilty of the offence and to accept the extra-judicial confiscation.

The proposed provision will result in the Danish Safety Technology Authority in future cases which are deemed not to result in higher penalties than fines and where the accused person declares that he or she is guilty of the infringement, has the legal basis for the extra-judicial adoption of confiscation of tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used with them, which are illegal to market in Denmark when they detect infringements during their checks. The proposal will thus create the possibility for the Danish Safety Technology Authority in certain cases to close the case and confiscate the products without involving the police and the judiciary.

However, in all cases, for extra-judicial confiscation to be possible, this presupposes that the factual and legal circumstances of the case are deemed to have been clarified to an extent and that the accused person de-

clares himself guilty of the offence and consents to extra-judicial confiscation. If the accused does not accept confiscation of the products or if there is sufficient uncertainty in the circumstances of the case, the case will have to be forwarded to the police for further prosecution.

The extra-judicial adoption of confiscation under the proposal may take place in cases in which the Danish Safety Technology Authority has the power to issue administrative penalty notices, as is proposed by § 1 no. 35 of the draft Act that the Minister for the Interior and Health may, following negotiations with the Minister for Justice, lay down rules on. If the Danish Safety Technology Authority finds that offences cannot be settled outside the court by means of an administrative penalty order, there can thus also be no extra-judicial confiscation of the illegal products. In accordance with § 35a of the Act on tobacco products etc., the Danish Safety Technology Authority will be able to seize the products that are illegal to market and forward the case to the police for further prosecution and possible confiscation.

The confiscation of an illegal tobacco product, tobacco surrogate, herbal smoking product or equipment and flavourings used with them means that ownership of the product has been transferred to the State. The State may then dispose of the product. In practice, in the case of illegal products, this generally involves destruction.

It is proposed in § 35c (2) that the rules of the Administration of Justice Act on requirements concerning the content of an indictment and the absence of an obligation on the accused person to make a statement shall apply *mutatis mutandis* to the adoption of confiscation under paragraph 1.

This applies, for example, to the name and address of the accused person, information on the offence being prosecuted and the regulation alleged to have been infringed, and a brief description of the offence being prosecuted, indicating the time, place, subject matter, method of performance and other details necessary for a sufficient and clear description, cf. § 834(1), nos. 2 and 3 and (2) of the applicable Code of Civil Procedure.

See also point 2.2 in the general comments on the draft Act.

Re No 21

§ 36 (1) no. 1 states that the Danish Safety Technology Authority may prohibit the placing on the market of tobacco products if the product does not

comply with the requirements of § 10, § 19(1), § 20(1) and (2), § 21a(1) or § 22a, or in rules laid down pursuant to §§ 8(2), 9(2), 19(2), 20(3), 21 or 21a(2).

It is proposed to amend ‘§ 21a (1)’ in § 36(1) *no 1* to ‘§ 21a(1) and (2), § 22’ and that ‘§ 21 or § 21a(2)’ is replaced by ‘§ 21(1) - (3) or § 21a(3)’.

The proposed amendment will have the effect of adding §§ 21a(2), 22 and 21(2) and (3) to § 36(1), *no. 1*, as a result of which the Danish Safety Technology Authority will in future be able to prohibit the marketing of tobacco products if the product does not comply with the requirements of these provisions. The proposed amendment would also have the effect of changing the reference to regulations laid down pursuant to § 21a(2) to regulations laid down pursuant to 21a(3).

The addition of § 21a(2) follows on from § 1 *no. 15* of the draft Act, in which it is proposed to add a new § 21a(2) to the Act on tobacco products, etc., whereby the person who places on the market technical equipment used with heated tobacco products in Denmark must ensure that each unit packet and any outside packaging has a standardised format. With the addition of § 21a(2) to § 36(1) *no. 1*, the Danish Safety Technology Authority will henceforth be able to prohibit the placing on the market of tobacco products if unit packets and any outside packaging for technical equipment used with heated tobacco products do not have a standardised design. Reference is also made to § 1 *nos. 26-28* of the draft Act, which proposes that infringement of § 21a(2) be punishable by a fine – irrespective of whether a prior marketing ban has been issued.

The addition of § 22 is in order that the Danish Safety Technology Authority will in future be able to prohibit the placing on the market of tobacco products if in unit packets or any outside packaging of tobacco products there are vouchers offering discounts, free distribution, two-for-one offers or other similar offers. At present, the infringement of § 22 is not subject to criminal penalties. With the addition of § 22 in § 36(1) *no. 1*, the Danish Safety Technology Authority will henceforth be able to prohibit the placing on the market of tobacco products if they do not meet the requirements as to what may be in unit packets and any outside packaging.

The addition of § 21(2) and (3) follows on from § 1 *no. 14* of the draft Act, in which it is proposed, *inter alia*, to insert paragraphs 2 and 3 into § 21 of the Act on tobacco products etc. With the proposed § 21(2), the Danish Health Authority lays down detailed rules on requirements for the appearance of cigarettes and roll-your-own tobacco, including paper, filters, etc.

With the proposed § 21(3), the Danish Health Authority lays down detailed rules on ingredients in relation to unit packets of chewing tobacco. With the addition of § 21(2) and (3) to § 36(1) no. 1, the Danish Safety Technology Authority will henceforth be able to prohibit the placing on the market of tobacco products if they do not comply with the rules on appearance and ingredients laid down by the Danish Health Authority. Reference is also made to § 1 no. 32 of the draft Act, which proposes that infringements of rules laid down pursuant to § 21, including the new paragraphs (2) and (3), be punishable by a fine – irrespective of whether a prior marketing ban has been issued.

The amendment of the reference from § 21a(2) to § 21a(3) has to be seen in conjunction with § 1 no. 15 of the draft Act, where it is proposed to add a new paragraph 2 to § 21a and consequently paragraph 2 becomes paragraph 3.

Re No 22

§ 36 (1) no. 1 states that the Danish Safety Technology Authority may prohibit the placing on the market of tobacco products if the product does not comply with the requirements of § 10, § 19(1), § 20(1) and (2), § 21a(1) or § 22a, or in rules laid down pursuant to §§ 8(2), 9(2), 19(2), 20(3), 21 or 21a(2).

It is proposed that ‘§ 8(2), § 9(2)’ in § 36(1) no. 1 are replaced by ‘§ 8(1) and (2), § 9(1) and (2),’.

The proposed amendment will have the effect of adding § 8(1) and § 9(1) to § 36 (1), no. 1, by which the Danish Safety Technology Authority will in future be able to prohibit the marketing of tobacco products if the product does not meet the requirements of these provisions.

The addition of § 8 (1) is in order that the Danish Safety Technology Authority will henceforth be able to prohibit the placing on the market of tobacco products if the product does not meet the requirements set by the Minister for Health on maximum tar, nicotine and carbon monoxide content in emissions from cigarettes marketed or manufactured in the country. The authorisation was used in Order No 780 of 13 June 2023. At present, an infringement of § 8(1) is not punishable. With the addition of § 8(1) to § 36(1) no. 1, infringement will in future result in a prohibition on marketing. Reference is also made to § 1, nos. 31 and 32, of the draft Act, which proposes that infringements of rules laid down pursuant to § 8(1) be pun-

ishable by a fine – irrespective of whether a prior marketing ban has been issued.

The addition of § 9(1) is in order that the Danish Safety Technology Authority will henceforth be able to prohibit the marketing of tobacco products if the product does not meet the requirements laid down by the Minister for Health on methods for measuring the emission levels of tar, nicotine and carbon monoxide contained in cigarettes marketed or manufactured in Denmark. The authorisation was used in Order No. 780 of 13 June 2023. At present, an infringement of § 9(1) is not punishable. With the addition of § 9(1) to § 36(1) no. 1, infringement will in future result in a prohibition on marketing. Reference is also made to § 1, nos. 31 and 32, of the draft Act, which proposes that infringements of rules laid down pursuant to § 9(1) be punishable by a fine – irrespective of whether a prior marketing ban has been issued.

Re no. 23

§ 36(2) no. 1 of the Act on tobacco products etc. provides that the Danish Safety Technology Authority may prohibit the marketing of tobacco surrogates if the product does not comply with the requirements of § 19a(1) or in rules laid down pursuant to § 19a(2) or § 22c.

It is proposed that ‘§ 19a(1)’ in § 36(2) no. 1 is replaced by ‘§ 10a(1), § 19a(1), § 22d(1)’ and that ‘§ 19a(2) or § 22c’ is replaced by ‘§ 10a(2), § 19a(2), § 21(4) and (5), § 22c or § 22d(2)’.

The proposed amendment will have the effect of adding § 10a(1) and (2), § 21(4) and (5) and § 22d(1) and (2) to § 36(2) no. 1, whereby the Danish Safety Technology Authority will in future be able to prohibit the marketing of tobacco surrogates if the product does not comply with the requirements of those provisions or rules laid down pursuant to those provisions.

The addition of § 10a(1) and (2) follows from § 1 no. 8 of the draft Act, in which it is proposed to insert § 10a into the Act on tobacco products, etc., whereby manufacturers and importers must ensure that tobacco surrogates comply with the nicotine content limit, and that the Minister for the Interior and Health lays down rules on maximum nicotine content in tobacco surrogates. With the addition of § 10a(1) and (2) to § 36(2) no. 1, the Danish Safety Technology Authority will henceforth be able to prohibit the marketing of tobacco surrogates if they do not comply with the maximum nicotine content. Reference is also made to § 1 no. 32 of the draft Act, which proposes that infringements of rules laid down pursuant to § 10a(2)

be punishable by a fine – irrespective of whether a prior marketing ban has been issued.

The addition of § 21(4) and (5) follows on from § 1 no. 14 of the draft Act, in which it is proposed, *inter alia*, to add paragraphs 4 and 5 to § 21 of the Act on tobacco products, etc., by which the Danish Health Authority shall lay down detailed rules on requirements for the appearance of tobacco surrogates and the Danish Health Authority shall lay down detailed rules on components in relation to unit packets of tobacco surrogates. With the addition of § 21(4) and (5) to § 36(2) no. 1, the Danish Safety Technology Authority will henceforth be able to prohibit the marketing of tobacco surrogates if they do not comply with the rules on requirements for appearance and ingredients laid down by the Danish Health Authority. Reference is also made to § 1 no. 32 of the draft Act, which proposes that infringements of rules laid down pursuant to § 21, including the new paragraphs (4) and (5), be punishable by a fine – irrespective of whether a prior marketing ban has been issued.

The addition of § 22d(1) and (2) follows on from § 1 no. 17 of the draft Act, in which it is proposed to insert § 22d into the Act on tobacco products, etc., whereby the person who markets tobacco surrogates in Denmark must ensure that each unit packet and any outside packaging is standardised and that the Minister for the Interior and Health lays down more detailed rules on the format of standardisation. With the addition of 22d(1) and (2) to § 36(2) no. 1, the Danish Safety Technology Authority will henceforth be able to prohibit the marketing of tobacco surrogates if unit packets and any outside packaging of tobacco surrogates do not have a standardised format. Reference is also made to § 1 nos. 26-28 and 32 of the draft Act, which proposes that infringement of § 22d(1) and rules laid down pursuant to § 22d(2) be punishable by a fine – irrespective of whether a prior marketing ban has been issued.

Re no. 24

§ 38a of the Act on tobacco products etc. states 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 rules in this Act, rules laid down pursuant to this Act or regulations relating to the scope of this Act.

The Act on Tobacco Products etc. does not provide for orders to be issued to communication platforms such as social media.

It is proposed that § 38c is inserted after § 38b.

Under the proposed § 38c the Danish Safety Technology Authority may order a communication platform to modify or remove content referring to a product which 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.

The proposed provision will mean that the possibility for the Danish Safety Technology Authority to order content to be modified or removed will henceforth also cover communication platforms and not only online interfaces.

The proposal must be seen in the light of the fact that the marketing of tobacco products, tobacco surrogates and herbal products for smoking no longer only takes place from brick-and-mortar shops and webshops, but has also moved to social media.

The proposal means that the Danish Safety Technology Authority will be able to order communication platforms to change the way a product is placed on the market or to remove all content where a non-compliant product is placed on the market, for example from a user profile.

An order to modify or remove content will in principle only be issued once the control authority has found that a communication platform has not complied with a request to remove the content in question voluntarily.

The provision could not be used to block communication platforms or user profiles.

§ 1 no. 30 of the draft Act also provides that if a communication platform fails to comply with an order, they will be penalised by a fine.

Reference is also made to § 1 no. 6 of the draft Act, where it is proposed to insert a definition of communication platforms in the Act on tobacco products, etc. It is also referred to § 3 no. 8 of the draft Act, where it is proposed to be inserted in the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, that the Danish Safety Technology Authority may also order a communication platform to amend or remove content relating to the marketing of tobacco products, tobacco surrogates or herbal products for smoking to persons under the age of 18.

Re no. 25

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

§ 45(1) no. 1 provides that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2), 30(1) or 30a(1).

The expectations regarding the level of fines for infringements of §§ 4(1), 5(1), 10, 13, 14 1), 15-17, 18(1), 19(1), 20(1) and (2), 22a, 28(2), or 30(1) are not described in detail in the explanatory notes to the Act, see Folketingstidende 2015- 2016, Appendix A, L166, as set out, page 54, Folketingstidende 2018-2019, Appendix A, L 108, as set out, page 15 and Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of §§ 19a(1), 21a(1) or 30a(1) is DKK 10 000 in first time cases, DKK 20 000 in second time cases and DKK 40 000 in third time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of § 24(1) is DKK 25 000 in the first case and DKK 40 000 in second time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 44.

It is proposed that: § 45(1) no. 1 be redrafted, after which, unless a more severe penalty is required under other legislation, a fine shall be imposed on any person who infringes the provisions of §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2), 30(1) or 30a(1).

The proposed amendment will not lead to changes to which provisions of the Act on tobacco products etc. may be penalised by a fine. The proposed amendment is prompted by the need to indicate expectations of a level of fines for infringements of §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24a(1), 30(1) and 30a(1) which are higher than previously.

With regard to §§ 4(1), 5(1), 10, 22a and 28(2), no changes are envisaged in relation to the expectations of the applicable level of fines than previously expected.

As regards §§ 13, 14(1), 15, 15a, 16, 17, 18 (1), 19(1), 19a (1), 20(1) and (2), 21a(1) 24(1), 30(1) and 30a(1), it is expected, with the amendment, that the starting point for determining the level of fines will be DKK

50 000. The level of the fine will as a starting point be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 26

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

§ 45(1) no. 1 provides that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2), 30(1) or 30a(1).

The expectations regarding the level of fines for infringements of §§ 4(1), 5(1), 10, 13, 14 1), 15-17, 18(1), 19(1), 20(1) and (2), 22a, 28(2), or 30(1) are not described in detail in the explanatory notes to the Act, see Folket-

ingstidende 2015- 2016, Appendix A, L166, as set out, page 54, Folketingstidende 2018-2019, Appendix A, L 108, as set out, page 15 and Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of §§ 19a(1), 21a(1) or 30a(1) is DKK 10 000 in first time cases, DKK 20 000 in second time cases and DKK 40 000 in third time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of § 24(1) is DKK 25 000 in the first case and DKK 40 000 in second time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 44.

It is proposed that § 45(1) *no. 1* be reworded, according to which, unless a higher penalty is incurred under other legislation, a fine shall be imposed on anyone who infringes §§ 4(1), 5(1), 10, 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1), or 30a(1).

The proposed amendment would result in more provisions being punishable by a fine. These are §§ 15b(1) and (2), 21a(2) and 22d(1).

§ 1 no. 25 of the draft Act proposes to redraft § 45 (1), no. 1, with entry into force on 1 January 2025, and in this context the expected levels of fines for infringements of §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1), and 30a(1) have been increased.

This increase in the expectations for the amount of fines for §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1) and 30a(1) will continue with the proposed amendment. It should be noted that § 17(1) is proposed to be amended by § 1 nos. 11 and 12 of the draft Act to include tobacco surrogates. This does not change the continuation of the expectation of the level of fines for infringements of § 17(1) with the proposed amendment.

With regard to § 15b(1) and (2), which is proposed to be added to the Act on tobacco products etc. by § 1 no. 10 of the draft Act, it is proposed that infringements should be punishable by a fine. Penalisation of the infringement of the provision is proposed, inter alia, to ensure that flavourings cannot adversely affect consumption patterns of tobacco surrogates from a health perspective.

With regard to § 21a(2), which is proposed to be added to the Act on tobacco products etc. by § 1 no. 15 of the draft Act, it is proposed that infringements should be punishable by a fine. It is proposed that violations of the provisions be subject to penalty, inter alia in order to protect consumers, especially children and young people, against serious damaging effects and serious health consequences from use of the products.

With regard to § 22d(1), which is proposed to be added to the Act on tobacco products etc. by § 1 no. 17 of the draft Act, it is proposed that infringements should be punishable by a fine. It is proposed that violations of the provisions be subject to penalty, inter alia in order to protect consumers, especially children and young people, against serious damaging effects and serious health consequences from use of the products.

In the event of an infringement of § 15b(1) and (2), § 21a(2) and § 22d(1), the expectation for the level of fines is that the starting point will be DKK 50 000. Determination of the level of fines will at the starting point be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the

amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 27

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

§ 45(1) no. 1 provides that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2), 30(1) or 30a(1).

The expectations regarding the level of fines for infringements of §§ 4(1), 5(1), 10, 13, 14 1), 15-17, 18(1), 19(1), 20(1) and (2), 22a, 28(2), or 30(1) are not described in detail in the explanatory notes to the Act, see Folketingstidende 2015- 2016, Appendix A, L166, as set out, page 54, Folketingstidende 2018-2019, Appendix A, L 108, as set out, page 15 and Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of §§ 19a(1), 21a(1) or 30a(1) is DKK 10 000 in first time cases, DKK 20 000 in second time cases and DKK 40 000 in third time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of § 24(1) is DKK 25 000 in the first case and DKK 40 000 in second time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 44.

It is proposed that: § 45(1) no. 1 be reworded, according to which, unless a higher penalty is incurred under other legislation, a fine shall be imposed on anyone who infringes §§ 4(1), 5(1), 10, 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 18a(1), 19a(1), 20(1) and (2), 21a(1) and (2); 22a, 22d(1), 24(1), 28(2), 30(1) or 30a(1).

The proposed amendment would result in an infringement of § 18a(1) being punishable by a fine.

§ 1 no. 25 of the draft Act proposes to redraft § 45 (1), no. 1, with entry into force on 1 January 2025, and in this context the expected levels of fines for infringements of §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1), and 30a(1) have been increased.

This increase in the expectations for the amount of fines for §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1) and 30a(1) will continue with the proposed amendment. It should be noted that § 17(1) is proposed to be amended by § 1 nos. 11 and 12 of the draft Act to include tobacco surrogates. This does not change the continuation of the expectation of the level of fines for infringements of § 17(1) with the proposed amendment.

§ 1 no. 26 of the draft Act proposes to redraft § 45(1) no. 1 with entry into force on 1 April 2025 so that infringements of §§ 15b(1) and (2), 21a(2) and 22d(1) will be punishable by a fine. Here, the expectation of the level of fines for infringements of §§ 15b(1) and (2), 21a(2) and 22d(1) has been indicated. This expectation of the level of fines is maintained with the proposed amendment.

With regard to § 18a(1), which is proposed to be added to the Act on tobacco products etc. by § 1 no. 13 of the draft Act, it is proposed that infringements should be punishable at the same time.

The penalty shall be imposed on any person who imports, purchases, delivers, receives, manufactures, processes or possesses tobacco surrogates covered by the prohibition in § 15b(1) or exceeds the nicotine content limit for a tobacco surrogate laid down pursuant to § 10a. This means that it is up to the individual who imports, purchases, holds, etc., to decide whether the products infringe the rules in question.

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. The undertaking dispatching the product or the carrier, etc. cannot be held liable for any infringement of this provision unless they have independently incurred criminal liability, for example by knowing that illegal products or similar goods are being transported. In that regard, it should be noted that flavourings and nicotine content are often apparent from the online marketing of the product or the packaging and labelling of the products.

It is assumed that, in first cases, an infringement of § 18a (1) is, in principle, punishable by a fine of DKK 10 000. In the second and third cases fines measured at DKK 20 000 and DKK 40 000 respectively are assumed. In determining the fine for infringement of § 18a(1), the aim should be that, in view of the health consequences of the use of tobacco surrogates, the amount of the fine is such that it acts as a deterrent 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 § 18a(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 therefore on taking action against the organisers and not private individuals, cf. also the exception in § 18a(2) no. 1. It must therefore be regarded as an attenuating circumstance if it is private individuals, in particular those of young age, who infringe paragraph 18a (1) and the infringement is not of a commercial nature or has taken place with a view to their onward transfer to a large number of persons or for substantial remuneration. The amount of the fine should therefore be significantly lower than DKK 10 000, DKK 20 000 and DKK 40 000 respectively.

Infringement of § 18a(1) may be punished concurrently with other offences. This means that if the same product or different products result in an infringement of both § 18a(1) and other provisions of the Act, there should be punishment under both provisions. If, for example, a retailer infringes both a prohibition on the marketing of an illegal characterising flavour under § 15b(1) and the prohibition of possession under § 18a(1), it will have to be taken into account when determining the penalty that several circumstances have been infringed. There is no absolute cumulation.

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 is also pointed out that, in the event of an infringement of § 18a(1), the Danish Safety Technology Authority will be able to seize the products concerned, cf. §§ 35a and 35b of the Act on tobacco products, etc. and § 1 no. 19 of the draft Act.

Re no. 28

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

§ 45(1) no. 1 provides that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2), 30(1) or 30a(1).

The expectations regarding the level of fines for infringements of §§ 4(1), 5(1), 10, 13, 14 1), 15-17, 18(1), 19(1), 20(1) and (2), 22a, 28(2), or 30(1) are not described in detail in the explanatory notes to the Act, see Folketingstidende 2015- 2016, Appendix A, L166, as set out, page 54, Folketingstidende 2018-2019, Appendix A, L 108, as set out, page 15 and Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of §§ 19a(1), 21a(1) or 30a(1) is DKK 10 000 in first time cases, DKK 20 000 in second time cases and DKK 40 000 in third time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 44.

The expectation of the level of fines for infringements of § 24(1) is DKK 25 000 in the first case and DKK 40 000 in second time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 44.

§ 2(21) of Act No. 2071 of 21 December 2020 states that, in § 45(1), no. 1, of the Act on tobacco products, etc., ‘§ 14(1)’ is amended to read: ‘§ 14(1) and (3),’. The Minister for the Interior and Health shall determine the date of entry into force of § 2 no. 21 of the Act. The provision will be put into effect when and if the basis of EU law is in place, with the proviso that producers are given a period of 6 months in which to convert their production facilities.

The expectation of the level of fines for infringements of § 14(3) is DKK 10 000 in first time cases, DKK 20 000 in second time cases and DKK 40 000 in third time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as presented on page 44.

It is proposed that: § 45(1) no. 1 be reworded, according to which, unless a higher penalty is incurred under other legislation, a fine shall be imposed on anyone who infringes the provisions of §§ 4(1), 5(1), 10, 13, 14(1) and (3), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 18a(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1) or 30a(1).

The proposed amendment would mean that the adopted § 2 no. 21 of Act 2071 of 21 December 2020 will be adopted again for technical reasons and

that the comments may indicate expectations of a higher level of fines for infringements.

§ 1 no. 25 of the draft Act proposes to redraft § 45 (1), no. 1, with entry into force on 1 January 2025, and in this context the expected levels of fines for infringements of §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1), and 30a(1) have been increased.

This increase in the expectations for the amount of fines for §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1) and 30a(1) will continue with the proposed amendment. It should be noted that § 17(1) is proposed to be amended by § 1 nos. 11 and 12 of the draft Act to include tobacco surrogates. This does not change the continuation of the expectation of the level of fines for infringements of § 17(1) with the proposed amendment.

§ 1 no. 26 of the draft Act proposes to redraft § 45(1) no. 1 with entry into force on 1 April 2025 so that infringements of §§ 15b(1) and (2), 21a(2) and 22d(1) will be punishable by a fine. Here, the expectation of the level of fines for infringements of §§ 15b(1) and (2), 21a(2) and 22d(1) has been indicated. This expectation of the level of fines is maintained with the proposed amendment.

§ 1 no. 27 of the draft Act proposes that § 45(1) no. 1 be redrafted with entry into force on 1 July 2025 so that infringements of § 18a(1) would be punishable by a fine. Here, the expectation of the amount of the fine in the event of an infringement of § 18a(1) has been indicated. This expectation of the amount of the fine is maintained with the proposed amendment.

With regard to § 14(3), it is proposed to change the expectation of the level of fines, so that the starting point for determining the level of fines will initially be DKK 50 000. The starting point for determining the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the

amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 29

§§ 36 and 37 of the Act on tobacco products etc. allow the Danish Safety Technology Authority to issue bans on the placing on the market of certain tobacco products, tobacco surrogates and herbal products for smoking.

§ 45(1) no. 4 of the Act on tobacco products, etc. states that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes a prohibition under §§ 36 or 37.

The expectations regarding the level of fines for infringements of §§ 36 and 37 are not described in detail in the comments, cf. Folketingstidende 2015-2016, Appendix A, L 166, as presented on page 54.

It is proposed to amend ‘§§ 36 or 37’ in § 45(1) no. 4, to ‘§ 36 or § 37’.

This is merely a technical amendment to the legislative text, the purpose of which is to make it possible to set out, in the comments, more detailed guidance on the expectation of the level of penalties under the provisions. It should also be noted that § 1, nos. 21-23 of the draft Act proposes that several provisions be covered by § 36 and that the Danish Safety Technology Authority may thus also prohibit the marketing of tobacco products and tobacco surrogates in the event of infringement of these.

It is proposed to change the expectation to the level of fines for infringements of § 36 or § 37, so that the levels of fines in future start at DKK 50 000 at the initial point. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 30

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

Under § 45(1) no. 5, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who fails to comply with an or-

der or an obligation to provide information based on §§ 3(1), 3a(1), 5(2), 7(3), 28(1), 32(3)-(5) or 38.

The expectations regarding the level of fines for infringements under § 38 are not described in more detail in the explanatory notes to the Danish Parliament (Folketingstidende) 2015-2016, Appendix A, L 166, as presented on page 55.

It is proposed to amend ‘or § 38’ in § 45(1) no. 5, to ‘§ 38 or § 38c’.

The proposed amendment would result in an infringement of § 38c being punishable by a fine. The proposed amendment will also allow the comments to indicate expectations of a higher level of fines for infringements of § 38 than previously.

With regard to § 38c, which is proposed to be added to the Act on tobacco products etc. by § 1 no. 24 of the draft Act, it is proposed that infringements should be punishable by a fine. Punishment for infringement of the provision is proposed, inter alia, to ensure that consumers, in particular children and young people, are not confronted with and tempted by tobacco products, etc. that are illegally marketed in Denmark.

In the event of an infringement of § 38c, the expectation of the level of fines is that the starting point for the level of fines will be DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority’s assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is

such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

With regard to § 38, it is proposed to change the expectation of the level of fines, so that the levels of fines will henceforth start at DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there

are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re No 31

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

§ 45 (2) states that in rules laid down pursuant to §§ 8(2), 9(2), 19a(2), 21, 21a(2), 22c, 24 (2), 30(2) or 30a(2), fines may be imposed for infringement of the rules in the provisions.

The expectations regarding the level of fines for infringements of §§ 8(2), 9(2), 19(2), 21 or 30(2) are not described in detail in the explanatory notes to the Act, cf. Folketingstidende 2015-2016, Appendix A, L 166, as presented on page 55.

The expectation of the level of fines for infringements of §§ 19a(2), 21a(2), 22c or 30a(2) is DKK 10 000 in first-time cases, DKK 20 000 in second-time cases and DKK 40 000 in third-time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 44.

The expectation of the level of fines for infringements of § 24(2) is DKK 25 000 in first-time cases and DKK 40 000 in second time-cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 45.

It is proposed that *paragraph 45(2)* be reworded, under which in rules laid down pursuant to § 8(1) and (2), § 9(1) and (2), § 19(2), § 19a(2), § 21a(2), § 22c, § 24(2), § 30(2) or § 30a(2), fines may be determined for infringement of the provisions of the rules.

The proposed amendment would have the effect of redrafting the penalty clause in such a way that it is possible in the explanatory notes to indicate expectations of a higher level of fines for infringements of all the provisions. In addition, the amendment will mean that infringements of rules issued pursuant to §§ 8(1), 9(1) and 19(2) will henceforth be punishable by a fine.

With regard to §§ 8(1) and 9(1), it is proposed that an infringement should be punishable by a fine. It is proposed that violations of the provisions be subject to penalty, inter alia in order to protect consumers, especially children and young people, against serious damaging effects and serious health consequences from use of the products.

With regard to § 19(2), it is proposed that an infringement should be punishable by a fine. It is proposed that violations of the provisions be subject to penalty, inter alia in order to protect consumers, especially children and young people, against serious damaging effects and serious health consequences from use of the products. Infringement of the provision is also proposed to be penalised in order to align the penalties with those applicable to infringements of the corresponding provisions for herbal products and tobacco surrogates, cf. that §§ 19a(2) and 30(2) are already covered by § 45 (2).

In the event of an infringement of §§ 8(1), 9(1) and 19(2), the expectation for the level of fines is that the starting point for the level of fines is DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

With regard to §§ 8(2), 9(2), 19a (2), 21, 21a (2), 21c, 22c, 24(2), 30(2), 30a (2), it is expected, with the amendment, that the levels of fines will henceforth start from the outset to be DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re No 32

§ 45 of the Act on tobacco products etc. states how a number of provisions of the Act are penalised.

§ 45 (2) states that in rules laid down pursuant to §§ 8(2), 9(2), 19a(2), 21, 21a(2), 22c, 24 (2), 30(2) or 30a(2), fines may be imposed for infringement of the rules in the provisions.

The expectations regarding the level of fines for infringements of §§ 8(2), 9(2), 19(2), 21 or 30(2) are not described in detail in the explanatory notes to the Act, cf. Folketingstidende 2015-2016, Appendix A, L 166, as presented on page 55.

The expectation of the level of fines for infringements of §§ 19a(2), 21a(2), 22c or 30a(2) is DKK 10 000 in first-time cases, DKK 20 000 in second-time cases and DKK 40 000 in third-time cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 44.

The expectation of the level of fines for infringements of § 24(2) is DKK 25 000 in first-time cases and DKK 40 000 in second time-cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out on page 45.

It is proposed that *paragraph 45 (2)* be redrafted, according to which in rules laid down pursuant to §§ 8(1) and (2), 9(1) and (2), 10a(2), 19(2), 19a(2), 21a(3), 22c, 22d(2), 24(2), 30(2) or 30a(2), penalties may be imposed for infringement of the provisions of the rules.

The proposed amendment would result in infringements of §§ 10a(2) and 22d(2) being punishable by a fine.

The proposed amendment would also result in a reference to § 21a(3) instead of § 21a(2) as a result of § 1 no. 15 of the draft Act.

§ 1 no. 31 of the draft Act proposes to redraft § 45(2) with entry into force on 1 January 2025, and in this context the expectation of fines for infringements of all the provisions has been increased and it was provided that §§ 8(1), 9(1) and 19(2) will henceforth be punishable by a fine and the corresponding expected level of fines.

This increase in the expectations for the levels of fines, as well as the amounts indicated for infringements of §§ 8(1), 9(1) and 19(2), is continued with the proposed amendment. This also applies to § 21, which is proposed to be amended by § 1 no. 14 of the draft Act and thus the new paragraphs are in the provision.

With regard to §§ 10a(2) and 22d(2), which are proposed to be added to the Act on tobacco products etc. by § 1 nos. 8 and 17 of the draft Act, it is proposed that infringements should be punishable by a fine. It is proposed that violations of the provisions be subject to penalty, inter alia in order to protect consumers, especially children and young people, against serious

damaging effects and serious health consequences from use of the products.

In the event of an infringement of §§ 10a(2) and 22d(2), the expectation for the level of fines is that the starting point for the level of fines is DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 33

Paragraph 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that, in the event of a particularly serious or repeated infringement of §§ 1 and 2a, the right to market tobacco, tobacco surrogates and herbal products is to be deprived for a period of time.

The Act on tobacco products, etc. does not contain any rules on the withdrawal of the right to market tobacco products, tobacco surrogates, herbal products for smoking or other products. Thus, there is no possibility of depriving the right to market tobacco products, tobacco surrogates, herbal products for smoking or other products when in breach of the requirements of the Tobacco Products Act, etc.

It is proposed that in § 45 *paragraph 3* is inserted that in the event of particularly serious or repeated infringements of §§ 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1), 30a(1), or 36-38 and rules issued pursuant to § 19(2), § 19a(2), § 21a(2), § 22c, § 24(2), § 30(2), or § 30a(2) a person shall be deprived of the right to place tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavourings used with them for a period of time.

The proposed provision would have the effect of temporarily withdrawal for a period of time the right to place on the market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as the equipment and flavourings used with them, in cases of particularly serious repetition of placing on the market of products that are illegal to be placed on the market and in cases of particularly serious repetition of the absence of an age control system in distance sales. As far as equipment and flavourings are concerned, the withdrawal will cover the products regulated by the Act on tobacco products etc. and the Act on electronic cigarettes, etc.

Withdrawal of the right to place the products on the market will occur in the event of the third infringement and the withdrawal would normally apply for one year. In the event of subsequent infringements, this will result in a new temporary withdrawal of one year as a starting point.

The calculation of when three infringements have taken place is made over a period of 10 years. The repeat infringement effect thus ceases if it is more than 10 years since the last infringement was committed. The three infringements may have been detected during different inspections, but may also have been detected under the same supervision. Thus, three infringements found at the same time would have the effect of depriving the right to market the products, with the proviso that there must be an infringement of three different provisions and not, for example, that three products infringe the same provision.

The calculation of when three cases have occurred will also be measured across tobacco and nicotine products and disqualification will also apply across tobacco and nicotine products. Thus, no distinction is made between whether the infringement concerns tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with or without nicotine or equipment and flavourings used with them. Thus, for example, infringement of § 13 of the Act on tobacco products etc. prohibiting the placing on the market of tobacco for oral use will count equally as an infringement of § 25a (1) of the Act on electronic cigarettes, etc. prohibiting the marketing of characterising flavours other than tobacco and menthol in nicotine electronic cigarettes, even if it concerns different products and different legislation. The products are generally treated in the same way in terms of regulation and handling, so that infringements of the various laws are regarded as similar. Reference is made in this regard to §§ 2 no. 16 and 3 no. 12 of the draft Act, where a corresponding provision is proposed to be introduced in the Act on electronic cigarettes, etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18.

If a total of three infringements of the listed provisions of § 45(3) of the Tobacco Products Act, § 33(3) of the Act on electronic cigarettes etc. or § 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age occur before the end of the repeated infringement period, then there will be a temporary withdrawal of the right to market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavourings used together, starting with one year.

The provision is addressed to retailers. It is immaterial whether they are retailers who market through distance selling or at physical outlets.

The withdrawal of the right to market the products will apply only to the point of sale that has infringed the ban, even if the holder has several outlets. If the sales outlet is part of a chain of shops, the withdrawal of the right will therefore not be directed at the entire chain of shops but only that sales outlet that has violated the prohibition.

It should be noted that the right to market tobacco and nicotine products may also, depending on the circumstances, be withdrawn from the person concerned under § 79 of the Criminal Code. However, the conditions for applying § 79 of the Danish Penal Code are stricter than is the case under the proposed measure, since the use of § 79 of the Danish Penal Code re-

quires that the person in question is sentenced for an intentional offence providing the basis for an immediate danger of misuse of position and that there furthermore are special circumstances which justify the withdrawal. If the conditions for withdrawal under § 79 of the Danish Penal Code are met, then this provision should be used.

Re no. 34

Paragraph 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that, in the event of a particularly serious or repeated infringement of §§ 1 and 2a, the right to market tobacco, tobacco surrogates and herbal products is to be deprived for a period of time.

The Act on tobacco products, etc. does not contain any rules on the withdrawal of the right to market tobacco products, tobacco surrogates, herbal products for smoking or other products. Thus, there is no possibility of depriving the right to market tobacco products, tobacco surrogates, herbal products for smoking or other products when in breach of the requirements of the Tobacco Products Act, etc.

It is proposed that § 45(3) is interpreted as meaning that in the event of a particularly serious or repeated infringement of §§ 13, 14(1), 15, 15a, 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1), 30a(1) or 36-38 and regulations issued pursuant to §§ 19(2), 19a(2), § 21a(2), 22c, 24(2), 30(2) or 30a(2) shall be deprived of the right to market tobacco products, tobacco surrogates, herbal products for smoking and electronic cigarettes and refill containers with and without nicotine for a period of time.

The proposed amendment would result in more provisions being included. These are §§ 15b(1) and (2), 21a(2) and (3), 22d(1) and (2), and 10a(2), which is proposed to be added to the Act on tobacco products, etc., cf. § 1, nos. 8, 10 and 15-17 of the draft Act. Infringements of these provisions may - as with the provisions already contained in § 45(3), cf. § 1 no. 33 of the draft Act, which entered into force on 1 January 2025 - result in the temporary withdrawal of the right to market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them, for a period of time in the event of particularly serious re-offending. As far as equipment and flavourings are concerned, the withdrawal will cover the products regulated by the Act on tobacco products etc. and the Act on electronic cigarettes, etc.

Withdrawal of the right to place the products on the market will occur in the event of the third infringement and the withdrawal would normally apply for one year. In the event of subsequent infringements, this will result in a new temporary withdrawal of one year as a starting point.

The calculation of when three infringements have taken place is made over a period of 10 years. The repeat infringement effect thus ceases if it is more than 10 years since the last infringement was committed. The three infringements may have been detected during different inspections, but may also have been detected under the same supervision. Thus, three infringements found at the same time would have the effect of depriving the right to market the products, with the proviso that there must be an infringement of three different provisions and not, for example, that three products infringe the same provision.

The calculation of when three cases have occurred will also be measured across tobacco and nicotine products and disqualification will also apply across tobacco and nicotine products. Thus, no distinction is made between whether the infringement concerns tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with or without nicotine or equipment and flavourings used with them. Thus, for example, infringement of § 13 of the Act on tobacco products etc. prohibiting the placing on the market of tobacco for oral use will count equally as an infringement of § 25a (1) of the Act on electronic cigarettes, etc. prohibiting the marketing of characterising flavours other than tobacco and menthol in nicotine electronic cigarettes, even if it concerns different products and different legislation. The products are generally treated in the same way in terms of regulation and handling, so that infringements of the various laws are regarded as similar. Reference is made in this regard to §§ 2 no. 16 and 3 no. 12 of the draft Act, where a corresponding provision is proposed to be introduced in the Act on electronic cigarettes, etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18.

If a total of three infringements of the listed provisions of § 45(3) of the Tobacco Products Act, § 33(3) of the Act on electronic cigarettes etc. or § 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age occur before the end of the repeated infringement period, then there will be a temporary withdrawal of the right to market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavourings used together, starting with one year.

The provision is addressed to retailers. It is immaterial whether they are retailers who market through distance selling or at physical outlets.

The withdrawal of the right to market the products will apply only to the point of sale that has infringed the ban, even if the holder has several outlets. If the sales outlet is part of a chain of shops, the withdrawal of the right will therefore not be directed at the entire chain of shops but only that sales outlet that has violated the prohibition.

It should be noted that the right to market tobacco and nicotine products may also, depending on the circumstances, be withdrawn from the person concerned under § 79 of the Criminal Code. However, the conditions for applying § 79 of the Danish Penal Code are stricter than is the case under the proposed measure, since the use of § 79 of the Danish Penal Code requires that the person in question is sentenced for an intentional offence providing the basis for an immediate danger of misuse of position and that there furthermore are special circumstances which justify the withdrawal. If the conditions for withdrawal under § 79 of the Danish Penal Code are met, then this provision should be used.

Re no. 35

The Act on tobacco products, etc. does not contain any rules on the issuing of administrative fines in the event of infringement of the rules laid down in the Act.

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 *paragraph 45a* as new provisions in Chapter 15.

It is proposed in § 45a, *paragraph 1* that the Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in cases concerning penalties under § 45 (1), or rules laid down pursuant to the Act, which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case may be decided without legal proceedings if the perpetrator of the infringement declares himself guilty of the infringement and declares that he or she is prepared to pay a fine as specified in the application for a fine within a specified period.

The proposed provision will mean that the Minister for the Interior and Health will be able on an ongoing basis to lay down rules on the provisions

for which the Danish Safety Technology Authority will henceforth have the power to issue administrative penalty notices in the event of an offence.

The Danish Safety Technology Authority will only be empowered to issue administrative fines when the infringements are generally uniform, straightforward and without any evidential doubts, and when the level of penalties is fixed, for example in court practice or preparatory work. Infringements must therefore, in general, be clear and immediately verifiable and the outcome of the case, including the determination of the amount of the fine, must be free from any element of discretion.

If the case is not straightforward to enable the case to be resolved by means of an administrative penalty order, or if the appropriate level of penalties can be called into question, a report to the police shall be made instead.

The types of infringements found to be suitable for issuing administrative penalty notices are infringements that are prima facie detectable, such as §§ 19(1), 19(1), 19a and 30 of the Act on tobacco products, etc., which concern requirements for health warnings on packaging, which, in accordance with § 45 (1) no. 1 of the Act, are punishable by a fine in the event of infringement. Infringement of § 23(1) of the Act on tobacco products, etc., which concerns registration with the Danish Safety Technology Authority and which, in accordance with § 45 no. 1 of the Act, is punishable by a fine in the event of an infringement, is also deemed appropriate to be determined by imposing fines. These are therefore types of cases in which the infringements will generally be prima facie detectable and without any significant discretionary elements.

For a number of provisions of the Act on tobacco products, etc., the level of fines for infringements is not described in detail in the comments. In the cases where this is described, the amounts of fines are generally indicated as DKK 10 000 in the first case, DKK 20 000 in the second case and DKK 40 000 in third cases. However, the actual amount of the fine may vary upwards or downwards depending on the specific case. It should be noted that § 1 nos. 25-32 of the draft Act proposes to increase the fines for infringements of a number of provisions of the Act on tobacco products, etc., including, inter alia, § 19 (1), §§ 19a and 30, so that the amount of the fine will henceforth start at DKK 50 000 at the starting point.

The fine shall be collected by and paid to the Danish Safety Technology Authority. The Danish Safety Technology Authority shall be entitled to al-

low the payment by instalments or deferral of payment of the fine adopted. A fine adopted shall be attached to a lien pursuant to § 11 of the Debt Recovery Act and shall not be subject to interest during recovery, cf. § 5(1) of the Debt Recovery Act. A fine adopted shall be covered, together with periodic penalty payments, with priority over other claims in the course of recovery, cf. § 4(1) no. 1 of the Debt Recovery Act.

It is proposed in § 45 *a*(2) that the rules of the Administration of Justice Act on requirements for the content of an indictment and on the fact that an accused person is not required to make a statement apply *mutatis mutandis* to fines.

Compliance with the requirements for an indictment means that the application for a fine must contain, in particular, information on the rule alleged to have been infringed, the legal basis and a description of the offence for which administrative penalty orders are issued, cf. § 834 (1). nos. 2 and 3, and (2) of the Administration of Justice Act. That indication shall be clear and intelligible and shall enable the person concerned to assess the merits of the application for a fine.

The fact that the rules against self-incrimination apply means that the Danish Safety Technology Authority must advise the person concerned that he or she is not obliged to comment. This should be stated directly in the penalty order issued.

In addition, the application for a fine should explain how the person concerned may accept the fine. For example, it may be indicated that acceptance can be achieved by returning the application for a fine in signed form or by paying the fine in a manner specified in the order for payment. It should be explicitly stated that the fine is paid to the Danish Safety Technology Authority, including how this is done. In this connection, the Danish Safety Technology Authority may provide information on the possibility of entering into an installment scheme.

Furthermore, it should be clear from the notice of fines what the effect is of the fact that the notice of fines is or is not adopted. It should therefore be stated that the acceptance of the decision implies that no criminal proceedings will be brought against the person concerned before the courts, but that the person concerned will be obliged to pay the fine. It should also be stated that failure to accept, both if the person concerned objects or does not react, may lead to the Danish Safety Technology Authority reporting the relationship to the police.

It is proposed in § 45a(3) that if the fine be accepted, no further proceedings will be brought and that the adoption of the penalty has the same effect as a judgement.

*Re § 2*

Re No 1

§ 2 of the Act on electronic cigarettes, etc. states how a number of terms in the Act are defined.

§ 2 no. 5 of the Act on electronic cigarettes, etc. states that characterising flavour is to be understood as a prominent smell or taste other than tobacco, resulting from an additive or combination of additives, including fruit, spices, herbs, alcohol, candy, menthol or vanilla, and which smells or can be tasted before or during consumption of an electronic cigarette with and without nicotine.

It is proposed that in § 2 no. 5 the words ‘Characterising aroma’ are replaced by ‘Aroma’ and ‘prominent’ and ‘other than tobacco’ are deleted.

The proposed amendment will mean that the definition will henceforth apply to flavourings and will not be limited to characterising flavourings. The proposed amendment would also mean that the definition does not presuppose an intrinsic flavour of tobacco.

The existing definition of characterising flavours reflects Article 2 no. 25 of the Tobacco Products Directive. Recital 47 of the Tobacco Products Directive states that the definition is targeted at tobacco products.

The term characterising flavour comes from the Tobacco Products Directive (2014/40/EU) and is used in relation to tobacco products, as it is necessary to use additives that impart a flavour in the manufacture of tobacco products. Therefore, the use of specific additives is not excluded, but manufacturers are required to reduce the amount of the additive or combination of additives to such an extent that the additives no longer produce a characterising flavour. The same consideration is not relevant for electronic cigarettes.

The proposed provision must be read in conjunction with § 2 nos. 8 and 9 of the draft Act, to which reference is made and where it is proposed that the ban on characterising flavours other than tobacco and menthol in electronic cigarettes, etc. will in future be a ban on flavours other than tobacco and menthol.

Re No 2

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

§ 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. § 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. § 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. § 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 § 2, *nos. 6-9, ’etc.’* be inserted after ‘nicotine’.

The proposed amendment would mean that the definition of manufacturer, importer, distributor, retailer and placement on the market also includes manufacturers, importers, distributors, retailers and the placement on the market of, for example, flavourings for use in electronic cigarettes and refill containers, as well as equipment used in connection with electronic cigarettes and refill containers, cf., for example, the regulation in § 25a(1) and (2) of the Act on electronic cigarettes, etc. The provision is thus intended only to cover more products by the definition.

Re no. 3

§ 2 of the Act on electronic cigarettes, etc. states how a number of terms in the Act are defined.

It is proposed that a *no. 13* is inserted in § 2, according to which a ‘communication platform’ means an online platform which, for profit purposes, offers the visitor to create a profile and explore other profiles and whose primary function is to enable users of the platform to connect and share messages or presentations with characters, words, written, audio, image or video content.

The fact that the platform is online means that interaction on the platform takes place via the internet. Online platforms vary in format and the number of features designed and maintained by a service provider, but they can

usually be accessed via a website from both desktop and laptop computers and via an app on mobile devices, such as tablets and smartphones. Platforms offered by means of, for example, fax or telex are excluded.

The fact that a communications platform is to be offered by a service provider seeking profits is to be understood as meaning that the communications platform has a commercial purpose, which includes all activities of an economic nature or carried out for payment. Payment does not necessarily have to be made by the user, i.e. a communications platform may well have a commercial purpose within the meaning of the law, even if the service provider's activities are not generally described as commercial. The communications platform shall aim at generating revenue. For example, a service provider may offer services or products in exchange for payment to other natural and legal persons wishing to promote their services or products on the communications platform. This payment may also represent access to data. Service providers can, for example, make profit by allowing enterprises to buy media placement with advertisements and in-app purchases, etc. In addition, service providers can make profit by offering their users, who have access to the communications platform free of charge, the possibility to purchase premium memberships for e.g. a weekly, monthly or annual amount.

The platform shall offer the visitor the opportunity to create a profile and explore other profiles. Thus, after registration on the platform, the user is able to create social relationships by connecting with other users who also have profiles on the website or app, either reciprocally or by other users following their user profile. The 'friend' or 'follow' network on the platform is typically visible to other users, and the main social interaction on the platform consists of a public, partially public, or private continuous stream of content generated by other users or oneself. In that regard, it should be noted that, in order to fall within the definition of a communications platform, it is not necessary for users to associate themselves with other users.

It is proposed that the prerequisite for inclusion in the definition of a communication platform is that a primary function of the platform should be to enable users to connect, share messages or presentations with content in characters, words, writing, sound, images or video. This should be understood in a broad sense so that, for example, a connection does not necessarily have to be in writing, but can be done by pressing a "like" button on another user's content on the platform. User-generated content is typically made easily accessible to users in general, without the user providing the

information having to do more to give those persons access to that information.

The primary function requirement means that the definition covers only the part of a given communication platform that meets this requirement. If, in connection with its communication platform, a service provider also offers a separate service where, for example, it is possible for users to trade in goods or use an individual communication service, this part is not governed by the Act.

It has become more common for websites that are subject to a high level of user traffic to also offer an interactive communication option that allows registered users to interact and share content on their website through, for example, a chat function. The draft Act is not intended to include interactive means of communication between users, which form a minor and purely ancillary part linked to a website that offers, for example, journalistic or editorial content, etc. The commentary section of an online newspaper will, for example, constitute such an ancillary function to the main service, namely the publication of news under the editorial responsibility of the publisher. For example, in some cases, enterprises offer the sale of products on their website as the main feature, but also allow users to communicate and exchange opinions about the products on the website through an interactive means of communication. The part of the website used by users as an interactive means of communication shall be regarded as an ancillary part of the website which is not covered by the concept of communications platform.

The definition is similar to that in the Act on the sale and marketing of laughing gas to consumers, cf. Folketingstidende 2022-23, Appendix A, L 89, as set out on page 13.

Re no. 4

Chapter 2 of the Act on electronic cigarettes, etc. sets out a number of provisions on where the use of electronic cigarettes with or without nicotine is not permitted or where more detailed rules are laid down as to where and how products may be used.

§ 3 (1) nos. 1-4 of the Act lay down, inter alia, rules according to which the use of electronic cigarettes with or without nicotine is in principle prohibited in or in children's establishments, schools, boarding schools, nursery schools, establishments providing secondary education, places of residence and the like, which have taken up children and adolescents under the

age of 18, in day-care homes and other premises for day care included in municipal day care and in collective means of transport, including Danish passenger vessels and foreign-registered passenger aircraft operating under Danish operating licences, irrespective of whether the vessel or aircraft is located outside Danish territory, and taxis.

§§ 3a and 3b of the Act state that pupils in schools, boarding schools and secondary schools who have admitted children and young people under the age of 18 and in upper secondary education may not use electronic cigarettes with or without nicotine during school hours. It follows from § 3c of the Act that it is not permitted to sell electronic cigarettes and refill containers with and without nicotine in schools, boarding schools and secondary schools covered by § 3a(1) and in educational establishments covered by § 3b(1).

It is proposed that *Chapter 2* the Act on electronic cigarettes, etc., which covers the use of electronic cigarettes with or without nicotine, be repealed.

The proposal will mean that provisions on where the use of electronic cigarettes with or without nicotine is not allowed or where more detailed rules are laid down for where and how products may be used will not in future be laid down in the Act on electronic cigarettes, etc.

The proposed amendment is to be seen in the context of § 5 of the draft Act, which proposes that electronic cigarettes with or without nicotine be covered by the Act on smoke-free environments. Thus, the proposal will not provide for any relaxation on where electronic cigarettes with or without nicotine may be used, but is proposed to ensure that electronic cigarettes with or without nicotine will henceforth be subject to similar rules on smoking.

Reference is also made to point 2.9 of the general comments on the draft Act.

Re no. 5

§ 15(1) of the current 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.

It is proposed that ‘versus’ is replaced by ‘to’ in *paragraph 15 (1)*.

The proposed adjustment in the provision is intended to unambiguously prohibit proxy sales and thus establish that all cases where electronic cigarettes and refill containers with and without nicotine are placed on the market for persons under 18 years of age will be illegal.

It is proposed that the provision should apply irrespective of whether they are traders or private individuals selling electronic cigarettes and refill containers with and without nicotine. The intention is thus that the provision should also cover situations in which a sale takes place between private individuals and which takes place immediately following the purchase in a shop and where the purchase is deemed to be in order to circumvent the applicable age limits for sales.

The proposed amendment means that adult persons may not purchase electronic cigarettes and refill containers with and without nicotine on behalf of minors and receive payment for them. The proposed provision would cover situations where an economic operation takes place.

The police will enforce the ban on private individuals selling electronic cigarettes and refill containers with and without nicotine and where the sale conflicts with the age limit. Enforcement will take place as a starting point in those situations where the vendor is 'caught in the act of committing the offence' or where a report is made to the police.

The proposed amendment does not intend to introduce changes to the existing penalty provisions for infringement of § 15(1). However, attention is drawn to § 2 no. 12 of the draft Act.

Re no. 6

The Act on electronic cigarettes, etc. does not contain any rules on the extra-judicial adoption of confiscation of electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings intended to be used with them.

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 § 22c as new provisions in Chapter 8.

It is proposed in § 22c 1) that in cases involving an offence which is deemed not to result in a penalty higher than a fine, the perpetrator of the offence may, upon notification by the Danish Safety Technology Author-

ity, adopt the extra-judicial confiscation of illegal electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them. The adoption of extra-judicial confiscation pursuant to paragraph 1 shall require the perpetrator of the offence to declare himself guilty of the offence and to accept the extra-judicial confiscation.

The proposed provision will result in the Danish Safety Technology Authority, has the legal basis for the extra-judicial adoption of the confiscation of electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings intended to be used together with them, which are illegal to market in Denmark when they detect infringements in the course of their checks, in future cases which are deemed not to result in higher penalties than fines and where the accused person declares that he is guilty of the infringement. The proposal will thus create the possibility for the Danish Safety Technology Authority in certain cases to close the case and confiscate the products without involving the police and the judiciary.

However, in all cases, for extra-judicial confiscation to be possible, this presupposes that the factual and legal circumstances of the case are deemed to have been clarified to an extent and that the accused person declares himself guilty of the offence and consents to extra-judicial confiscation. If the accused does not accept confiscation of the products or if there is sufficient uncertainty in the circumstances of the case, the case will have to be forwarded to the police for further prosecution.

The extra-judicial adoption of confiscation under the proposal may take place in cases in which the Danish Safety Technology Authority has the power to issue administrative penalty notices, as is proposed in § 2 no. 17 of the draft Act, on which the Minister for the Interior and Health may, following negotiations with the Minister for Justice, lay down rules. If the Danish Safety Technology Authority finds offences that cannot be settled outside the court by means of an administrative penalty order, there can therefore also be no extra-judicial confiscation of the illegal products. The Danish Safety Technology Authority, cf. § 22a of the Act on electronic cigarettes, etc., will be able to seize the products that are illegal to be placed on the market and forward the case to the police for further prosecution and possible confiscation.

The confiscation of an illegal electronic cigarette or refill container with and without nicotine, as well as the equipment and flavourings used with them, means that ownership of the product has been transferred to the State. The State may then dispose of the product. In practice, in the case of illegal products, this generally involves destruction.

It is proposed in § 22c (2) that the rules of the Administration of Justice Act on requirements concerning the content of an indictment and the absence of an obligation on the accused person to make a statement shall apply *mutatis mutandis* to the adoption of confiscation under paragraph 1.

This applies, for example, to the name and address of the accused person, information on the offence being prosecuted and the regulation alleged to have been infringed, and a brief description of the offence being prosecuted, indicating the time, place, subject matter, method of performance and other details necessary for a sufficient and clear description, cf. § 834(1), nos. 2 and 3 and (2) of the applicable Code of Civil Procedure.

See also point 2.2 in the general comments on the draft Act.

Re No 7

§ 23 states that the supervision of compliance with the provisions of Chapter 2 is to be carried out by the Working Environment Authority, cf. § 79a of the Working Environment Act, the Minister for Employment, cf. § 66a of the Offshore Safety Act, the Danish Maritime Authority, cf. § 20a of the Maritime Safety Act, and the Minister for Transport, cf. § 150f of the Aviation Act.

It is proposed to repeal § 23. The proposal is to be seen in conjunction with § 2 no. 3 of the draft Act to repeal Chapter 2 of the Act on electronic cigarettes, etc., with a view to regulating the use of electronic cigarettes with or without nicotine in the future in the Act on smoke-free environments, cf. § 5, nos. 1-11 of the draft Act.

The proposed amendment will mean that the Danish Working Environment Authority, the Minister for Employment, the Danish Maritime Authority and the Minister for Transport will henceforth carry out inspections only in accordance with the Act on smoke-free environments, cf. § 24 of the Act. The authorities will thus continue to monitor the rules governing where electronic cigarettes can be used.

Re no. 8

§ 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. Paragraph 2 of that provision provides that equipment used in connection with electronic cigarettes which makes it possible to alter the smell or taste of the electronic cigarettes concerned may not be marketed in Denmark.

It is proposed that in *paragraph 25a(1)* the words ‘Electronic cigarettes, refill containers’ are replaced by the following: ‘Electronic cigarettes and refill containers’; and in two places, ‘characterising flavour’ is replaced by ‘flavour’.

The proposed amendments will have the effect of clarifying that the ban concerns flavours and not characterising flavours, and that with and without nicotine it is linked to both electronic cigarettes and refill containers. It is therefore not a question of a change in the current legal situation.

It should be noted that the exception for a tobacco flavour covers only a pure tobacco flavour, and not, for example, tobacco flavour with hints of vanilla, caramel, etc. This follows the Danish Safety Technology Authority’s existing practice today.

The term characterising flavour comes from the Tobacco Products Directive (2014/40/EU) and is used in relation to tobacco products, as it is necessary to use additives that impart a flavour in the manufacture of tobacco products. Therefore, the use of specific additives is not excluded, but manufacturers are required to reduce the amount of the additive or combination of additives to such an extent that the additives no longer produce a characterising flavour. The same consideration is not relevant for electronic cigarettes, so it is not relevant to use the term ‘characterising’. Moreover, the Tobacco Products Directive also uses the description of flavourings when it is described in relation to electronic cigarettes, cf. Preamble 47. Reference is also made in this regard to § 2 no. 1 of the draft Act, where it is proposed to change the definition of characterising flavour into flavour.

The proposed amendment does not intend to amend the existing penalty provisions for infringements of § 25a(1)-(2), which are laid down in § 33(1) no. 1 of the Act on electronic cigarettes, etc. However, attention is drawn to the proposed amendment to § 2 no. 12 of the draft Act, which proposes a higher penalty for infringement of a number of provisions of the Act on electronic cigarettes, etc., including § 25a(1)-(2).

Re no. 9

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. Paragraph 2 of that provision provides that equipment used in connection with electronic cigarettes which makes it possible to alter the smell or taste of the electronic cigarettes concerned may not be marketed in Denmark. Paragraph 3 of the provision states that the Danish Health Authority may lay down detailed rules on the prohibition referred to in paragraph 1, including rules on whether a specific product is covered by the prohibition and on maximum levels for the content in products of additives or combinations of additives that produce a characterising flavour.

It is proposed that in § 25a (3), the words ‘characterising flavour’ are replaced by ‘flavour’;

The proposed amendment is to be seen in the context of § 2 no. 8 of the draft Act, which proposes that the ban on the placing on the market of electronic cigarettes and refill containers with and without nicotine will in future concern flavours other than tobacco and menthol and not characterising flavours, and which aims to provide more clarity on the legal framework. This proposed amendment is thus a resulting clarification. It is therefore not a question of a change in the current legal situation.

The term characterising flavour comes from the Tobacco Products Directive (2014/40/EU) and is used in relation to tobacco products, as it is necessary to use additives that impart a flavour in the manufacture of tobacco products. Therefore, the use of specific additives is not excluded, but manufacturers are required to reduce the amount of the additive or combination of additives to such an extent that the additives no longer produce a characterising flavour. The same consideration is not relevant for electronic cigarettes, so it is not relevant to use the term ‘characterising’. Moreover, the Tobacco Products Directive also uses the description of flavourings when it is described in relation to electronic cigarettes, cf. Preamble 47. Reference is also made in this regard to § 2 no. 1 of the draft Act, where it is proposed to change the definition of characterising flavour into flavour.

Re no. 10

§ 25 of the Act on electronic cigarettes, etc. states that the Danish Safety Technology Authority may prohibit the placing on the market of electronic cigarettes and refill containers with or without nicotine if:

- 1) the products are marketed in Denmark without being notified under § 5(1) or § 5b(1);
- 2) the products do not meet the requirements of § 7(1), § 9(1) or § 9a(1) and (2) or in rules laid down pursuant to § 7(2), § 8, § 9(2) or § 9a(3), or
- 3) no notification has been made under § 12(1).

§ 1a(25) of the Act states 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. Paragraph 2 of that provision provides that equipment used in connection with electronic cigarettes which make it possible to alter the smell or taste of the electronic cigarettes concerned may not be marketed in Denmark. Paragraph 3 of the provision states that the Danish Health Authority may lay down detailed rules on the prohibition referred to in paragraph 1, including rules on whether a specific product is covered by the prohibition and on maximum levels for the content in products of additives or combinations of additives that produce a characterising flavour.

Under § 26 of the Act, the Danish Safety Technology Authority may require manufacturers, importers, distributors and retailers of electronic cigarettes and nicotine refill containers to withdraw the products from the market or recall them from consumers in the cases set out in § 25 nos. 1 and 2, or if it otherwise considers that the products present a serious risk to human health.

It is proposed that in § 26 after § 25, nos. 1 and 2, ‘or where the products are covered by § 25a(1) and (2),’ is inserted.

The proposed amendment will mean that the Danish Safety Technology Authority may in future also require manufacturers, importers, distributors and retailers to withdraw from the market electronic cigarettes, refill containers with and without nicotine, flavourings for use in electronic cigarettes and equipment used in connection with electronic cigarettes and allowing the smell and taste of the electronic cigarettes concerned to be altered, or recall them from consumers if the product has a flavour, with the exception of menthol or tobacco.

§ 26 addresses situations where it is found that electronic cigarettes and refill containers already placed on the market do not comply with the requirements of the draft Act or rules laid down pursuant thereto, or if these products are deemed to pose a serious risk to human health, cf. Folketingsstidende 2015-16, Appendix A, L 144, as presented.

The proposed amendment is thus intended to ensure the intended purpose of the provision.

Re no. 11

§ 27a of the Act on electronic cigarettes, etc. states 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 rules in this Act, rules laid down pursuant to this Act or regulations relating to the scope of this Act.

The Act on electronic cigarettes, etc. does not provide for orders to be issued to communication platforms such as social media.

It is proposed that the following § 27b be inserted: § 27c.

Under the proposed § 27c (1), the Danish Safety Technology Authority may order a communication platform to modify or remove content referring to a product which 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.

The proposed provision will mean that the possibility for the Danish Safety Technology Authority to order content to be modified or removed will henceforth also cover communication platforms and not only online interfaces.

The proposal is to be seen in the light of the fact that the placing on the market of electronic cigarettes and refill containers no longer only takes place from brick-and-mortar and web shops, but has also moved to social media.

The proposal means that the Danish Safety Technology Authority will be able to order communication platforms to change the way a product is placed on the market or to remove all content where a non-compliant product is placed on the market, for example from a user profile.

An order to modify or remove content will in principle only be issued once the control authority has found that a communication platform has not complied with a request to remove the content in question voluntarily.

The provision could not be used to block communication platforms or user profiles.

§ 2 no. 14 of the draft Act also provides that if a communication platform fails to comply with an order, they will be penalised by a fine.

Reference is also made to § 2 no. 3 of the draft Act, where it is proposed to insert a definition of communication platforms in the Act on electronic cigarettes, etc.

Under the proposed § 27c (2), the Danish Safety Technology Authority may order a communication platform to amend or remove content relating to the marketing of electronic cigarettes or refill containers with or without nicotine to persons under the age of 18.

The proposed provision will allow the Danish Safety Technology Authority to order communication platforms to change or remove content if it concerns the marketing of electronic cigarettes or refill containers with or without nicotine to persons under the age of 18. This would be relevant, for example, in cases where the legal marketing of nicotine electronic cigarettes can be established but where the marketing is made to people under the age of 18, in forums for children and young people, such as groups of primary school pupils or similar.

Please note in this connection that electronic cigarettes and refill containers with and without nicotine are not allowed to be placed on the market to persons under the age of 18, cf. § 15(1) of the Act on electronic cigarettes, etc., which is proposed to be amended by § 2 no. 5 of the draft Act. Placement on the market shall be understood in accordance with § 2 no. 10 of the Act on electronic cigarettes, etc., and thus concerns making electronic cigarettes or refill containers with and without nicotine available to consumers against payment or free of charge, including by means of distance selling. In the case of cross-border distance sales, the product is deemed to have been placed on the market in the country where the consumer is located.

The proposed provision therefore needs to be seen in the context of the current age limit for electronic cigarettes and refill containers with and without nicotine.

The proposal is to be seen in the light of the fact that the placing on the market of electronic cigarettes and refill containers no longer only takes place from brick-and-mortar and web shops, but has also moved to social media.

The proposal means that the Danish Safety Technology Authority will be able to order communication platforms to change the way a product is placed on the market or to remove content altogether where there is marketing to persons under 18 years of age, for example from a user profile.

An order to modify or remove content will in principle only be issued once the control authority has found that a communication platform has not complied with a request to remove the content in question voluntarily.

The provision could not be used to block communication platforms or user profiles.

§ 2 no. 14 of the draft Act also provides that if a communication platform fails to comply with an order, they will be penalised by a fine.

Reference is also made to § 2 no. 3 of the draft Act, where it is proposed to insert a definition of communication platforms in the Act on electronic cigarettes, etc.

Re no. 12

§ 33 of the Act on electronic cigarettes, etc. states how a number of provisions of the Act are penalised.

§ 33(1) no. 1 provides that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes §§ 3(1) and (4), 4, 9(1), 9a (1) and (2), 10(1), 11(1), 15(1)-(3), 16(1), 17, 18a(1), 18b(1) or 25a(1) and (2).

The expectations regarding the level of fines for infringements of §§ 9 (1), 10(1), 15(1)-(3), 16(1) and 17 are not described in detail in the explanatory notes to the Act, cf. Folketingstidende 2015-2016, Appendix A, L 144, as set out, page 56, Folketingstidende 2022-2023, Attachment A, L 123, as set out, pages 19 and 20, Folketingstidende 2020-2021, Appendix A, L 61, as set out, pages 50-51.

The expectations of the level of fines for infringements of §§ 9a(1) and (2), 18b(1), 25a(1) and (2) are in principle DKK 10 000 in first cases, DKK 20 000 in second cases and DKK 40 000 in third cases, cf. Folketingsti-

dende 2020-2021, Appendix A, L 61, as set out, page 54, Folketingstidende 2020-2021, Appendix A, L 204, as set out, page 36 and Folketingstidende 2023-2024, Appendix A, L 173, as set out, pages 30 and 31.

The expectations regarding the level of fines for infringements of § 18a shall be based on the principles set out in the Marketing Practices Act, as is the case for infringement of the prohibition on tobacco advertising under the Act on the prohibition of tobacco advertising, etc. The fines for infringement of the Marketing Practices Act shall be determined on the basis of the seriousness, extent and economic benefit intended. Infringements that are either serious, deliberate or repeated should also be punishable by fines of such a level that they have a real deterrent effect, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 55.

It is proposed that § 33(1), *no. 1* be reworded, according to which, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who infringes §§ 9(1), 9a(1) and (2), 10(1), 11(1), 15(1)–(3), 16(1), 17, 18a(1), 18b(1), or 25a(1) or (2).

The proposed amendment would have the effect of deleting § 3(1) and § 4 from § 33 (1) as a result of § 2 no. 3 of the draft Act, where it is proposed that Chapter 2 of the Act be repealed.

The proposed amendment is also to indicate expectations of a level of fines for infringements of §§ 9(1), 9a(1), 11(1), 15(1)-(3) and 25a (1) and (2) that are higher than the previous one.

With regard to §§ 9(1), 9a(1), 11(1), 15(1)-(3) and 25a(1) and (2), it is proposed to change the expectation to the level of fines, so that the levels of fines will henceforth start from the outset at DKK 50 000. The setting of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

With regard to § 15(1), which is proposed to be amended in § 2 no. 5 of the draft Act, it should be noted that a ban on proxy sales is introduced. In the event of an infringement by private individuals of the ban on proxy sales pursuant to § 15(1), it is proposed that the expectation of the level of fines is that in the first case it is punishable by a fine of DKK 10 000. In the second and third cases fines are assumed to be DKK 20 000 and DKK 40 000 respectively. When determining the fine for infringement, the fine should be of sufficient size that it is dissuasive 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.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

As regards §§ 9a(2), 10(1), 16(1), 17, 18b(1), no changes are envisaged in relation to expectations regarding the level of fines in force than previously expected.

With regard to §18a(1), it is noted that the preparatory work to the Act on electronic cigarettes, etc. does not specifically address the level of fines for infringement of the provision, and it is therefore proposed to clarify the level of fines for infringement of §18a(1). The aim is to support more effective supervision and to support a shorter time lag between non-compliance and punishment.

The Consumer Ombudsman will base its calculation on the trader's turnover when calculating the fine. At the same

time, the amount of the fine is such that it acts as a deterrent and sends a strong signal that the prohibition must be complied with. Furthermore, a fine imposed must be in appropriate proportion to the situation caused or potentially caused by the infringement.

When determining the amount of a fine, the extent of the infringement, the turnover of the trader and whether it is a first-time or repeated infringement will be taken into account.

For the purposes of choosing the category of turnover, the total turnover of the trader shall be taken as the basis.

In relation to the position of the trader within the four categories of turnover, turnover means the trader's net turnover, which is defined in the Annual Accounts Act as the sales value of products and services, etc., after deduction of discounts, value added tax and other taxes directly linked to the amount of sales, cf. Annex 1, C, no. 13, of Consolidation Act No. 838 of 8 August 2019 on the Annual Accounts Act.

As regards turnover from traders who are not required to submit annual accounts under the Annual Accounts Act, the position in the four categories of turnover will depend on the trader's declaration of the output tax to the Customs and Tax Administration in accordance with the VAT Act, Consolidation Act No. 209 of 27 February 2024 on Value Added Tax (the VAT Act).

The turnover will be calculated for the year of the infringement, if this information is available. If this information is not available, turnover will be calculated on the basis of the year preceding the year of the infringement.

Pursuant to § 31 of the Public Administration Act, the Consumer Ombudsman will have access to information on the trader's turnover via other public authorities.

If there are aggravating or mitigating circumstances in the individual case, the determination of the penalty will, as always, depend on a case-by-case assessment by the courts

of all the circumstances of the case, and the levels of fines indicated may therefore be derogated from upwards or downwards, in accordance with the general rules on the determination of the penalty in Chapter 10 of the Criminal Code.

An aggravating circumstance may be, for example, the fact that the company has previously imposed a fine for a similar infringement or that the Consumer Ombudsman has previously informed the undertaking of the prohibition and the consequences of any infringement.

For physical sales outlets, the calculation of fines will be based on the number of events. The number of events that the Consumer Ombudsman can prove that electronic cigarettes or refill containers with and without nicotine have been visible to customers by means of pictorial evidence, testimony, etc. will be relevant to the calculation of the number of factors in relation to physical sales outlets, so that one day constitutes one event/infringement. The number of products visible does not affect the amount of the fine.

In the case of first-time infringements of the display ban, cf. the Act on electronic cigarettes, etc. in physical outlets, the following model of fines will be used. If the trader has a turnover of DKK 1 499 999.99 or less, the offence is punishable by a fine of DKK 10 000. With turnover between DKK 1 500 000.00 and DKK 2 999 999.99, an infringement shall be punishable by a fine of DKK 20 000. With turnover between DKK 3 000 000.00 and DKK 4 999 999.99, an infringement shall be punishable by a fine of DKK 30 000. With a turnover of DKK 5 000 000.00 or more, an infringement shall be punishable by a fine of DKK 50 000. For a second and subsequent offences, the fines are increased by 50 %.

Thus, for example, in cases where a point of sale, with an annual turnover of DKK 1 million, has had electronic cigarettes and refill containers with and without nicotine standing clearly visible to customers at the point of sale for one day, a fine will be measured at DKK 10 000. Similarly, for

example, where there are five different sales outlets in a grocery chain with the same owner, each day with electronic cigarettes and refill containers with and without nicotine standing clearly visible to customers, and there is a turnover of DKK 25 000 000 million, the fine will be measured at DKK 250 000. Similarly, for example, in cases where a sales outlet, with an annual turnover of DKK 1 million, which has had electronic cigarettes and refill containers with and without nicotine standing visible to customers at the point of sale for one day, but a fine has previously been imposed for similar infringements, will be measured at DKK 15 000.

For online sales outlets, fines will not follow the same model as for brick-and-mortar shops, as in the case of online sales there are generally many more customers exposed to visible products if the display ban is not respected. Online sales outlets are not geographically limited, as is the case for brick-and-mortar shops. In addition, in relation to online sales outlets, it will be easier to document the duration of the infringement, unlike brick-and-mortar shops, where there will typically be a snapshot.

In the case of first-time infringements of the display ban, cf. the Act on electronic cigarettes, etc. at online sales outlets, the following model penalty will be used. If electronic cigarettes or refill containers with or without nicotine have been visible during an offence period of up to 6 months, the offence shall be punished by a fine rate of DKK 50 000. Where electronic cigarettes or refill containers with or without nicotine were visible during an offence period of more than 6 months, the infringement shall be punished by a fine rate of DKK 75 000 and, in addition, 50 % per 6th month started. In the case of second and subsequent cases, the penalty rate shall be increased by 50 %.

Thus, for example, where an online sales outlet has had electronic cigarettes or refill containers with or without nicotine for a period of 3 months, a fine will be set at DKK 50 000. Similarly, for example, where an online sales outlet has had electronic cigarettes or refill containers with or

without nicotine for a period of 8 months, a fine will be set at DKK 75 000.

If there are aggravating or mitigating circumstances in the individual case, the determination of the penalty will, as always, depend on a case-by-case assessment by the courts of all the circumstances of the case, and the levels of fines indicated may be derogated from upwards or downwards, in accordance with the general rules on the determination of the penalty in Chapter 10 of the Criminal Code.

An aggravating circumstance could be, for example, if the trader deliberately infringes the prohibition, for example by continuing to display electronic cigarettes or refill containers with or without nicotine despite the fact that the Consumer Ombudsman has previously informed the trader behind the website about the legislation.

Re no. 13

§ 25 and § 27(1) of the Act on electronic cigarettes, etc. allow the Danish Safety Technology Authority to issue prohibitions on the marketing of certain electronic cigarettes and refill containers with or without nicotine.

§ 33(1) no. 4 of the Act on electronic cigarettes, etc. states that, unless a higher penalty is required under another Act, a fine shall be imposed on anyone who infringes prohibitions notified under § 25 or § 27(1).

The expectations regarding the level of fines for infringements of §§ 25 and 27 (1) are not described in detail in the comments, cf. Folketingstidende 2015-2016, Appendix A, L 144, as presented on page 56.

It is proposed to amend ‘prohibitions’ in § 33(1) no. 4, to ‘prohibitions which are’.

This is only a linguistic amendment to the text of the Act, which has the purpose of enabling the comments to give more detailed guidelines on the level of penalties under the provision.

It is proposed to change the expectation regarding the level of fines for infringements of § 25 or § 27 (1), so that the fines will henceforth start at DKK 50 000 in the starting point. Determination of the level of fines will in principle be affected by four different parameters: imputability, consis-

tency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re No 14

§ 33 of the Act on electronic cigarettes, etc. states how a number of provisions of the Act are penalised.

§ 33(1) no. 5 provides that, unless a higher penalty is required under other legislation, a fine shall be imposed on anyone who fails to comply with an order or an obligation to provide information on the basis of § 11(2) or (3), § 12(1), § 19(2) or § 26.

The expectations regarding the level of fines for infringements of §§ 11(2) or (3), 12(1), 19(2) and 26 are not described in detail in the explanatory notes to the Act, cf. Folketingstidende 2015-2016, Appendix A, L 144, as set out, pages 56 and 57.

It is proposed to amend ‘§§ 11(2) or (3), 12(1), 19(2) or 26,’ in § 33 (1) *no.* 5, to ‘§§ 11(2) or (3), 12(1), 19(2), 26 or § 27c,’.

The proposed amendment would result in an infringement of § 27c being punishable by a fine. The proposed amendment will also allow the comments to indicate expectations of a level of fines for infringements of §§ 11(2) and (3) and 26 higher than previously.

With regard to § 27c, which is proposed to be added to the Act on electronic cigarettes, etc. by § 2(11) of the draft Act, it is proposed that infringements should be punishable by a fine. Infringement of the provision is proposed to be punishable, *inter alia*, to ensure that consumers, in particular children and young people, are not confronted with and tempted by electronic cigarettes, etc., which are illegal to market in Denmark, and to ensure effective enforcement of the age limit for the sale of the products.

In the event of an infringement of § 27c, the expectation of the level of fines is that the starting point for the level of fines starts at DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority’s assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

With regard to §§ 11(2) and (3) and 26, it is proposed to change the expectation to the level of fines, so that the starting point for future fines is DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

In the case of §§ 12(1) and 19(2), no changes are envisaged in relation to the expectations of the applicable level of fines previously expected.

§ 33 of the Act on electronic cigarettes, etc. states how a number of provisions of the Act are penalised.

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

The expectations regarding the level of fines for infringements of §§ 7(2), 8, 9(2), 10(2), 12(3), 13 (2), 15 (4) and 18 and are not described in detail in the explanatory notes to the Act, cf. the Danish Parliamentary Gazette (Folketingstidende) 2015-2016, Appendix A, L 144, as presented on page 57.

The expectation of the level of fines for infringements of § 9a (3) is DKK 10 000 in first cases, DKK 20 000 in second cases and DKK 40 000 in third cases, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 56.

The level of fines for infringements of § 18a shall be based on the principles set out in the Marketing Practices Act, as is the case for infringement of the prohibition on tobacco advertising under the Act on the prohibition of tobacco advertising etc. The fines for infringement of the Marketing Practices Act shall be determined on the basis of the seriousness, extent and economic benefit intended. Infringements that are either serious, deliberate or repeated should also be punishable by fines of such a level that they have a real deterrent effect, cf. Folketingstidende 2020-2021, Appendix A, L 61, as set out, page 55.

It is proposed to amend ‘there’ in *Paragraph 33 (2)* to ‘like’.

This is only a linguistic amendment to the text of the legislation, which is intended to make it possible to indicate in the comments expectations of a level of fines for infringements of §§ 7(2), 8, 9(2), 9a(3) and 15(4) that are higher than previously.

As regards §§ 7(2), 8, 9(2), 9(3), 15(4), it is proposed to change the expectation to the level of fines, so that the levels of fines will henceforth start starting at DKK 50 000. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

With regard to §§ 10(2), 12(3), 13(2), 18 and 18a(4), no changes are envisaged in relation to the expectations of the applicable level of fines than previously expected.

Re no. 16

Paragraph 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that, in the event of a particularly serious or repeated infringement of §§ 1 and 2a, the right to market tobacco, tobacco surrogates and herbal products is to be deprived for a period of time.

The Act on electronic cigarettes, etc. does not contain any rules on the withdrawal of the right to market electronic cigarettes and refill containers with and without nicotine, or other products. Thus, there is no possibility of depriving the right to market electronic cigarettes with or without nico-

tine, refill containers with or without nicotine or other products in breach of the requirements of the Act on electronic cigarettes, etc.

It is proposed that in § 33 it is inserted as *paragraph 3* that anyone committing particularly serious or repeated infringements of § 9a(1), § 15(1)-(3), § 18b(1), § 25, § 25a(1) and (2), § 26 or § 27(1) and rules issued pursuant to §§ 9a(3) and 15(4) is deprived of the right to market electronic cigarettes and refill containers with and without nicotine, tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used with them, for a period of time.

The proposed provision would have the effect of temporarily depriving the right to place on the market electronic cigarettes and refill containers with and without nicotine, tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used together with them, for a period of time in cases of particularly serious repeated marketing of products that are illegally marketed in Denmark and in cases of particularly serious repeated sales to minors and the absence of an age control system in distance sales. As far as equipment and flavourings are concerned, the withdrawal will cover the products regulated by the Act on tobacco products etc. and the Act on electronic cigarettes, etc.

Withdrawal of the right to place the products on the market will occur in the event of the third infringement and the withdrawal would normally apply for one year. In the event of subsequent infringements, this will result in a new temporary withdrawal of one year as a starting point.

The calculation of when three infringements have taken place is made over a period of 10 years. The repeat infringement effect thus ceases if it is more than 10 years since the last infringement was committed. The three infringements may have been detected during different inspections, but may also have been detected under the same supervision. Thus, three infringements found at the same time would have the effect of depriving the right to market the products, with the proviso that there must be an infringement of three different provisions and not, for example, that three products infringe the same provision.

The calculation of when three cases have occurred will also be measured across tobacco and nicotine products and disqualification will also apply across tobacco and nicotine products. Thus, there is no distinction between whether the infringement concerns electronic cigarettes with or without nicotine, refill containers with or without nicotine, tobacco products, tobacco surrogates, herbal products for smoking or equipment and flavour-

ings used with them. Thus, for example, infringement of § 15(1) of the Act on electronic cigarettes, etc., prohibiting the placing on the market of electronic cigarettes to persons under the age of 18 years, will count as equivalent to an infringement of § 19a of the Act on tobacco products, etc., on health warnings on tobacco surrogates, even if it concerns different products and different legislation. The products are generally treated in the same way in terms of regulation and handling, so that infringements of the various laws are regarded as similar. In this regard, reference is made to §§ 1(33) and (34) and 3(12) of the draft Act, where a corresponding provision is proposed to be introduced in the Act on tobacco products etc. and the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18.

If a total of three infringements of the listed provisions of § 45(3) of the Tobacco Products Act, § 33(3) of the Act on electronic cigarettes etc. or § 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age occur before the end of the effect of repeated infringement, then the right to market electronic cigarettes with and without nicotine, refill containers with and without nicotine, tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used together, will be temporarily deprived for an initial period of one year.

The provision is addressed to retailers. It is immaterial whether they are retailers who market through distance selling or at physical outlets.

The withdrawal of the right to place the products on the market will apply only to the point of sale that has infringed the ban, even if the holder has several outlets. If the sales outlet is part of a chain of shops, the withdrawal of the right will therefore not be directed at the entire chain of shops but only that sales outlet that has violated the prohibition.

It should be noted that the right to market tobacco and nicotine products may also, depending on the circumstances, be withdrawn from the person concerned under § 79 of the Criminal Code. However, the conditions for applying § 79 of the Danish Penal Code are stricter than is the case under the proposed measure, since the use of § 79 of the Danish Penal Code requires that the person in question is sentenced for an intentional offence providing the basis for an immediate danger of misuse of position and that there furthermore are special circumstances which justify the withdrawal. If the conditions for withdrawal under § 79 of the Danish Penal Code are met, then this provision should be used.

Re no. 17

It follows from § 18a(1) of the Act on electronic cigarettes, etc., that the visible placement and display of electronic cigarettes and refill containers with and without nicotine at points of sale, including on the internet, is prohibited, and that the same applies to goods intended to be used with those products.

§ 24 of the Act on electronic cigarettes, etc. states that the Consumer Ombudsman supervises compliance with the rules set out in Chapter 7 and rules issued pursuant thereto.

The Act on electronic cigarettes, etc. does not contain any rules on the issuing of administrative fines in the event of infringement of the rules of the Act.

For a detailed description of the applicable law in relation to the control powers of the Danish Safety Technology Authority and the Consumer Ombudsman, reference is made to points 2.2 and 2.3 of the general explanatory notes to the draft Act.

It is proposed to insert § 33a and § 22b as new provisions in Chapter 12.

(§ 33a)

It is proposed, in § 33a(1), in the event of an infringement of § 18a(1) of the Act and rules laid down pursuant to paragraph 4, where the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay the fine within a period specified in the application for a fine, the Consumer Ombudsman may indicate that the case can be decided without legal proceedings.

The proposed provision will have the effect that the Consumer Ombudsman will henceforth have the legal basis to issue administrative penalty notices for infringements of the prohibition on the visible placing and display of electronic cigarettes and refill containers with and without nicotine.

The Consumer Ombudsman's power to issue administrative penalty orders applies to infringements which are generally uniform, straightforward and without any evidential doubt, and where the level of penalties is fixed, for example in court practice or preparatory work. Infringements must therefore, in general, be clear and immediately verifiable and the outcome of the case, including the determination of the amount of the fine, must be free from any element of discretion.

If the case is not straightforward enough to enable the case to be resolved by an administrative fine, the matter shall instead be reported to the police.

The fine is collected by and paid to the Consumer Ombudsman. In the event of non-payment within the 20-day deadline, the Consumer Ombudsman will send a reminder with a payment deadline of 10 (calendar) days for payment. In the continued absence of payment, the Consumer Ombudsman will in principle forward the application for a fine to the Danish Debt Collection Agency.

It is proposed in § 33 *a*(2) that the rules of the Administration of Justice Act on requirements for the content of an indictment and on the fact that an accused person is not required to make a statement apply *mutatis mutandis* to fines.

Compliance with the requirements for an indictment means that the application for a fine must contain, in particular, information on the rule alleged to have been infringed, the legal basis and a description of the offence for which administrative penalty orders are issued, cf. § 834 (1). nos. 2 and 3, and (2) of the Administration of Justice Act. That indication shall be clear and intelligible and shall enable the person concerned to assess the merits of the application for a fine.

The fact that of the rules against self-incrimination apply means that the Consumer Ombudsman must advise the person concerned that he or she is not obliged to comment. This should be stated directly in the penalty order issued.

In addition, the application for a fine should explain how the person concerned may accept the fine. For example, it may be indicated that acceptance can be achieved by returning the application for a fine in signed form or by paying the fine in a manner specified in the order for payment. It should be explicitly stated that the fine is paid to the Consumer Ombudsman, including how this is done. In this context, the Consumer Ombudsman may provide information about the possibility of entering into an instalment scheme.

Furthermore, it should be clear from the notice of fines what the effect is of the fact that the notice of fines is or is not adopted. It should therefore be stated that the acceptance of the decision implies that no criminal proceedings will be brought against the person concerned before the courts, but that the person concerned will be obliged to pay the fine. In addition, it should be stated that failure to accept, both if the person concerned objects

or does not react, may lead to the Consumer Ombudsman reporting the relationship to the police.

It is proposed in *paragraph 33a (3)* that if the fine is accepted, no further action is taken, and that acceptance has the same repeat effect as a judgement. (§ 33b).

(§ 33 b)

It is proposed to insert § 33b as new provisions in Chapter 12.

It is proposed in § 33b(1) that the Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in cases concerning penalties under § 33(1), or rules laid down pursuant to the Act which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case may be decided without legal proceedings if the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay a fine as specified in the application for a fine within a specified period.

The proposed provision will mean that the Minister for the Interior and Health will be able on an ongoing basis to lay down rules on the provisions for which the Danish Safety Technology Authority will henceforth have the power to issue administrative penalty notices in the event of an offence.

The Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules on the provisions for the infringement of which the Danish Safety Technology Authority may issue administrative penalty notices.

The Danish Safety Technology Authority will only be empowered to issue administrative fines when the infringements are generally uniform, straightforward and without any evidential doubts, and when the level of penalties is fixed, for example in court practice or preparatory work. Infringements must therefore, in general, be clear and immediately verifiable and the outcome of the case, including the determination of the amount of the fine, must be free from any element of discretion.

If the case is not straightforward to enable the case to be resolved by an administrative penalty order, or if the appropriate level of penalties can be called into question, the police report shall be made instead.

The types of infringements found to be suitable for issuing administrative penalty notices are infringements that are prima facie detectable, such as § 9 of the Act on electronic cigarettes, etc., which concerns requirements for health warnings on packaging, which, in accordance with § 33(1) of the Act, are punishable by a fine for infringement. These are therefore types of cases in which the infringements will generally be prima facie detectable and without any significant discretionary elements.

For a number of provisions of the Act on electronic cigarettes, etc., the level of fines for infringements is not described in detail in the comments. In those cases where this is described, the amounts of fines is generally indicated as DKK 10 000 in the first case, DKK 20 000 in the second case and DKK 40 000 in third cases. However, the actual amount of the fine may vary upwards or downwards depending on the specific case. It should be noted that § 2, nos. 12-15, of the draft Act proposes to increase the levels of fines for infringements of a number of provisions of the Act on electronic cigarettes, etc., including, inter alia, § 9, so that the amount of the fine will henceforth start at the starting point of DKK 50 000.

The fine shall be collected by and paid to the Danish Safety Technology Authority. The Danish Safety Technology Authority shall be entitled to allow the payment by instalments or deferral of payment of the fine adopted. A fine adopted shall be attached to a lien pursuant to § 11 of the Debt Recovery Act and shall not be subject to interest during recovery, cf. § 5(1) of the Debt Recovery Act. A fine adopted shall be covered, together with periodic penalty payments, with priority over other claims in the course of recovery, cf. § 4(1) no. 1 of the Debt Recovery Act.

It is proposed in § 33 b(2) that the rules of the Administration of Justice Act on requirements for the content of an indictment and on the fact that an accused person is not required to make a statement apply *mutatis mutandis* to fines.

Compliance with the requirements for an indictment means that the application for a fine must contain, in particular, information on the rule alleged to have been infringed, the legal basis and a description of the offence for which administrative penalty orders are issued, cf. § 834 (1). nos. 2 and 3, and (2) of the Administration of Justice Act. That indication shall be clear and intelligible and shall enable the person concerned to assess the merits of the application for a fine.

The fact that the rules against self-incrimination apply means that the Danish Safety Technology Authority must advise the person concerned that he

or she is not obliged to comment. This should be stated directly in the penalty order issued.

In addition, the application for a fine should explain how the person concerned may accept the fine. For example, it may be indicated that acceptance can be achieved by returning the application for a fine in signed form or by paying the fine in a manner specified in the order for payment. It should be explicitly stated that the fine is paid to the Danish Safety Technology Authority, including how this is done. In this connection, the Danish Safety Technology Authority may provide information on the possibility of entering into an installment scheme.

Furthermore, it should be clear from the notice of fines what the effect is of the fact that the notice of fines is or is not adopted. It should therefore be stated that the acceptance of the decision implies that no criminal proceedings will be brought against the person concerned before the courts, but that the person concerned will be obliged to pay the fine. It should also be stated that failure to accept, both if the person concerned objects or does not react, may lead to the Danish Safety Technology Authority reporting the relationship to the police.

It is proposed in § 33b(3) that if the fine is accepted, there is no further prosecution and that it has the same effect as a judgement.

### *Re § 3*

#### Re No 1

§ 1 of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that tobacco products, tobacco surrogates 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 alcoholic strength by volume of 1.2 % or more may not be sold to persons under 16 years of age from retail shops.

§ 2(2) of the Act states that alcoholic beverages with an alcoholic strength of 16.5 % or more may not be sold to persons under the age of 18 years from retail shops.

§ 2b(1) of the Act states that the Danish Safety Technology Authority shall monitor compliance with the requirements of §§ 1-2a and rules issued pursuant to § 2a(8).

It is proposed in § 2(1) and (2) to delete 'from retail shops'.

The proposed amendments will mean that all cases where alcoholic beverages with an alcoholic strength by volume of 1.2 % or more are sold to persons under the age of 16 or alcoholic beverages with an alcoholic strength exceeding 6 % by volume to persons under the age of 18 would be illegal acts punishable by fines. Reference is made in this connection to § 3(2) of the draft Act, which proposes a change in the alcoholic strength by volume of sales of alcoholic beverages to persons under the age of 18.

The proposed adjustment in the provision is clearly intended to prohibit proxy sales.

It is proposed that the provisions should apply irrespective of whether they are traders or private individuals who sell alcoholic beverages with an alcoholic strength of 1.2 % or more to persons under the age of 16 or alcoholic beverages with an alcoholic strength exceeding 6 % by volume to persons under 18 years of age. The intention is therefore that the provisions should also cover situations in which a sale takes place between private individuals and which takes place immediately following the purchase in a shop and where the purchase is deemed to be in order to circumvent the applicable age limits for sales.

The proposed amendments mean that adult persons are not allowed to buy alcoholic beverages on behalf of minors and be paid for them. The proposed provisions will cover situations where an economic transaction takes place.

The police will enforce the ban on private individuals selling alcoholic beverages and where sales conflict with the age limit. Enforcement by the police will take place as a starting point in situations where the vendor is 'caught in the act of committing the offence' or where a report is made to the police.

The rules laid down in the Catering Act concerning the prohibition of dispensing alcohol to persons under the age of 18, cf. Consolidation Act No. 692 of 5 July 2019 on restaurant services and alcohol licences, etc., shall continue to apply. It will thus continue to be the police who will monitor compliance with age limits at catering establishments, including restaurants, bars, etc., where alcoholic beverages are served.

No need was seen for an amendment to § 1 of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, as the current wording of the provision clearly considers that all cases in which tobacco prod-

ucts, tobacco surrogates and herbal products are sold to persons under the age of 18 are illegal.

Re no. 2

§ 2(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that alcoholic beverages with an alcoholic strength of 16.5 % or more may not be sold to persons under the age of 18.

It is proposed in § 2 (2) to replace ‘16.5 or more’ with ‘more than 6’.

The proposed amendment would mean that alcoholic beverages with an alcoholic strength of more than 6 % by volume may in future not be sold to persons under the age of 18. 16-17 year-olds will continue to have the possibility to buy alcoholic beverages with an alcoholic strength of less than or equal to 6 % alcohol, such as cider, alcoholic soda drinks and general beer, which currently have an alcoholic strength of approximately 4.6 % by volume.

It follows from § 2a(6) and (8) of the Act that shops where alcoholic beverages are retailed must, by means of visible signs drawn up by the Danish Health Authority, inform about the age limit requirements for the sale of alcoholic beverages, cf. paragraphs 2-5 and § 2, and that the Minister for Health shall lay down detailed rules on the design, installation, etc. of signs, cf. paragraph 6. It should be noted that, as a result of the proposal that alcoholic beverages with an alcoholic strength of more than 6 % may henceforth not be sold to persons under the age of 18, the Danish Health Authority updates the signs which are required under § 2a(6) of the Act. The updated signs will be available, in both a physical and an online format, via the Danish Health Authority’s website from 1 December 2024. In accordance with § 12 of the draft Act on entry into force, shops where alcoholic beverages are retailing must have displayed the updated signs from 1 January 2025.

The rules laid down in the Catering Act concerning the prohibition of dispensing alcohol to persons under the age of 18, cf. Consolidation Act No. 692 of 5 July 2019 on restaurant services and alcohol licences, etc., shall continue to apply. Thus, catering establishments will continue only to be allowed to serve alcoholic beverages to persons who have reached the age of 18 years.

Re no. 3

Under § 2(1), alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be sold to persons under the age of 16 years from shops where retail sale takes place.

§ 2(2) of the Act states that alcoholic beverages with an alcoholic strength of 6 % or more may not be sold to persons under the age of 18 years from retail shops.

It is proposed that new *paragraph 3* be inserted in § 2, according to which in night-life zones, alcoholic beverages containing an alcohol content of 1.2 % or more by volume may not be sold or delivered to persons under 18 years of age from 22.00 to 08.00.

The proposed provision would mean that alcoholic beverages with an alcoholic strength of more than 1.2 % may henceforth not be sold or delivered to persons under 18 years of age in night-life zones during the period from 22.00 to 08.00.

Night-life zones shall be designated by the police, cf. § 6b of the Act on the activities of the police. The designation of night-life zones may take place where there is a dense concentration in the area concerned of night clubs, bars, cafés and the like, with opening hours after 24.00, and the designation of a night-life zone is deemed appropriate to deal with offences during the evening and night hours.

The proposed provision is intended to cover places of general access. It is therefore irrelevant, for example, whether the sale, etc., takes place from a temporary or fixed outlet, or whether it is done from a shop, a stand or a wagon travelling from one place to another.

The provision is also proposed to include delivery. This would mean that alcoholic beverages with an alcoholic strength of 1.2 % or more by volume may not be delivered on a commercial basis to persons under the age of 18 who are staying in a night-life zone during the period from 22.00 to 08.00. Thus, for example, if a person under 18 years of age orders, by means of a tender or similar service, alcoholic beverages with an alcoholic strength by volume of 1.2 % or more, for supply within a night-life zone, it would be caught by the prohibition against bringing the product to the customer.

The ban on delivery will only apply to public places in a night-life zone, such as streets, squares and parks. Thus, for example, the ban would not cover delivery in or to private homes, nor will the ban on sales cover private events, for example.

It should be noted that § 5(1) of the Act provides that, for infringements of § 1, § 2 or § 2a and rules issued pursuant to § 2a(6), the shop owner, the restaurateur, the hotel host, the canteen owner, the professional marketing by means of distance selling, etc., is punishable by a fine.

The Danish Safety Technology Authority, which is currently monitoring compliance with the age limits laid down in the Act, will also monitor the proposed provision with regard to sales from retail shops. The police will enforce the ban on the delivery of alcoholic beverages with an alcoholic strength of 1.2 % or more to people under the age of 18 who are staying in a night-life zone between 22.00 and 08.00. If the Danish Safety Technology Authority or the police find an infringement of the prohibition on the sale or delivery of alcoholic beverages with an alcohol volume of more than 1,2 to persons under 18 years of age, this may give rise to a financial penalty (see § 3 no. 9 of the draft Act). In this context, it is not a prerequisite that the retail establishment or the service behind the delivery has been made aware of the ban by the Danish Safety Technology Authority, the police or other public authority, since each retail establishment must keep abreast of the police's designation of night-life zones.

In that regard, it should be noted that the police publishes any decision to designate a night-life zone on the official police website, social media or similar, and the police district in question issues a press release on the night-life zone and the details of the zone.

As required by § 2a(6) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 years, shops where alcoholic beverages are sold at retail outlets shall, by means of visible signs drawn up by the Danish Health Authority, inform about the age limit requirements for the sale of alcoholic beverages, cf. paragraphs 2-5 and § 2. The proposed provision that alcoholic beverages with an alcoholic strength by volume of more than 1.2 % may henceforth not be sold or delivered to persons under 18 years of age in night-life zones during the period from 22.00 to 08.00 would not be covered by the requirement for visible age signs. The Danish Health Authority will make available signs which shops in night-life zones can use if the individual store considers it appropriate. The sign concerning rules for night-life zones will be available on the Danish Health Authority's website from 1 December 2024.

Re no. 4

§ 2(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that alcoholic beverages with an alcoholic

strength by volume of 16.5 or more may not be sold to persons under the age of 18 years from retail outlets.

§ 2a(4) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that a person who sells alcoholic beverages with an alcoholic strength by volume of 16.5 % or more at physical places must require the presentation of a valid photo identification if the vendor has doubts that the customer has reached the age of 18.

§ 2a(5) provides that a person who markets alcoholic beverages with an alcoholic strength by volume of 16.5 % or more on a distance sales basis must operate an age verification system which, at the time of sale, verifies that the customer has reached the age of 18 years.

It is proposed that in § 2a(4) and *paragraph 5*, ‘greater than or equal to 16.5’ is replaced by ‘greater than 6’;

The proposed amendments are to be seen in the context of § 3(2) of the draft Act, where it is proposed that alcoholic beverages with an alcoholic strength by volume of more than 6 % should henceforth not be sold to persons under the age of 18.

Re no. 5

§ 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 compliance with the requirements of §§ 1-2a and rules issued pursuant to § 2a(8). It follows from paragraph 2 of the provision that the Danish Safety Technology Authority’s representatives shall at any time, without proof of identity, have access to dealers’ shops for the purpose of verifying compliance with §§ 1-2a and rules issued pursuant to § 2a(8).

It is proposed that in § 2b(1) and 2, ‘§ 4a’ is inserted after ‘§§ 1-2a’.

The proposed amendment will mean that the Danish Safety Technology Authority will in future also monitor § 4a of the Act on requirements for the location of alcoholic beverages. The proposed provision must be seen in conjunction with § 3 no. 8 of the draft Act, which proposes that in brick-and-mortar shops where retail sales are made, the placement of alcoholic beverages with an alcoholic strength of 1.2 % or more may not be directed towards or linked to a context aimed at children and adolescents.

The proposed amendment will also mean that the Danish Safety Technology Authority's representatives have access at any time, without proof of identification, to dealers' shops for the purpose of checking compliance with § 4a. The aim is that the inspection could thus be carried out in connection with the inspection visits already carried out in order to carry out the Agency's other inspection tasks.

The Danish Safety Technology Authority will be able to organise the detailed inspection task on a case-by-case basis, including the possibility of carrying out anonymous checks. The Danish Safety Technology Authority will thus be able to carry out the checks without proof of identity, whereby its representatives can act in such a way that they are not identifiable to retailers. This includes the fact that the Danish Safety Technology Authority's representatives may, in the course of an inspection, refrain from presenting themselves and not to act in uniform or other clothing associating them with a supervisory authority.

Re no. 6

§ 2(1) to (2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that alcoholic beverages with an alcoholic strength of 1.2 % or more may not be sold to persons under the age of 16 years from shops where retail sales are carried out and that alcoholic beverages with an alcoholic strength of 16.5 % or more may not be sold to persons under 18 years of age from shops where retail sales are carried out.

§ 3(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that alcoholic beverages with an alcoholic strength by volume between 1.2 and 16.5 may not be imported from other EU countries by persons under the age of 16.

It is proposed that in *paragraph 3 (2)*, '16.5' is replaced '6'.

The proposed provision is to be seen in conjunction with § 3(2) of the draft Act, which proposes that alcoholic beverages with an alcoholic strength exceeding 6 % by volume should in future not be sold to persons under the age of 18.

Re no. 7

§ 2(2) of the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18 provides that alcoholic beverages with an alcoholic strength of 16.5 % or more by volume may not be sold to persons under the age of 18 years from retail shops.

§ 3(3) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that alcoholic beverages with an alcoholic strength of 16.5 % or more by volume may not be imported from other EU countries by persons under the age of 18.

It is proposed that in §(3) ‘16.5 or more’ is replaced by ‘more than 6’.

The proposed provision is to be seen in the context of § 3(2) of the draft Act, which proposes that alcoholic beverages with an alcoholic strength of more than 6 % by volume should henceforth not be sold to persons under 18 years of age.

Re no. 8

4.

Under § 1(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, tobacco products, tobacco surrogates and herbal products for smoking may not be sold to persons under the age of 18.

Under § 2(1) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age, alcoholic beverages with an alcoholic strength by volume of 1,2 or more may not be sold to persons under the age of 16 years from retail outlets. Paragraph 2 of that provision provides that alcoholic beverages with an alcoholic strength by volume of 16.5 % or more may not be sold to persons under the age of 18 years from retail outlets.

The Act prohibiting the sale of tobacco and alcohol does not provide for the possibility of imposing injunctions on communication platforms such as social media.

It is proposed that § 4 be inserted after § 3.

Under the proposed § 4(1), the Danish Safety Technology Authority may order a communication platform to modify or remove content relating to the labelling of tobacco products, tobacco surrogates or herbal products for smoking to persons under 18 years of age.

The proposed provision will allow the Danish Safety Technology Authority to order communication platforms to change or remove content if it concerns the marketing of tobacco products, tobacco surrogates or herbal products for smoking to persons under 18 years of age. This will be relevant, for example, in cases where the lawful marketing of tobacco surrogates can be observed, but where the marketing is made to people under

the age of 18, in forums for children and adolescents, such as groups of primary school pupils or similar.

In this context, it is pointed out that it is not permitted to sell tobacco products, tobacco surrogates or herbal products for smoking to persons under the age of 18, cf. § 1 of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18. Placing on the market shall be understood in accordance with § 2 no. 21 of the Act on tobacco products, etc., and thus concerns making tobacco products, tobacco surrogates or herbal products for smoking available to consumers for payment or free of charge. 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

The proposed provision therefore needs to be seen as an extension of the current age limit for tobacco products, tobacco surrogates and herbal products for smoking.

The proposal must be seen in the light of the fact that the marketing of tobacco products, tobacco surrogates and herbal products for smoking no longer only takes place from brick-and-mortar shops and webshops, but has also moved to social media.

The proposal means that the Danish Safety Technology Authority will be able to order communication platforms to change the way a product is placed on the market or to remove content altogether where there is marketing to persons under 18 years of age, for example from a user profile.

An order to modify or remove content will in principle only be issued once the control authority has found that a communication platform has not complied with a request to remove the content in question voluntarily.

The provision could not be used to block communication platforms or user profiles.

§ 3(9) of the draft Act also provides that if a communication platform fails to comply with an order, they will be penalised by a fine.

Communication platforms shall be understood in accordance with the definition in § 2 no. 34 of the Tobacco Products Act, etc., which is proposed to be inserted by § 1 no. 6 of the draft Act.

Reference is also made to § 1 no. 24 of the draft Act, which proposes to include a provision in the Act on tobacco products, etc., in which the Danish Safety Technology Authority may also order a communication platform to

amend 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.

Under the proposed *paragraph 4(2)*, the Danish Safety Technology Authority may order a communication platform to amend or remove content relating to the marketing of alcoholic beverages with an alcoholic strength of 1.2 % or more to persons under 16 years of age.

The proposed provision will allow the Danish Safety Technology Authority to order communication platforms to modify or remove content if it concerns the marketing of alcoholic beverages with an alcoholic strength of 1.2 % or more to persons under 16 years of age. This would be relevant, for example, in cases where the lawful marketing of alcoholic beverages can be found, but where the marketing is made to people under the age of 16, in forums for children and adolescents, such as groups of primary school pupils or similar.

In this context, it is recalled that alcoholic beverages with an alcoholic strength of 1.2 % or more may not be sold to persons under the age of 16 from shops, cf. § 2(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, which is proposed to be amended by § 3 no. 1 of the draft Act. Placing on the market is to be understood in accordance with § 2 no. 21 of the Act on tobacco products, etc., and thus concerns making alcoholic beverages available to consumers for payment or free of charge. 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

The proposed provision must therefore be seen in the context of the current age limit for alcoholic beverages.

The proposal is to be seen in the light of the fact that the sale of tobacco and nicotine products is no longer only made from brick-and-mortar shops and webshops, but has also moved to social media. It is suspected that sales of alcoholic beverages can also move more onto social media.

The proposal means that the Danish Safety Technology Authority will be able to order communication platforms to change the way a product is placed on the market or to remove a product which is marketed to persons under 16 years of age, for example from a user profile.

An order to modify or remove content will in principle only be issued once the control authority has found that a communication platform has not complied with a request to remove the content in question voluntarily.

The provision could not be used to block communication platforms or user profiles.

§ 3 no. 9 of the draft Act also states that if a communication platform fails to comply with an order, they will be penalised by a fine.

Communication platforms shall be understood in accordance with the definition in § 2 no. 34 of the Tobacco Products Act, etc., which is proposed to be inserted by § 1 no. 6 of the draft Act.

It should be noted that, in addition to the age limit for alcoholic beverages, commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, pictures or references to alcohol, cf. § 11(2) of the Marketing Act.

Under the proposed § 4(3), the Danish Safety Technology Authority may order a communication platform to modify or remove content if it concerns the marketing of alcoholic beverages with an alcoholic strength of more than 6 % by volume to persons under 18 years of age.

The proposed provision will allow the Danish Safety Technology Authority to order communication platforms to modify or remove content if it concerns the marketing of alcoholic beverages with an alcoholic strength of more than 6 % by volume to persons under 18 years of age. This would be relevant, for example, in cases where the lawful marketing of alcoholic beverages can be found, but where the marketing is made to people under the age of 18, in forums for children and adolescents, such as groups of primary school pupils or similar.

In this regard, it is recalled that alcoholic beverages with an alcoholic strength exceeding 6 % by volume may not be sold to persons under the age of 18, cf. § 2(2) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 with the amendments proposed in § 3 nos. 1 and 2 of the draft Act. Placing on the market is to be understood in accordance with § 2 no. 21 of the Act on tobacco products, etc., and thus concerns making alcoholic beverages available to consumers for payment or free of charge. 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

The proposed provision must therefore be seen in the context of the future age limit for alcoholic beverages.

The proposal is to be seen in the light of the fact that the sale of tobacco and nicotine products is no longer only made from brick-and-mortar shops and webshops, but has also moved to social media. It is suspected that sales of alcoholic beverages can also move more onto social media.

The proposal means that the Danish Safety Technology Authority will be able to order communication platforms to change the way a product is placed on the market or to remove content altogether where there is marketing to persons under 18 years of age, for example from a user profile.

An order to modify or remove content will in principle only be issued once the control authority has found that a communication platform has not complied with a request to remove the content in question voluntarily.

The provision could not be used to block communication platforms or user profiles.

§ 3 no. 9 of the draft Act also provides that if a communication platform fails to comply with an order, they will be penalised by a fine.

Communication platforms shall be understood in accordance with the definition in § 2 no. 34 of the Tobacco Products Act, etc., which is proposed to be inserted by § 1 no. 6 of the draft Act.

It should be noted that, in addition to the age limit for alcoholic beverages, commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, pictures or references to alcohol, cf. § 11(2) of the Marketing Act.

(§ 4 a)

§ 3(1) of the Marketing Act states that traders must follow good commercial practices, taking into account consumers, traders and the public interest, subject to paragraph 3. Paragraph 2 of that provision provides that, without prejudice to paragraph 3, commercial practices aimed at children and adolescents or in which children and young people are particularly vulnerable to the commercial practice must take particular account of the natural credulity of children and young people and lack of experience and critical sentiment which make them easier to influence and characterise.

§ 11(2) of the Marketing Act states that commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, pictures or references to intoxicants, including alcohol or other products unsuitable for children and adolescents under the age of 18 years.

Whether the location of alcoholic beverages can be said to be aimed at children and adolescents for the purposes of §§ 3 and 11(2) will always depend on a specific assessment. There is currently no administrative or other practice in this area.

On the basis of the provisions of the Marketing Act, the Alcohol Advertising Board has issued more detailed guidelines. The Alcohol Advertising Board's guidelines constitute the industry's interpretation of honest practices in industrial and commercial matters and represent an ethical standard for economic operators and cover any form of marketing of alcoholic beverages that takes place on the Danish market. The guidelines and related notes set out, inter alia, the design and content requirements for the marketing of alcoholic beverages, as well as requirements in relation to children and adolescents.

The Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 does not contain any requirement for the placement of alcoholic beverages in retail.

It is proposed to insert § 4a as a new provision.

It is proposed in § 4a (1) that in brick-and-mortar shops where retail sales are made, the location of alcoholic beverages with an alcoholic strength of 1.2 % or more must not be directed towards or linked to a context aimed at children and adolescents.

The proposed provision would make it clear directly from the legislation that there are requirements as to where and how alcoholic beverages are placed. The detailed location requirements are proposed in paragraph 2 of the provision.

The requirement covers the same products covered by the age limits for the sale of alcoholic beverages laid down in the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18.

It should be noted that the *lex specialis* principle applies. The proposed § 4a of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 thus takes precedence over the provisions of the Marketing

Act. With the proposed § 4a, it is also intended to clarify which requirements apply to the location of alcoholic beverages.

It is proposed in § 4a(2) no. 1 that when complying with the prohibition laid down in paragraph 1, juices, soft drinks, chips, sweets and similar products intended for children and adolescents shall not be placed on the same shelf as the alcoholic beverages or adjacent shelf areas.

The proposed provision will mean that there are a number of specific products to which alcoholic beverages must not be adjacent. These include all types of juice, soft drinks, chips and sweets, as well as similar products aimed at children and adolescents. Similar products aimed at children and adolescents must be understood narrowly and appear only in order to ensure that products that are highly similar to juices, soft drinks, chips and sweets are also covered if the products appeal to children and adolescents. This would mean, for example, that chocolate with toys is covered, while filled chocolates placed on the market for adults will not be covered.

Juice is to be understood in accordance with the Order on fruit juices, etc.

Soft drinks shall be understood in accordance with the Læskedrikreklamenævn (Soft Drink Advertising Association). The term 'soft drinks' thus covers beverages which typically consist of water to which fruit juices or extracts have been added as well as potentially acids, salts and/or other authorised additives and flavourings. Soft drinks may be sweetened with sugar and/or sweeteners and may be carbonated or aerated. Enriched soft drinks are also included. 'Soft drinks' do not include products with the sales description 'juice', 'fruit juices', 'concentrated fruit juices', 'fruit nectars', cf. the definitions of these products in the Order on fruit juices etc. Energy drinks and cider are also covered by the concept of soft drinks to the extent that the products are not alcoholic beverages.

Adjacent shelves are to be understood as those directly adjacent to the shelf where alcoholic beverages are kept. There must therefore be other groups of products which provide a separation between alcoholic beverages and juices, soft drinks, chips and sweets, and similar products intended for children and adolescents. The separation shall be vertical, horizontal and diagonal. It would thus not be permitted to have alcoholic beverages on shelves which are just to the left or right of the shelf with, for example, juices, or which are just above, below or aligned with juices. On the other hand, it would be permissible to have alcoholic beverages standing in such a way that there is a single shelf with other products that distin-

guish it from the shelf with, for example, juices, this also applies vertically, horizontally and diagonally.

It is proposed in § 4a(2) no. 2, when complying with the prohibition laid down in paragraph 1, alcoholic beverages shall not be placed at the entrances.

The proposed provision would mean that there may be no alcoholic beverages at entrances, regardless of how they are placed.

‘Entrance’ is to be understood as the area surrounding the entrance of a building, outside and inside. The entrance forms a limited part of the shop, often taking up a few square metres, and in some cases may be limited by the presence of additional doors to the goods section itself after entering the building.

It is proposed in § 4a(2) no. 3 that, in complying with the prohibition in paragraph 1, there shall be no impression given that alcoholic beverages are associated with active sport or events for children and adolescents.

The proposed provision would provide that alcoholic beverages may not be placed in such a way that they are associated with active sport or events for children and adolescents. That provision therefore concerns the associations arising from the location of alcoholic beverages, both as a result of the products related to the alcoholic beverages and from the instruments used in relation to them.

Active sporting activity must be understood as meaning that alcohol is not placed in a way that is associated with being physically active. Alcohol can, for example, be associated with physical activity by being placed together with sports tools or by the presence of advertisements for physical activity in relation to the alcoholic beverages. In other words, the location of the alcoholic beverages must not give the impression that active sport and alcohol consumption are related to, or prerequisites for, each other. The provision does not concern sport in television, radio, etc., but is intended for children and young people’s own active participation in sport.

Events are to be understood as meaning that alcohol may not be placed in a way that is associated with, for example, birthdays, confirmations, fastelavn (carnival), Halloween, etc. Alcohol can be associated with events by being placed together with decorations, gift paper, birthday cards, etc., or by the shelf etc. of the alcoholic beverages being decorated with confetti or other festive decoration. In other words, the location of the alcoholic

beverages must not give the impression that events for children and adolescents and the consumption of alcohol are related or prerequisites for each other.

It is proposed in § 4a(2) no. 4 that in complying with the prohibition laid down in paragraph 1, no emphasis shall be placed on alcoholic beverages or cause the alcoholic beverages to be particularly urgent, provocative or otherwise particularly persuasive to children and adolescents, including visual and textual content.

The proposed provision would mean that alcoholic beverages should not have a particularly prominent role at the point of sale or distinguish themselves from the other products in a way that appeals to children and adolescents. The provision thus covers which instruments used in connection with alcoholic beverages.

It is not possible to specify precisely what is not permitted, as it depends on the actual context and overall impression in each store. However, it may be cases, for example, where it would be contrary to the prohibition to display alcoholic beverages in the middle of passageways if the display uses instruments that appeal to children and adolescents.

It is proposed in § 4a(3) that the requirement of paragraph 2, no. 1 shall not apply to refrigerators with beverages and pre-packed gift baskets.

The proposed provision would mean that refrigerators with beverages and pre-packed gift baskets are not covered by the ban on placing juices, soft drinks, chips, sweets and similar products aimed at children and adolescents on the same shelf as the alcoholic beverages or on an adjacent shelf.

The exemption for refrigerators is in order to take into account of the fact that sales outlets have different designs and sizes. Thus, there will be sales outlets that do not have the possibility to have several refrigerators. Against this background, there is no requirement as to where and how the products should be placed in refrigerators. The derogation applies only to refrigerators with beverages; where there are other products in the refrigerator, the derogation does not apply. Thus, for example, soft drinks and alcoholic beverages will be allowed in the same refrigerators, including on the same shelf, if there are only drinks in the refrigerator, whereas it would not be allowed if, for example, there is also yoghurt in the refrigerator.

The exemption for pre-packed gift baskets is in order to take account of the fact that points of sale must continue to be able to offer gift baskets in

their range, even though this may imply that alcoholic beverages are linked to sweets, chips, etc. It is a prerequisite that the gift baskets are prepacked.

It is proposed in § 4a (4) that the requirement laid down in paragraph 2, nos. 1 and 2, does not apply to brick-and-mortar shops specialised in the sale of alcoholic beverages.

The proposed provision would mean that brick-and-mortar shops specialised in the sale of alcoholic beverages are not covered by the ban on placing juices, soft drinks, chips, sweets and similar products aimed at children and adolescents on the same shelf as the alcoholic beverages or on adjacent shelf flasks, and would be exempt from the ban on placing alcoholic beverages at entrances.

The exemption will also apply if such special shops are located in department stores, shopping centres and the like. It will however not apply for special stands or counters in everyday shops, supermarkets or the like.

A point of sale is considered to be specialised in the sale of alcoholic beverages when the premises have a wide range of such sales. In addition, the point of sale will be able to sell special goods which do not in principle appeal to children and adolescents. These include, for example, pipes, pipe tobacco and cigars, coffee, chocolate and other specialities. A general kiosk or shop with a wider range should not be considered as a special shop.

Re no. 9

Under § 1(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, tobacco products, tobacco surrogates and herbal products for smoking may not be sold to persons under the age of 18.

Under § 2(1) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age, alcoholic beverages with an alcoholic strength by volume of 1,2 or more may not be sold to persons under the age of 16 years from retail outlets. Paragraph 2 of that provision provides that alcoholic beverages with an alcoholic strength by volume of 16.5 % or more may not be sold to persons under the age of 18 years from retail outlets.

§ 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. Paragraph

2 of that provision provides that a person who sells alcoholic beverages commercially with an alcoholic strength by volume of 1.2 % or more at physical points of sale must require the presentation of a valid image identification if the vendor is in doubt that the customer is at least 16 years of age. Paragraph 3 of that provision provides that a person who markets alcoholic beverages commercially with an alcoholic strength by volume of 1.2 % or more by volume on a distance basis must operate an age verification system which, at the time of sale, verifies that the customer is at least 16 years of age. Paragraph 4 of that provision provides that a person who sells alcoholic beverages commercially with an alcoholic strength by volume of 16.5 % or more at physical points of sale must require the presentation of a valid image identification if the vendor has doubts that the customer is at least 18 years of age. Paragraph 5 of that provision provides that a person who markets alcoholic beverages commercially with an alcoholic strength by volume of 16.5 % or more by volume on a distance basis must operate an age verification system which, at the time of sale, verifies that the customer is at least 18 years of age. It follows from paragraph 6 of the provision that shops where alcoholic beverages are retailing must state, by means of a visible sign drawn up by the Danish Health Authority, the age limit requirements for the sale of alcoholic beverages, cf. paragraphs 2-5 and § 2. It follows from paragraph 7 of the provision 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. paragraph 1 and § 1, shall be drawn up by the Danish Health Authority. It follows from paragraph 8 of the provision that the Minister for Health shall lay down detailed rules on the design, installation, etc. of signs, cf. paragraph 6.

It follows from § 5(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that, for infringements of § 1, § 2 or § 2a and rules issued pursuant to § 2a(8), the shop owner, the restaurateur, the hotel host, the canteen owner, the professional marketing by means of distance selling, etc. shall be punished by a fine. In determining the level of the penalty, it is considered to be an especially aggravating circumstance if the infringements of § 1, § 2 or § 2a and regulations issued pursuant to § 2a(8) are of a serious or repetitive nature. The provision in § 23 of the Criminal Code shall not apply.

In the comments on § 5(1), cf. Folketingstidende 2018-2019, Annex A, L 65 as published, it is stated that the proposal envisages an increase in the level of penalty in § 5(1) point 1 of the Act, so that the amount of fines in

future will respectively be DKK 10 000 for first offences, DKK 20 000 for second offences and DKK 40 000 for third offences. For subsequent violations, the amount of the fine will depend on a specific assessment, which will depend on intent, etc.

The comments to § 5(1), cf. Folketingstidende 2020-2021, Appendix A, L 61, as published, page 59, state that in order to further encourage greater compliance with the ban on the sale of tobacco, tobacco surrogates and herbal products for smoking to persons under the age of 18, it is assumed that, in the event of infringement of the Act, the level of fines will be increased. The size of fines in future shall therefore respectively be DKK 25 000 for first-time cases and thereafter DKK 40 000 for further cases. For subsequent violations, the amount of the fine will depend on a specific assessment, which will depend on intent, etc.

It is proposed in § 5(1), *points 1 and 2*, to amend ‘§ 1, § 2 or § 2a and rules issued pursuant to § 2a(8)’ in *Paragraph 5 (1)* to ‘§§ 1-2a or 4a(1) and rules issued pursuant to § 2a(8)’.

The proposed amendment would result in an infringement of § 4a(1) being punishable by a fine. The proposed amendment will also allow the comments to indicate expectations of a level of fines for infringements of §§ 1-2a and rules issued pursuant to § 2a(8) that are higher than previously.

With regard to § 4a(1), which is proposed to be added to the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 by § 3 number 8 of the draft Act, it is proposed that infringements should be punishable by a fine. Infringement of the provision is proposed to be penalised, inter alia, with a view to securing the incentive to comply with the requirements for the location of alcoholic beverages.

In the event of an infringement of § 4a(1), the expectation of the level of fines is that in the first case it is punishable by a fine of DKK 10 000. In second and third cases, fines measured at DKK 20 000 and DKK 40 000 respectively. When determining the fine for infringement, the fine should be such that it is dissuasive 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.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each addi-

tional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will continue to depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be waived upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

As regards §§ 1-2a and rules issued pursuant to § 2a(8), it is proposed to change the expectation to the level of fines so that the levels of fines in the future start at DKK 50 000 in the case of traders' infringements. Determination of the level of fines will in principle be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

With regard to §§ 1 and 2, which are proposed to be amended in § 3 nos. 1-3 of the draft Act, it should be noted that there is a prohibition on proxy sales. In the case of infringements by private individuals of the ban on proxy sales under §§ 1 and 2, it is proposed that the expectation of the level of fines is that in first cases it is punishable by a fine of DKK 10 000. In second and third cases, fines measured at DKK 20 000 and DKK 40 000 respectively are assumed. When determining the fine for infringement, the fine should be such that it is dissuasive 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.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 10

Under § 1(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18, tobacco products, tobacco surrogates and herbal products for smoking may not be sold to persons under the age of 18.

Under § 2(1) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age, alcoholic beverages with an alcoholic strength by volume of 1,2 or more may not be sold to persons under the age of 16 years from retail outlets. Paragraph 2 of that provision provides that alcoholic beverages with an alcoholic strength by volume of 16.5 % or more may not be sold to persons under the age of 18 years from retail outlets.

§ 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. Paragraph 2 of that provision provides that a person who sells alcoholic beverages commercially with an alcoholic strength by volume of 1.2 % or more at physical points of sale must require the presentation of a valid image identification if the vendor is in doubt that the customer is at least 16 years of age. Paragraph 3 of that provision provides that a person who markets alcoholic beverages commercially with an alcoholic strength by volume of 1.2 % or more by volume on a distance basis must operate an age verification system which, at the time of sale, verifies that the customer is at least

16 years of age. Paragraph 4 of that provision provides that a person who sells alcoholic beverages commercially with an alcoholic strength by volume of 16.5 % or more at physical points of sale must require the presentation of a valid image identification if the vendor has doubts that the customer is at least 18 years of age. Paragraph 5 of that provision provides that a person who markets alcoholic beverages commercially with an alcoholic strength by volume of 16.5 % or more by volume on a distance basis must operate an age verification system which, at the time of sale, verifies that the customer is at least 18 years of age. It follows from paragraph 6 of the provision that shops where alcoholic beverages are retailing must state, by means of a visible sign drawn up by the Danish Health Authority, the age limit requirements for the sale of alcoholic beverages, cf. paragraphs 2-5 and § 2. It follows from paragraph 7 of the provision 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. paragraph 1 and § 1, shall be drawn up by the Danish Health Authority. It follows from paragraph 8 of the provision that the Minister for Health shall lay down detailed rules on the design, installation, etc. of signs, cf. paragraph 6.

It follows from § 5(1) of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 provides that, for infringements of § 1, § 2 or § 2a and rules issued pursuant to § 2a(8), the shop owner, the restaurateur, the hotel host, the canteen owner, the professional marketing by means of distance selling, etc. shall be punished by a fine. In determining the level of the penalty, it is considered to be an especially aggravating circumstance if the infringements of § 1, § 2 or § 2a and regulations issued pursuant to § 2a(8) are of a serious or repetitive nature. The provision in § 23 of the Criminal Code shall not apply. It follows from paragraph 2 that, in the event of a particularly serious or repeated infringement of §§ 1 and 2a, the right to market tobacco, tobacco surrogates and herbal products shall be deprived for a period of time.

The commentary on § 5(2), cf. Folketingstidende 2020-2021, Appendix A, L 61, as published on page 60, states that, in cases of particularly serious repeated infringement, the right to market tobacco is withdrawn for a period of time when tobacco is sold to persons under the age of 18. This is thus a strengthening of the provision compared with current legislation, since it is proposed that the period of withdrawal of the right to place tobacco, tobacco surrogates and herbal smoking products on the market after the proposed determination of the court will be a minimum of 6 months. It

is a condition for the temporary withdrawal of the right to place tobacco, tobacco surrogates and herbal smoking products on the market that the dealer has twice previously sold the products to minors. It is additionally envisaged that on the third occasion that a violation takes place, there will be a temporary withdrawal of the right to sell tobacco for at least 6 months, if it is less than 2 years since the first offence was committed. It is envisaged that if there is a fourth violation, there will be a temporary withdrawal of the right to sell tobacco, tobacco surrogates and herbal smoking products for 8 months, if it is less than 1 year since the last quarantine period expired. Finally, it is envisaged that if there is a fifth violation, there will be a temporary withdrawal of the right to sell tobacco, tobacco surrogates and herbal smoking products for 12 months, if it is less than 1 year since the last quarantine period expired. The withdrawal of the right to place tobacco, tobacco surrogates and herbal smoking products on the market will only apply to the sales outlet which has violated the prohibition, even if its owner has several sales outlets. If the sales outlet is part of a chain of shops, the withdrawal of the right will therefore not be directed at the entire chain of shops but only that sales outlet that has violated the prohibition.

Act No. 738 of 13 June 2023 amended § 5(2) in order to provide more clarity that tobacco, tobacco surrogates and herbal products for smoking were all covered by the provision on the withdrawal of the right to market, cf. Folketingstidende 2022-2023, Appendix A, L 123, as published, page 26.

It is proposed that § 5(2) be redrafted, so that in the event of particularly serious or repeated infringements of §§ 1 and 2a(1), the right to market tobacco products, tobacco surrogates, herbal products for smoking and electronic cigarettes and refill containers with and without nicotine is deprived for a period of time.

The proposed amendment will result in a linguistic amendment to the text of the legislation, which aims to provide for the possibility of specifying in the comments further details on the withdrawal of the right to market. Furthermore, the proposed amendment would mean that the withdrawal of the right to market for a period of time will in future cover more product types, such as tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them. As far as equipment and flavourings are concerned, the withdrawal will cover the prod-

ucts regulated by the Act on tobacco products etc. and the Act on electronic cigarettes, etc.

Withdrawal of the right to place the products on the market will occur in the event of the third infringement and the withdrawal would normally apply for one year. In the event of subsequent infringements, this will result in a new temporary withdrawal of one year as a starting point.

The calculation of when three infringements have taken place is made over a period of 10 years. The repeat infringement effect thus ceases if it is more than 10 years since the last infringement was committed. The three infringements may have been detected during different inspections, but may also have been detected under the same supervision. Thus, three infringements found at the same time would have the effect of depriving the right to market the products, with the proviso that there must be an infringement of three different provisions and not, for example, that three products infringe the same provision.

The calculation of when three cases have occurred will also be measured across tobacco and nicotine products and disqualification will also apply across tobacco and nicotine products. Thus, no distinction is made between whether the infringement concerns tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with or without nicotine or equipment and flavourings used with them. Thus, for example, an infringement of § 1 of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 because of the sales age limit for tobacco products will count as equivalent to an infringement of § 19a of the Act on tobacco products etc. on health warnings on tobacco surrogates, even if it concerns different products and different legislation. The products are generally treated in the same way in terms of regulation and handling, so that infringements of the various laws are regarded as similar. Reference is made in this connection to § 1(33) and (34) and § 2 no. 16 of the draft Act, where a corresponding provision is proposed to be introduced in the Act on tobacco products etc. and the Act on electronic cigarettes, etc.

If a total of three infringements of the listed provisions of § 45(3) of the Tobacco Products Act, § 33(3) of the Act on electronic cigarettes etc. or § 5(2) of the Act prohibiting the sale of tobacco and alcohol to persons under 18 years of age occur before the end of the repeated infringement effect, then the right will be temporarily deprived, initially for one year, to market tobacco products, tobacco surrogates, herbal products for smoking, elec-

tronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used together with them.

The provision is addressed to retailers. It is immaterial whether they are retailers who market through distance selling or at physical outlets.

The withdrawal of the right to market the products will apply only to the point of sale that has infringed the ban, even if the holder has several outlets. If the sales outlet is part of a chain of shops, the withdrawal of the right will therefore not be directed at the entire chain of shops but only that sales outlet that has violated the prohibition.

It should be noted that the right to market the products generally may also, depending on the circumstances, be withdrawn from the person concerned pursuant to § 79 of the Criminal Code. However, the conditions for applying § 79 of the Danish Penal Code are stricter than is the case under the proposed measure, since the use of § 79 of the Danish Penal Code requires that the person in question is sentenced for an intentional offence providing the basis for an immediate danger of misuse of position and that there furthermore are special circumstances which justify the withdrawal. If the conditions for withdrawal under § 79 of the Danish Penal Code are met, then this provision should be used.

Re no. 11

§ 5 of the Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 states how breaches of a number of provisions of the Act are penalised.

It is proposed that in §5 after paragraph 2, a new *paragraph 3* is inserted under which, unless a more severe penalty is required under other law, a fine shall be imposed on anyone who:

- 1) fails to grant access to the Danish Safety Technology Authority in accordance with § 2b(2), or
- 2) infringes or fails to comply with an order issued by the Danish Safety Technology Authority pursuant to § 4.

The proposed provision would mean that if a retailer fails to grant the Danish Safety Technology Authority access to shop premises for inspection purposes, cf. § 2b(2), the retailer will be penalised by a fine. Similar requirements are already penalised in the Act on tobacco products etc. and the Act on electronic cigarettes, etc.

The proposed provision would also mean that if a communication platform fails to comply with an order under § 4, as proposed in § 3(8) of the draft Act, they will be penalised by a fine. Infringement of the provision is proposed, inter alia, to ensure effective enforcement of the age limits for the sale of tobacco products, tobacco surrogates, herbal products for smoking and alcoholic beverages.

In the event of an infringement of § 4, the expectation of the level of fines is that the starting point for setting the level of fines will initially be DKK 50 000. The starting point for determining the level of fines will be affected by four different parameters: imputability, consistency, probability and turnover. In addition, whether there is a repeated infringement or whether the infringement was committed under aggravating circumstances.

It is based on the supervisory authority's assessment of the individual and specific circumstances of the case, which amount of the fine is proposed in each individual case, taking into account the relevant parameters in the specific situation, aggravating and attenuating circumstances, and taking into account relevant case law. Attention must be paid to the fact that the amount of the fine must be proportionate to the infringement and that the trader is not able in reality to make a profit from breaching the rules.

In the event of multiple infringements, this would have to be reflected in the level of the fine. This applies both where there are several infringements of the same provision or infringement of different provisions. The amount of the fine will have to be significantly increased for each additional infringement. The aim is to ensure that the amount of the fine is such that it acts as a deterrent and sends a clear signal that the rules must be complied with. However, the financial penalty calculated must be proportionate to the infringement in question.

It is also noted that the Danish Safety Technology Authority, as a public authority, has a general duty of guidance.

The determination of the amount of the penalty will depend on a case-by-case assessment by the courts of all the circumstances of the case, and the amount of the fine indicated may be varied upwards or downwards if there are aggravating or mitigating circumstances under the general rules laid down in Chapter 10 of the Criminal Code.

Re no. 12

The Act prohibiting the sale of tobacco and alcohol to persons under the age of 18 does not contain any rules on the issuing of administrative penalty orders in the event of infringement of the provisions of the Act.

For a detailed description of existing law in relation to the control powers of the Danish Safety Technology Authority, see point 2.2 of the general comments to the draft Act.

It is proposed to insert § 5a with new provisions.

It is proposed in § 5a, *paragraph 1* that the Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 5(1) or rules laid down pursuant to the Act, concerning infringements of the provisions of this Act which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a penalty order that the case may be decided without legal proceedings if the perpetrator of the offence declares himself guilty of the offence and declares that he is prepared to pay a fine as specified in the financial notice within a specified period.

The proposed provision will mean that the Minister for the Interior and Health will be able on an ongoing basis to lay down rules on the provisions for which the Danish Safety Technology Authority will henceforth have the power to issue administrative penalty notices in the event of an offence.

The Danish Safety Technology Authority will only be empowered to issue administrative fines when the infringements are generally uniform, straightforward and without any evidential doubts, and when the level of penalties is fixed, for example in court practice or preparatory work. Infringements must therefore, in general, be clear and immediately verifiable and the outcome of the case, including the determination of the amount of the fine, must be free from any element of discretion.

If the case is not straightforward to enable the case to be resolved by means of an administrative penalty order, or if the appropriate level of penalties can be called into question, a report to the police shall be made instead.

The types of infringements found to be suitable for issuing administrative penalty notices are infringements which are immediately detectable and are punishable by a fine in the event of an infringement, cf. § 5 of the Act.

These will therefore be cases in which infringements would generally be prima facie detectable and without any significant discretionary elements.

The level of fines for infringements of the rules relating to alcoholic beverages is DKK 10 000 in the first case, DKK 20 000 in the second case and DKK 40 000 in third cases. For the sale of tobacco products, tobacco surrogates and herbal products for smoking, the level of fines shall be DKK 25 000 in the first case and DKK 40 000 in the second case, and, in the case of particularly serious or repeated infringements of the rules on sales to minors, tobacco surrogates and herbal products, shall be deprived of the right to market tobacco products, tobacco surrogates and herbal products for a period of at least 6 months. However, the actual amount of the fine may vary upwards or downwards depending on the specific case. It should be noted that § 3(9) of the draft Act proposes to change the expectation to the level of fines, so that the levels of fines will henceforth start at DKK 50 000 in the case of infringements by traders of §§ 1-2a of the Act.

The fine shall be collected by and paid to the Danish Safety Technology Authority. The Danish Safety Technology Authority shall be entitled to allow the payment by instalments or deferral of payment of the fine adopted. A fine adopted shall be attached to a lien pursuant to § 11 of the Debt Recovery Act and shall not be subject to interest during recovery, cf. § 5(1) of the Debt Recovery Act. A fine adopted shall be covered, together with periodic penalty payments, with priority over other claims in the course of recovery, cf. § 4(1) no. 1 of the Debt Recovery Act.

It is proposed in § 5a(2) that the rules of the Administration of Justice Act on requirements for the content of an indictment and on the fact that an accused person is not required to make a statement apply mutatis mutandis to fines.

Compliance with the requirements for an indictment means that the application for a fine must contain, in particular, information on the rule alleged to have been infringed, the legal basis and a description of the offence for which administrative penalty orders are issued, cf. § 834 (1). nos. 2 and 3, and (2) of the Administration of Justice Act. That indication shall be clear and intelligible and shall enable the person concerned to assess the merits of the application for a fine.

The fact that the rules against self-incrimination apply means that the Danish Safety Technology Authority must advise the person concerned that he or she is not obliged to comment. This should be stated directly in the penalty order issued.

In addition, the application for a fine should explain how the person concerned may accept the fine. For example, it may be indicated that acceptance can be achieved by returning the application for a fine in signed form or by paying the fine in a manner specified in the order for payment. It should be explicitly stated that the fine is paid to the Danish Safety Technology Authority, including how this is done. In this connection, the Danish Safety Technology Authority may provide information on the possibility of entering into an installment scheme.

Furthermore, it should be clear from the notice of fines what the effect is of the fact that the notice of fines is or is not adopted. It should therefore be stated that the acceptance of the decision implies that no criminal proceedings will be brought against the person concerned before the courts, but that the person concerned will be obliged to pay the fine. It should also be stated that failure to accept, both if the person concerned objects or does not react, may lead to the Danish Safety Technology Authority reporting the relationship to the police.

It is proposed in *paragraph 5a(3)* that if the fine is accepted, no further action is taken, and that acceptance has the same repeat effect as a judgement.

See also point 2.2 in the general comments on the draft Act.

*Re § 4*

Re No 1

§ 7(1) of the Act on the prohibition of tobacco advertising etc. states that § 7. Infringements of §§ 3, 5, 4 and 5a shall be punishable by a fine.

The preparatory work on the Act on prohibition of tobacco advertising etc. does not take a position on the level of fines for violation of §§ 3, 4 and 5 of the Act. Please refer to page 3030 of Appendix A of the Folketingstidende 2000-01. Under § 6(2) of the Act, surveillance of the Act is conducted according to the regulations of the Marketing Practices Act, for which reason in the event of a violation of the Act on prohibition of tobacco advertising etc. the starting point should be the principles of the Marketing Practices Act and practice in similar cases. Fines for violations of the Marketing Practices Act are determined based on the gravity, extent of the violation and the financial benefit being sought. Violations that are either gross, intentional or repeated should in addition be punished with fines of a size that have a genuine preventive effect. This is stated in the general remarks on determination of punishment in § 37 of the Marketing

Practices Act (Folketingstidende 2016-2017, Annex A, L 40, as published).

The level of fines for infringement of the proposed § 5a(1) is assumed to be assessed in accordance with the current practice for infringement of the Act on the prohibition of tobacco advertising, etc., cf. Folketingstidende 2020-21, Appendix A, L 61, as published on page 35.

It is proposed to amend ‘§§ 3, 4, 5 and 5a’ in § 7 (1), to ‘§§ 3-5a’.

This is merely a linguistic amendment to the text of the legislation, which aims to make it possible to clarify in the comments the calculation of fines for infringement of § 5a(1). The aim is to support more effective supervision and to support a shorter time lag between non-compliance and punishment.

The Consumer Ombudsman will base its calculation on the trader’s turnover when calculating the fine. At the same time, the amount of the fine is such that it acts as a deterrent and sends a strong signal that the prohibition must be complied with. Furthermore, a fine imposed must be in appropriate proportion to the situation caused or potentially caused by the infringement.

When determining the amount of a fine, the extent of the infringement, the turnover of the trader and whether it is a first-time or repeated infringement will be taken into account.

For the purposes of choosing the category of turnover, the total turnover of the trader shall be taken as the basis.

In relation to the position of the trader within the four categories of turnover, turnover means the trader’s net turnover, which is defined in the Annual Accounts Act as the sales value of products and services, etc., after deduction of discounts, value added tax and other taxes directly linked to the amount of sales, cf. Annex 1, C, no. 13, of Consolidation Act No. 838 of 8 August 2019 on the Annual Accounts Act.

As regards turnover from traders who are not required to submit annual accounts under the Annual Accounts Act, the position in the four categories of turnover will depend on the trader’s declaration of the output tax to the Customs and Tax Administration in accordance with the VAT Act, Consolidation Act No. 209 of 27 February 2024 on Value Added Tax (the VAT Act).

The turnover will be calculated for the year of the infringement, if this information is available. If this information is not available, turnover will be calculated on the basis of the year preceding the year of the infringement.

Pursuant to § 31 of the Public Administration Act, the Consumer Ombudsman will have access to information on the trader's turnover via other public authorities.

If there are aggravating or mitigating circumstances in the individual case, the determination of the penalty will, as always, depend on a case-by-case assessment by the courts of all the circumstances of the case, and the levels of fines indicated may therefore be derogated from upwards or downwards, in accordance with the general rules on the determination of the penalty in Chapter 10 of the Criminal Code.

An aggravating circumstance may be, for example, the fact that the company has previously imposed a fine for a similar infringement or that the Consumer Ombudsman has previously informed the undertaking of the prohibition and the consequences of any infringement.

For physical sales outlets, the calculation of fines will be based on the number of events. The number of days the Consumer Ombudsman can prove that tobacco products, tobacco surrogates or herbal products for smoking have been visible to customers by means of pictorial documentation, testimony, etc. will be relevant in determining the number of events in relation to physical sales points, so that one day constitutes one event/infringement. The number of products visible does not affect the amount of the fine.

In the case of first-time infringements of the exhibition ban, cf. the Act on the prohibition of tobacco advertising, etc. in physical sales outlets, the following model of fines will be used. If the trader has a turnover of DKK 1 499 999.99 or less, the offence is punishable by a fine of DKK 10 000. With turnover between DKK 1 500 000.00 and DKK 2 999 999.99, an infringement shall be punishable by a fine of DKK 20 000. With turnover between DKK 3 000 000.00 and DKK 4 999 999.99, an infringement shall be punishable by a fine of DKK 30 000. With a turnover of DKK 5 000 000.00 or more, an infringement shall be punishable by a fine of DKK 50 000. For second and subsequent offences, the fines are increased by 50 %.

Thus, for example, in cases where a point of sale, with an annual turnover of DKK 1 million, has had tobacco products, tobacco surrogates or herbal

products for smoking prominently visible for customers at the point of sale for one day, a fine will be set at DKK 10 000. Similarly, for example, where five different sales outlets in a grocery chain with the same owner have had tobacco products, tobacco surrogates or herbal smoking products visible to customers, each for one day, and there is a turnover of DKK 25 000 000 million, the fine will be measured at DKK 250 000. Similarly, for example, in cases where a sales outlet, with an annual turnover of DKK 1 million, which has had tobacco products, tobacco surrogates or herbal products for smoking standing visible to customers in the shop for one day, but where a fine has previously been imposed for similar infringements, the fine will be measured at DKK 15 000.

For online sales outlets, fines will not follow the same model as for brick-and-mortar shops, as in the case of online sales there are generally many more customers exposed to visible products if the display ban is not respected. Online sales outlets are not geographically limited, as is the case for brick-and-mortar shops. In addition, in relation to online sales outlets, it will be easier to document the duration of the infringement, unlike brick-and-mortar shops, where there will typically be a snapshot.

In the case of first-time infringements of the exhibition ban, cf. the Act on the prohibition of tobacco advertising, etc. at online sales outlets, the following model of fines will be used. If tobacco products, tobacco surrogates or herbal products for smoking have been visible for an offence period of up to 6 months, the infringement shall be punished by a fine rate of DKK 50 000. Where tobacco products, tobacco surrogates or herbal products for smoking were visible during an offence period of more than 6 months, the infringement shall be punished by a fine rate of DKK 75 000 and when exceeding this, 50 % more per for every 6 additional months started. In the case of second and subsequent cases, the penalty rate shall be increased by 50 %.

Thus, for example, where an online sales outlet has displayed tobacco products, tobacco surrogates or herbal products for a period of 3 months, a fine will be set at DKK 50 000. Similarly, for example, in cases where an online sales outlet has had tobacco products, tobacco surrogates or herbal products brought forward for 8 months, the fine will be set at DKK 75 000.

If there are aggravating or mitigating circumstances in the individual case, the determination of the penalty will, as always, depend on a case-by-case assessment by the courts of all the circumstances of the case, and the levels of fines indicated may be derogated from upwards or downwards, in accor-

dance with the general rules on the determination of the penalty in Chapter 10 of the Criminal Code.

An aggravating circumstance may be, for example, if the trader deliberately infringes the ban, for example by continuing to display tobacco products, tobacco surrogates or herbal products for smoking despite the fact that the Consumer Ombudsman has previously informed the trader behind the website about the legislation.

Re no. 2

Under § 5a(1) of the Act on the prohibition of tobacco advertising, etc., the visible placing and display of tobacco products, tobacco surrogates and herbal products for smoking, including on the internet, are prohibited.

§ 6 of the Act on the prohibition of tobacco advertising etc. states that the Consumer Ombudsman supervises compliance with the Act. See also point 2.3 in the general comments on the draft Act.

The Act on the Prohibition of Tobacco Advertising etc. does not contain any rules on the issuing of administrative penalty orders in the event of infringement of the rules of the Act.

It is proposed to insert *paragraph 7 a* as new provisions in Chapter 4.

It is proposed, in § 7a(1), in the event of an infringement of § 5a(1) of the Act and rules laid down pursuant to paragraph 4, where the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay the fine within a period specified in the application for a fine, the Consumer Ombudsman may indicate that the case can be decided without legal proceedings.

The proposed provision will have the effect that the Consumer Ombudsman will henceforth have the legal basis to issue administrative fines in the event of infringement of the prohibition on the visible placing and display of tobacco products, tobacco surrogates and herbal products for smoking.

The Consumer Ombudsman's power to issue administrative penalty orders applies to infringements which are generally uniform, straightforward and without evidential doubts, and where the level of penalties is fixed, for example in court practice or preparatory work. Infringements must therefore, in general, be clear and immediately verifiable and the outcome of the case, including the determination of the amount of the fine, must be free from any element of discretion.

If the case is not straightforward enough to enable the case to be resolved by an administrative fine, the matter shall instead be reported to the police.

The fine is collected by and paid to the Consumer Ombudsman. In the event of non-payment within the 20-day deadline, the Consumer Ombudsman will send a reminder with a payment deadline of 10 (calendar) days for payment. In the continued absence of payment, the Consumer Ombudsman will in principle forward the application for a fine to the Danish Debt Collection Agency.

It is proposed in § 7 a(2) that the rules of the Administration of Justice Act on requirements for the content of an indictment and on the fact that an accused person is not required to make a statement apply *mutatis mutandis* to fines.

Compliance with the requirements for an indictment means that the application for a fine must contain, in particular, information on the rule alleged to have been infringed, the legal basis and a description of the offence for which administrative penalty orders are issued, cf. § 834 (1). nos. 2 and 3, and (2) of the Administration of Justice Act. That indication shall be clear and intelligible and shall enable the person concerned to assess the merits of the application for a fine.

The fact that of the rules against self-incrimination apply means that the Consumer Ombudsman must advise the person concerned that he or she is not obliged to comment. This should be stated directly in the penalty order issued.

In addition, the application for a fine should explain how the person concerned may accept the fine. For example, it may be indicated that acceptance can be achieved by returning the application for a fine in signed form or by paying the fine in a manner specified in the order for payment. It should be explicitly stated that the fine is paid to the Consumer Ombudsman, including how this is done. In this context, the Consumer Ombudsman may provide information about the possibility of entering into an instalment scheme.

Furthermore, it should be clear from the notice of fines what the effect is of the fact that the notice of fines is or is not adopted. It should therefore be stated that the acceptance of the decision implies that no criminal proceedings will be brought against the person concerned before the courts, but that the person concerned will be obliged to pay the fine. In addition, it should be stated that failure to accept, both if the person concerned objects

or does not react, may lead to the Consumer Ombudsman reporting the relationship to the police.

It is proposed in *paragraph 7a(3)* that if a fine is accepted, the imposition ceases to be pursued and that it has the same effect as a judgement.

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

### *Re § 5*

#### Re No 1

Under the current rules of the Act on smoke-free environments, electronic cigarettes with or without nicotine are not covered by the Act. Furthermore, it is not clear whether heated tobacco products are covered.

It is stated in § 1(1) of the Act on smoke-free environments that the objective of the Act is to extend smoke-free environments with a view to preventing effects of passive smoking that are damaging to health and prevent anyone being involuntarily exposed to passive smoking. The purpose of the Act is additionally to ensure that children and young people are not confronted with smoking or other use of tobacco products, tobacco surrogates and herbal smoking products during school hours.

It is proposed that *paragraph 1(1)* is reworded, so that the purpose of the Act is to ensure environments where there is no smoking nor use of other tobacco products or electronic cigarettes with or without nicotine. In addition, the aim of the Act continues to be to ensure that during school hours children and adolescents are not confronted with smoking or other use of tobacco products, electronic cigarettes with or without nicotine, tobacco surrogates or herbal products for smoking.

The purpose of the proposed amendment is that the purpose of the Act reflects the proposed changes in § 5, nos. 2-12, of the draft Act, where heated tobacco products are clearly covered by the same rules as tobacco products in the Act on smoke-free environments, and that the use of electronic cigarettes with or without nicotine is henceforth regulated in the Act on smoke-free environments. Reference is also made to § 2(4) of the draft Act, which repeals the provisions on the use of electronic cigarettes with or without nicotine in the Act on electronic cigarettes.

#### Re no. 2

§ 1, nos. 2-5, of the Act on smoke-free environments states what is to be understood by a number of terms in the Act.

It is proposed that a new *paragraph 4* be inserted in § 1 of the Act stating that for the purposes of this Act, heated tobacco products are a novel category of tobacco products heated to produce an emission containing nicotine and other chemicals which are then inhaled by the user or users and which, depending on their characteristics, are smokeless tobacco products or smoking tobacco products.

The proposed amendment leads to the introduction of a definition of heated tobacco products in the Act. The definition is identical to the definition of heated tobacco products in § 2(32) of the Tobacco Products Act, etc. The proposed addition must be seen in conjunction with the other proposals in the draft Act that heated tobacco products are clearly covered by the current rules on tobacco products in the Act on smoke-free environments, cf. § 5, nos 1-12 of the draft Act.

It is also proposed that a new *paragraph 5* is inserted in § 1 of the Act that for the purposes of this Act, ‘electronic cigarettes with or without nicotine’ means a product that can be used for consumption of either steam containing nicotine or steam not containing nicotine through a mouthpiece, or parts of such a product, including a cartridge, a refillable tank and a device without a cartridge or refillable tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a refillable tank, or rechargeable with single-use cartridges.

The proposed amendment introduces a definition of electronic cigarettes with and without nicotine in the Act. Based on the definition of electronic cigarettes with and without nicotine in § 2, nos 1 and 3, of the Act on electronic cigarettes, etc., this definition is to be seen in the context of the other proposals in the draft Act that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments, and not in the Act on electronic cigarettes, etc. as before, cf. § 5, nos. 1-11, of the draft Act.

Re no. 3

The Act on smoke-free environments lays down a number of provisions on cases where smoking is not permitted or where more detailed rules are laid down on where smoking is permitted.

It follows from § 4 of the Act that in premises etc. covered by the Act, smoking indoors is not permitted unless otherwise provided in the other provisions of the Act.

Chapter 3 of the Act lays down, inter alia, rules on smoking in workplaces, institutions and schools, which state, inter alia, that it is not permitted to smoke indoors in workplaces, but it may be decided that it is permitted to smoke in commercial vehicles which serve only as a workplace for one person at a time, for example in company cars.

Chapters 4 and 5 of the Act lay down, inter alia, rules on smoking in public spaces, including indoor premises accessible to the public, public transport and taxis, and smoking indoors at catering establishments.

It is proposed that after ‘smoking’ in § 4, § 6(1) and 2, § 7(4), § 10, § 11(2), § 12, § 15(1), § 16(2), § 18(1), and § 21(1), insert ‘or using heated tobacco products or electronic cigarettes with or without nicotine’.

The proposed amendments would make the use of heated tobacco products and the use of electronic cigarettes subject to the rules set out in those provisions.

The proposed amendments aim at subjecting heated tobacco products and electronic cigarettes with or without nicotine to the same existing rules for tobacco products in the Act on smoke-free environments. This means, inter alia, that the use of heated tobacco products or electronic cigarettes with or without nicotine in workplaces, including offshore installations, indoor premises accessible to the public and serving sites, will not in principle be permitted in the future.

The proposed amendments as regards the use of electronic cigarettes with or without nicotine will tighten the rules for where electronic cigarettes with or without nicotine are permitted, with the exception of the proposed amendment to § 20(1), where an equivalent prohibition applies, cf. current § 3, nos. 3 and 4, of the Act on electronic cigarettes, etc. Reference is made in this connection to § 2(4) of the draft Act, where it is proposed to repeal Chapter 2 of the Act on electronic cigarettes, etc.

See also point 2.9 in the general comments on the draft Act.

Re no. 4

The Act on smoke-free environments lays down a number of provisions on cases where smoking is not permitted or where more detailed rules are laid down on where smoking is permitted.

It follows from § 4 of the Act that in premises etc. covered by the Act, smoking indoors is not permitted unless otherwise provided in the other provisions of the Act.

Chapter 3 of that law lays down, inter alia, rules on smoking in workplaces, institutions and schools, which state, inter alia, that it is not permitted to smoke indoors in workplaces, but it may be decided that it is permitted to smoke in commercial vehicles which serve only as a workplace for one person at a time, for example in company cars.

Chapters 4 and 5 of the Act lay down, inter alia, rules on smoking in public spaces, including indoor premises accessible to the public, public transport and taxis, and smoking indoors at catering establishments.

It is proposed that after ‘smoking’ in: § 5(2)(1) and § 11(1), ‘or use heated tobacco products or electronic cigarettes with or without nicotine’ is inserted.

The proposed amendments would make the use of heated tobacco products and the use of electronic cigarettes subject to the rules set out in those provisions.

The proposed amendments aim at subjecting heated tobacco products and electronic cigarettes with or without nicotine to the same existing rules for tobacco products in the Act on smoke-free environments. This means that the use of heated tobacco products and electronic cigarettes with or without nicotine is subject to the rules on written smoking policy in workplaces, as well as to the rules for nursing homes, residential institutions, home services and similar institutions.

The proposed changes as regards the use of electronic cigarettes with or without nicotine will generally strengthen the rules for where the use of electronic cigarettes with or without nicotine is allowed.

See also point 2.9 in the general comments on the draft Act.

Re no. 5

The Act on smoke-free environments lays down a number of provisions on cases where smoking is not permitted or where there are fixed, more detailed, rules on the locations where smoking is permitted.

It follows from § 4 of the Act that in premises etc. covered by the Act, smoking indoors is not permitted unless otherwise provided in the other provisions of the Act.

Chapter 3 of that law lays down, inter alia, rules on smoking in workplaces, institutions and schools, which state, inter alia, that it is not permitted to smoke indoors in workplaces, but it may be decided that it is permitted to smoke in commercial vehicles which serve only as a workplace for one person at a time, for example in company cars.

Chapters 4 and 5 of the Act lay down, inter alia, rules on smoking in public spaces, including indoor premises accessible to the public, public transport and taxis, and smoking indoors at catering establishments.

It is proposed that after ‘smoking’: § 6(3) and (4), § 13, § 17, § 18 (2,) § 19, § 20(2), § 21(3), § 22, and § 26(2), ‘or use of heated tobacco products or electronic cigarettes with or without nicotine’ is inserted.

The proposed amendments would make the use of heated tobacco products and the use of electronic cigarettes subject to the rules set out in those provisions.

The proposed amendments aim at subjecting heated tobacco products and electronic cigarettes with or without nicotine to the same existing rules for tobacco products in the Act on smoke-free environments. This means, among other things, that the possibility to install smoking rooms and booths in certain locations will continue to apply to the use of heated tobacco products or electronic cigarettes with or without nicotine, and it may be decided, for example, that the use of heated tobacco products or electronic cigarettes with or without nicotine is allowed in small traditional inns and serving areas.

Furthermore, the proposed provision will make it possible to decide in the future that the use of heated tobacco products or electronic cigarettes with or without nicotine is allowed on premises serving as a private home for one person at a time, which would strengthen the current rules on the use of electronic cigarettes with or without nicotine.

See also point 2.9 in the general comments on the draft Act.

Re no. 6

The Act on smoke-free environments lays down a number of provisions on cases where smoking is not permitted or where more detailed rules are laid down on where smoking is permitted.

Pursuant to § 7(1) of the Act, in nursery establishments, schools, boarding schools, secondary schools, establishments providing secondary education, places of residence and the like which have taken up children and adolescents under the age of 18, smoking or the use of tobacco products, tobacco surrogates or herbal products for smoking within the institution shall not be permitted, subject to paragraphs 2-4. It also follows from §§ 7a and 7b of the Act that in schools, boarding schools and secondary schools which have taken up children and adolescents under the age of 18, as well as in upper secondary education, pupils are not permitted to smoke or use tobacco products, tobacco surrogates or herbal products for smoking during school hours.

§ 7c of the Act on smoke-free environments states that it is not permitted to sell tobacco products, tobacco surrogates and herbal products for smoking in schools, boarding schools and secondary schools covered by § 7a(1) and in educational establishments covered by § 7b(1).

It is proposed that after ‘tobacco products’ in § 7(1), § 7a (1), § 7b(1) and § 7c(1), ‘, electronic cigarettes with or without nicotine’ be inserted.

The proposed amendments would make the use of electronic cigarettes subject to the rules of the aforementioned provisions on the use of tobacco and nicotine products in institutions and schools for children and adolescents in the Act on smoke-free environments.

The proposed amendments to insert electronic cigarettes with or without nicotine do not alter the current requirements for where electronic cigarettes with or without nicotine may be used, and should be seen in conjunction with the other proposals in the draft Act that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments, and not the Act on electronic cigarettes, etc. as before, cf. § 2, no. 3, and § 5, nos, 1-11 of the draft Act.

See also point 2.9 in the general comments on the draft Act.

Re no. 7

The Act on smoke-free environments contains a number of provisions on where smoking is not permitted or where there are strict and more detailed rules on where and how to smoke.

Under § 7(1) of that Act, in nursery establishments, schools, boarding schools, secondary schools, establishments providing secondary education, places of residence and the like which have taken up children and adolescents under the age of 18, smoking or the use of tobacco products, tobacco surrogates or herbal products for smoking on the premises of the establishment is prohibited, subject however to paragraphs 2-4. It follows from paragraph 2 of the provision that for places intended for children and young people under 18 years of age which also serve as homes for the young people, it may be decided that it is permitted for the young people to smoke outdoors in the area of the institution. Paragraph 3 of that provision provides that, in the case of residential and semi-closed residential establishments which also serve as accommodation for young people under the age of 18, it may be decided that the smoking of young people outdoors in the area of the establishment is permitted.

It is proposed that after 'smoke' in: § 7(2) and (3), 'or use heated tobacco products or electronic cigarettes with or without nicotine' is inserted.

The proposed amendment would imply that it could be decided that heated tobacco products or electronic cigarettes with or without nicotine may be respectively used outdoors on the premises of the institution, in places targeting children and adolescents under the age of 18 which also act as housing for the young people, as well as secure departments in residential and semi-closed residential institutions also serving as housing for young people under the age of 18.

The proposed amendments aim at subjecting heated tobacco products and electronic cigarettes with or without nicotine to the same existing rules for tobacco products in the Act on smoke-free environments.

The current rules prohibiting the use of electronic cigarettes with or without nicotine are set out in point 2.9.1 of the general comments of the draft Act. The proposed amendments to insert electronic cigarettes with or without nicotine do not alter the current requirements for deciding whether to authorise the use of electronic cigarettes with or without nicotine outdoors in the premises of the institution, in places targeting children and adolescents under the age of 18 which also act as housing for young people, as well as secure departments in residential and semi-closed residential institutions also serving as housing for young people under the age of 18.

The amendment is to be seen in the context of the other proposals in the draft Act that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments, and not the Act on electronic cigarettes, etc. as before, cf. § 5, nos. 1-12, of the draft Act.

See also point 2.9 in the general comments on the draft Act.

Re no. 8

According to § 15(1) of the Act on smoke-free environments, in municipal day care and in pool schemes, cf. § 21(2) and §§ 101 and 102 of the Daily Childcare Act, smoking in the day-care home and in other day-care facilities is not permitted when looking after children. Paragraph 2 of that provision provides that premises primarily designed for the children's play rooms and accommodation must be smoke-free throughout the day.

It is proposed that after 'smoke-free' in *paragraph 15(2)*, 'and free from heated tobacco products and electronic cigarettes with or without nicotine' is inserted.

The proposed amendment will mean that in future heated tobacco products or electronic cigarettes with or without nicotine may not be used at any time of day in premises primarily designed for children's play and accommodation areas.

The proposed amendment aims to make heated tobacco products and electronic cigarettes with or without nicotine subject to the same rules applicable to tobacco products in the Act on smoke-free environments.

The current rules on the ban on use of electronic cigarettes with or without nicotine are set out in point 2.9 of the general comments of the draft Act. The proposed amendments to insert electronic cigarettes with or without nicotine in § 15(1) do not change the current requirements for the use of electronic cigarettes with or without nicotine in municipal day-care and in other day-care facilities. The amendment is to be seen in conjunction with the other proposals in the draft Act that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments, and not the Act on electronic cigarettes, etc. as previously, cf. § 2 no. 4 and § 5 nos. 1-12 of the draft Act.

See also point 2.9 in the general comments on the draft Act.

Re no. 9

§ 20 of the Act on smoke-free environments states that in collective means of transport and taxis it is not permitted to smoke indoors, cf. § 4.

§ 3(1) nos. 3 and 4 of the Act on electronic cigarettes, etc. states that it is not permitted to use electronic cigarettes with or without nicotine in collective means of transport, including Danish passenger ships and Danish and foreign-registered passenger aircraft operating under Danish operating licence, regardless of whether the vessel or aircraft is located outside Danish territory, subject however to paragraphs 5 and 6, and taxis. Paragraph 5 of that provision states that the prohibition laid down in paragraph 1 no. 3 does not apply to passenger ships in the area of the ship which is reserved for the crew and to which the passengers of the ship do not have access. Paragraph 6 of that provision provides that, on passenger ships, the management may authorise passengers to use electronic cigarettes outdoors, cabins or cabins designed for that purpose.

It is proposed that in § 20 (1) after ‘smoke’ insert ‘or use heated tobacco products or electronic cigarettes with or without nicotine’ and delete ‘indoors, cf. § 4’.

The proposed amendment will result in the prohibition of smoking or the use of heated tobacco products or electronic cigarettes with or without nicotine in collective means of transport and taxis in the future and will in principle apply both indoors and outdoors. Thus, in future, the rules on smoking in collective means of transport will in principle also apply outdoors, which is a tightening of existing rules, cf. the current wording of § 20(1) of the Act on smoke-free environments. The amendment is made with a view to harmonising the rules on the basis of the highest level of protection, which in this case follows from the current § 3(1) nos. 3 and 4 of the Act on electronic cigarettes, etc.

The proposed amendment is to be seen in the context of the other proposals in the draft Act that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments, and not the Act on electronic cigarettes, etc. as previously, cf. § 2(4) and § 5, nos. 1-12, of the draft Act, and thus aims to equate the rules on smoking, heated tobacco products and electronic cigarettes with or without nicotine.

See also point 2.9 in the general comments on the draft Act.

Re no. 10

The Act on smoke-free environments lays down a number of provisions on cases where smoking is not permitted or where there are fixed, more detailed, rules on the locations where smoking is permitted.

It is proposed that the following §§ *20a* and *20b* be inserted as new provisions after § 20.

(§ 20 a)

It is proposed in § *20a* that in outdoor stadia intended for major sporting events, there shall be zones where smoking, use of heated tobacco products or electronic cigarettes with or without nicotine is prohibited.

The proposed provision will require in future that in all outdoor stadia intended for major sporting events there should be zones where smoking or the use of heated tobacco products and electronic cigarettes with or without nicotine is prohibited. This may be, for example, in family zones.

The requirement to establish zones without smoking and the use of heated tobacco products or electronic cigarettes with or without nicotine will apply to stadiums with a spectator capacity of 4 000 or more. This limit is inspired by the general requirements for Danish football stadiums from the Divisionsforening [association of football stadia] for the Superliga, 1st division, 2nd division and 3rd division. The zone in which smoking or the use of heated tobacco products and electronic cigarettes with or without nicotine will not be permitted shall represent at least 20 per cent of the total spectator capacity. The requirement is therefore not intended to cover smaller installations, for example, ball pitches. In order to ensure freedom of method, it will be up to each stadium to determine which zones should be free of air contaminated by tobacco and e-cigarettes.

It is proposed in § *20a(2)* that the management of a stadium covered by paragraph 1 is responsible for disclosing the requirement and for determining and disclosing the consequences of any breach thereof. It will also be the responsibility of the management to enforce the requirement.

See also point 2.9 in the general comments on the draft Act.

(§ 20 b)

It is proposed in § *20b* that the municipal council may decide not to allow smoking, the use of heated tobacco products or electronic cigarettes with or without nicotine in outdoor municipal playgrounds.

The proposed provision will give the municipal council the power to decide that smoking, heated tobacco products or electronic cigarettes with or without nicotine should not be allowed in outdoor municipal playgrounds.

The legal basis is thus given to municipal councils to take account of local circumstances, such as municipal initiatives, coherence with restaurant and night-life plans, and educational and institutional areas.

It is proposed in § 20b(2) that the municipal council will be responsible for providing information on the prohibition in paragraph 1 and on the consequences of its infringement. It will also be the responsibility of the municipal council to enforce the ban.

See also point 2.9 in the general comments on the draft Act.

Re no. 11

§ 23 of the Act on smoke-free environments states that the employer, the holder, the restaurateur, the manager and the lessee must ensure that smoking is carried out only in accordance with the rules laid down in this Act.

It is proposed that after ‘smoking’ in § 23, the following text is added: ‘and use of heated tobacco products and use of heated tobacco products and electronic cigarettes with or without nicotine’.

The proposed amendment will require the employer, the holder, the restaurateur, the manager and the lessee to ensure that the use of heated tobacco products and electronic cigarettes with or without nicotine is conducted only in accordance with the proposed rules. The provision must be read in conjunction with the penal provision in § 26 of the Act on smoke-free environments.

The proposed amendment aims to include heated tobacco products and electronic cigarettes with or without nicotine within the current rules for tobacco products in the Act on smoke-free environments and should be read in conjunction with § 2, no. 4, and § 5, nos. 1-12 of the draft Act.

The general rule of the Act is that the employer is obliged to ensure that smoking is carried out in accordance with the rules of this Act, irrespective of whether the employer is public or private and regardless of whether the employer is a natural or legal person, cf. Folketingstidende 2006-07, Appendix A, L 191, as published.

It will therefore also be the employer who is obliged to ensure that smoking is carried out in accordance with the rules laid down in this Act for institutions for children and young people, schools, other educational establishments, hospitals, nursing homes, etc. Managers of such institutions do not have an independent obligation under the Act to ensure that smoking or consumption of products covered by this Act is carried out in accordance with this Act and will therefore not be subject to punishment under the provisions of the Act for an infringement thereof.

In order to comply with the statutory obligation in accordance with general rules of employment law, the employer will be able to require employees, including managers, to ensure that smoking is carried out only in accordance with the rules of the Act. Any breach by employees of such an obligation imposed by the employer shall be treated in accordance with the rules applicable to their employment relationship, cf. § 25 of the Act.

In addition to the employer, the provision also obliges the holder, the restaurateur, the manager and the lessee to ensure that smoking is carried out only in accordance with the provisions of the Act. Thus, with regard to the rules governing catering establishments, that the holder, the restaurateur, the manager and the lessee are under an obligation to ensure that the rules laid down by law are complied with, irrespective of whether they are at the same time employers. It is therefore not decisive for the obligation to ensure that the rules of the law are complied with whether there are employees linked to the catering establishment.

Re no. 12

§ 25 of the Act on smoke-free environments states that an employee's infringement of the ban on smoking at a workplace is to be treated in accordance with the rules applicable to that employee's employment relationship in other respects.

It is proposed that after 'the smoking ban' in § 25 'or the ban on the use of heated tobacco products or electronic cigarettes with or without nicotine' is inserted.

The proposed amendment would have the effect of treating an employee's infringement of the smoking ban or the ban on the use of heated tobacco products or electronic cigarettes with or without nicotine in a workplace in accordance with the rules otherwise applicable to the employment relationship of the employee concerned.

The proposed amendment aims to make heated tobacco products and electronic cigarettes with or without nicotine subject to the same rules applicable to tobacco products in the Act on smoke-free environments and should be read in conjunction with § 5, nos. 1-12 of the draft Act.

See also point 2.9 in the general comments on the draft Act.

*Re § 6*

Re No 1

§ 2 no. 6 of Act No. 2071 of 21 December 2020 states that the following paragraphs 3 and 4 are inserted in § 14 of the Act on tobacco products, etc.:

‘(3) Tobacco products not included in paragraph 1 and herbal smoking products with a different characterising flavour from tobacco and menthol may not be placed on the market in this country. However, this does not apply to pipe tobacco and cigars.

(4) The Danish Health Authority can lay down more detailed regulations on the prohibition in subsection 3, including regulations on whether a specific tobacco product or herbal smoking product is included in the prohibition and on limit values for the content in tobacco products or herbal smoking products of additives or combinations of additives giving a characterising flavour.’

§ 2, no. 21, of Act No. 2071 of 21 December 2020 states that, in § 45(1), no 1, of the Act on tobacco products, etc., ‘§ 14(1)’ is amended to read: ‘§ 14(1) and (3),’.

Under the provision on entry into force in § 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 § 2, Nos 6 and 21, of the Act.

The amendments have not yet been put into effect. They will be put into effect when and if the basis of EU law is in place, however giving producers a period of 6 months in which to convert their production facilities.

In order to redraft § 45(1), no. 1, of the Act on tobacco products, etc., cf. § 1, nos. 25-28, of the draft Act, it is necessary, for technical reasons, to repeal the adopted – but not yet entered into force – § 2, no. 21.

It is proposed that § 2, *no 21*, shall be repealed.

The repealed provision is proposed to be reinstated in § 1, no. 28, of the draft Act. The Minister for the Interior and Health will continue to determine the date of entry into force. The provision will be put into effect when and if the basis of EU law is in place. It is noted in this connection that the prevention plan states that Denmark will be actively involved in the revision of the Tobacco Products Directive, including work to promote Denmark's regulation of flavours in electronic cigarettes and tobacco surrogates.

Re No 2

§ 2, no. 21, of Act No. 2071 of 21 December 2020 states that, in § 45(1), no 1, of the Act on tobacco products, etc., '§ 14(1)' is amended to read: '§ 14(1) and (3),'

§ 7(7) of Act No. 2071 of 21 December 2020 states that the Minister for the Interior and Health shall determine the date of entry into force of § 2, nos. 6, 13, 14 and 21, and § 3 no. 8 of the Act.

With Act No. 651 of 11 June 2024, § 7 (7) of Act No. 2071 of 21 December 2020 is worded as meaning that the Minister for the Interior and Health determines the date of entry into force of § 2, nos. 6 and 21, of the Act.

It is proposed in § 7 (7) to delete 'and 21'.

The proposed amendment would have the effect of deleting the possibility for the Minister for the Interior and Health to determine the date of entry into force of § 2, no. 21, of the Act. The amendment is to be seen in conjunction with § 6, no. 1, of the draft Act, which repealed § 2, no. 21, of Act No. 2071 of 21 December 2020. The proposed amendment thus means that there are no provisions for the entry into force of repealed provisions.

*Re § 7*

Re no. 1

§ 11(2) of the Marketing Act states that commercial practices aimed at children and adolescents under the age of 18 may not contain any reference to, pictures or references to intoxicants, including alcohol or other products unsuitable for children and adolescents under the age of 18.

§ 25 of the Marketing Act states that the Consumer Ombudsman is to monitor compliance with the Act and rules issued pursuant to the Act, in particular in the interests of consumers.

It is proposed that in § 25, a new (3) is inserted after (2).

Under the proposed (3), when monitoring commercial practices under § 11(2), the Consumer Ombudsman may use a hidden identity.

Hidden identity means that the Consumer Ombudsman can carry out supervision without coming forward or identifying himself as a supervisory authority. The Consumer Ombudsman will be able to hide his identity in different ways. This can be done, for example, in the context of social media monitoring by the employee acquiring access to closed forums without making themselves known.

To allow for the ability of the Consumer Ombudsman to carry out effective checks and to ensure that there is no illegal marketing targeting children and young people over the age of 18, it is necessary for the Consumer Ombudsman to be empowered to act under a hidden identity. The intention is that the Consumer Ombudsman does not attract particular attention in connection with the supervision of commercial practices aimed at children and young people under the age of 18, in order to be more effective. The use of hidden identity is carried out under the responsibility of the authority and it is assumed that it does not incite unlawful acts in itself.

The use of hidden identity should be subject to a proportionality assessment, i.e. balancing the intrusive control powers to be used in a given situation and the way in which the control is to be carried out. It also involves, for example, weighing up whether a hidden identity should be used during the control in question.

The rules on the marketing to children and adolescents include marketing containing references to, images or references to intoxicants, including alcohol, as well as unsuitable products, such as products harmful to health, or products that cannot lawfully be sold to children under 18 years of age. They may therefore be products for which children and young people in particular are particularly vulnerable to their adverse health effects. Children and adolescents are also more sensitive to branding elements.

Re no. 2

§ 39 of the Marketing Act states that the Minister for Business and Industry may delegate his powers under the Act to an authority under the Min-

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istry. This does not apply to powers under § 25 (5). Where the Minister submits his powers to an authority under the Ministry, the Minister may lay down rules on the right of appeal, including that appeals may not be brought before any other administrative authority.

It is proposed that in § 39, ‘§ 25 (5)’ is replaced by ‘§ 25 (6)’.

The proposed amendment is a consequence of § 7(1) of the draft Act, in which it is proposed that a new paragraph 3 be inserted in § 25 after paragraph 2. As a consequence, § 25(5) becomes § 25(6).

### *Re § 8*

Re no. 1

§ 20a of the Act on safety at sea states that the Danish Maritime Authority may, as part of its supervisory activities under this Act, also monitor compliance with the Act on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. on Danish ships and with compliance with the Seafarers’ Employment Act, etc., the Ships’ Crews Act, the Ship Measurement Act, §§ 153, 154a and 168, § 169(4), § 170, § 170a(2) and (3) and §§ 186, 197, 198, 403 a to 403 c, 440, 471 and 486 of the Maritime Act and rules issued pursuant thereto and EU regulations within the scope of the laws. Paragraph 3 of the provision states that rules on monitoring compliance with the Act on smoke-free environments and Chapter 2 of the Act on electronic cigarettes etc. on Danish vessels are to be laid down after consultation with the Minister for Health and Prevention.

It is proposed that in § 20a (1) and (3), “and Chapter 2 of the Act on electronic cigarettes, etc.” is deleted.

The proposed amendment is a consequence of § 2, no. 4, and § 5, nos. 1-12, of the draft Act, in which it is proposed, respectively, to repeal Chapter 2 of the Act on electronic cigarettes, etc. and that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments.

The proposed amendment will therefore not change the Danish Maritime Authority’s control obligations, as the rules on the use of electronic cigarettes are now regulated in the Act on smoke-free environments. The Danish Maritime Authority will therefore in future only monitor compliance with the Act on smoke-free environments.

### *Re § 9*

Re no. 1

§ 79a of the Act on health and safety at work states that, as part of the inspection activities under this Act, the Danish Working Environment Authority is to monitor compliance with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. The Danish Working Environment Authority may, potentially under specified conditions, order that any circumstances which are contrary to the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. are rectified immediately or within a specified period.

It is proposed that in § 79a(1), ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted in two places.

The proposed amendment is a consequence of § 2, no. 4, and § 5, nos. 1-12, of the draft Act, in which it is proposed, respectively, to repeal Chapter 2 of the Act on electronic cigarettes, etc. and that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments.

The proposed amendment will thus not change the inspection obligations of the Danish Working Environment Authority, as the rules on the use of electronic cigarettes will in future be governed by the Act on smoke-free environments. The Danish Working Environment Authority will therefore in future only monitor compliance with the Act on smoke-free environments.

*Re § 10*

Re no. 1

§ 66a(1) of the Offshore Safety Act states that the Minister for Employment shall, as part of the supervisory activities under this Act, monitor compliance with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. The Minister for Employment may, potentially subject to specified conditions, order that circumstances which are contrary to the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. are rectified immediately or within a specified period.

It is proposed that in § 66 a(1), ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted in two places.

The proposed amendment is a consequence of § 2, no. 4, and § 5, nos. 1-12, of the draft Act, in which it is proposed, respectively, to repeal Chapter 2 of the Act on electronic cigarettes, etc. and that electronic cigarettes with

or without nicotine are henceforth regulated in the Act on smoke-free environments.

The proposed amendment will thus not change the monitoring obligations of the Minister for Employment, as the rules on the use of electronic cigarettes are now regulated in the Act on smoke-free environments. Thus, the Minister for Employment will in future only monitor compliance with the Act on smoke-free environments.

*Re § 11*

Re no. 1

§ 150f of the Aviation Act states that, as part of the supervisory activities under this Act, the Minister for Transport shall monitor compliance with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. The Minister for Transport may, possibly under specified conditions, order that any circumstances contrary to the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. be rectified immediately or within a specified period.

It is proposed that in § 150 f(1), point 1 ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ and in § 150 f (1), point 2 ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ are deleted.

The proposed amendment is a consequence of § 2, no. 4, and § 5, nos. 1-12, of the draft Act, in which it is proposed, respectively, to repeal Chapter 2 of the Act on electronic cigarettes, etc. and that electronic cigarettes with or without nicotine are henceforth regulated in the Act on smoke-free environments.

The proposed amendment will thus not change the control obligations of the Minister for Transport, as the rules on the use of electronic cigarettes are now regulated in the Act on smoke-free environments. Thus, the Minister for Transport will in future only monitor compliance with the Act on smoke-free environments.

*Re § 12*

It is proposed in paragraph 1 that the Act enter into force on 1 January 2021, subject however to paragraphs 2 and 4.

This means that provisions on more powers for the Danish Safety Technology Authority and the Consumer Ombudsman, cf. § 1 nos. 20, 24 and 35, § 2 nos. 6, 11 and 17, § 3 nos. 9 and 14, § 4, no. 2 and § 6, no. 1 of the

draft Act, will enter into force on 1 January 2025. This means, inter alia, that from 1 January 2025, the Danish Safety Technology Authority may order communication platforms to modify or remove content, and may, in certain cases, undertake extra-judicial confiscation of illicit tobacco products, tobacco surrogates, herbal products for smoking, equipment intended to be used with them, as well as illegal electronic cigarettes and refill containers with or without nicotine, and equipment and flavourings intended to be used with them. This also means that, from 1 January 2025, the Danish Safety Technology Authority and the Consumer Ombudsman may, inter alia, issue administrative fines in certain cases.

This also means that the ban on proxy sales, cf. § 2, no. 5, and § 3, number 1 of the draft Act, is unequivocally imposed from 1 January 2025.

This also means that the regulation of the sale of alcoholic beverages in the draft Act, cf. § 3, nos. 2, 3 and 10, will enter into force on 1 January 2025. Thus, from 1 January 2025, it will not be permitted to sell alcoholic beverages with an alcoholic strength of more than 6 % to persons under the age of 18 and that, in night-life zones, alcoholic beverages with an alcoholic strength of 1.2 % or more by volume may not be sold or delivered to persons under 18 years of age during the period from 22.00 to 08.00. Moreover, from 1 January 2025, there will be requirements for the placement of alcoholic beverages in brick-and-mortar shops.

This also means that the rules for several smoke- and vapour free environments, as set out in paragraph 5 of the legislative proposal, will enter into force on 1 January 2025. This means, inter alia, that heated tobacco products and electronic cigarettes with or without nicotine will be subject to existing smoking rules, as well as requiring outdoor stadia to establish zones in which smoking and the use of heated tobacco products and electronic cigarettes are prohibited.

It is proposed in *paragraph 2* that nos. 3, 7-12, 15-17, 19, 21, 23, 26, 32 and 34 enter into force on 1 April 2025.

This means that new product regulation requirements, including, inter alia, standardisation requirements for tobacco surrogates and technical equipment used with heated tobacco products, requirements on the appearance of the cigarette, roll-your-own tobacco and tobacco surrogates, rules on component parts for unit packets of tobacco surrogates and chewing tobacco and nicotine content requirements in tobacco surrogates and consumption against taste, with the exception of tobacco and menthol in tobacco surrogates, will enter into force on 1 April 2025.

It is proposed in *paragraph 3* that § 1, nos. 13, 18 and 27, enter into force on 1 July 2025.

This means that § 1, no. 13 of the draft Act prohibiting the introduction, purchase, supply, receipt, manufacture, processing or possession of tobacco surrogates covered by § 15b of the Act, or exceeding the nicotine content limit for a tobacco surrogate as determined pursuant to § 10a of the Act, will enter into force on 1 July 2025.

It is proposed in *paragraph 4* that the Minister for the Interior and Health shall determine the date of entry into force of § 1(28).

This means that a ban on the placing on the market of tobacco products other than cigarettes, roll-your-own tobacco, pipe tobacco and cigars, as well as herbal products for smoking with a characterising flavour other than tobacco and menthol in Denmark, enters into force when the Minister for the Interior and Health so decides. The Minister for the Interior and Health will bring the provision into force when and if the basis of EU law is in place. It is noted in this connection that the prevention plan states that Denmark will be actively involved in the revision of the Tobacco Products Directive, including work to promote Denmark's regulation of flavours in electronic cigarettes and tobacco surrogates.

It is proposed in *paragraph 5* for tobacco surrogates manufactured before 1 April 2025, § 1, nos 8, 10, 14 and 17 of the Act shall take effect on 1 July 2025.

This means that it will not be lawful to produce tobacco surrogates with too high nicotine content, with an aroma, with the exception of tobacco and menthol, with different additives, with too many components for unit packets, and without standardised appearance and design, for the Danish market after 1 April 2025, while it will be lawful to place stock products manufactured before that date until 1 July 2025. This gives the relevant parties the opportunity to sell off the remaining stock of tobacco surrogates produced before 1 April 2025.

It is proposed in *paragraph 6* that equipment used in connection with tobacco surrogates manufactured before 1 April 2025, § 1(10) of the Act shall take effect on 1 July 2025.

This means that it will not be lawful to manufacture equipment used in connection with tobacco surrogates which would allow the odour or taste of those surrogates to be changed for the Danish market after 1 April 2025,

whereas it will be lawful to market stock products produced before that date until 1 July 2025. This will allow relevant parties to sell off the residual stock of equipment used for tobacco surrogates produced before 1 April 2025.

It is proposed in *paragraph 7* that for flavourings for use in tobacco surrogates produced before 1 April 2025, § 1 (10) of the Act shall take effect on 1 July 2025.

This means that it will not be lawful to produce flavourings for use in tobacco surrogates for the Danish market after 1 April 2025, while it will be lawful to market stocks produced before that date until 1 July 2025. This gives the relevant parties the opportunity to sell off the residual stock of tobacco surrogates produced before 1 April 2025.

It is proposed in *paragraph 8* that for cigarettes and roll-your-own tobacco, including paper, filters, etc., and chewing tobacco produced before 1 April 2025, § 1(14) of the Act shall apply from 1 July 2025.

This means that it will not be lawful to manufacture cigarettes and roll-your-own tobacco, including paper, filters, etc., without standardised appearance for the Danish market after 1 April 2025, while it will be lawful to market stock products produced before that date until 1 July 2025. It also means that it will not be lawful to manufacture chewing tobacco which does not comply with the rules on component parts in relation to unit packets for the Danish market, while it will be lawful to market stock products produced before that date until 1 July 2025. This will allow relevant parties to sell off residual stocks of cigarettes and roll-your-own tobacco, including paper, filters, etc., as well as chewing tobacco produced before 1 April 2025.

It is proposed in *paragraph 9* that for technical equipment used with heated tobacco products manufactured before 1 April 2025, § 1, nos 13 and 14, of the Act shall apply from 1 July 2025.

This means that it will not be lawful to manufacture equipment used with heated tobacco products without a standardised design for the Danish market after 1 April 2025, while it will be lawful to market stock products produced before that date until 1 July 2025. This will allow relevant parties to sell off residual stock of equipment used with heated tobacco products manufactured before 1 April 2025.

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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.

It is stated in § 9 of the Act on prohibition of tobacco advertising etc. that the Act does not apply to the Faroes and Greenland.

It is stated in § 34 of the Act on smoke-free environments that the Act does not apply to the Faroe Islands and Greenland.

§ 41 of the Marketing Act states 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, the Act on tobacco products, etc., the Act on electronic cigarettes, etc., the Act on the prohibition of the sale of tobacco and alcohol to persons under the age of 18, the Act on the prohibition of tobacco advertising, etc., the Act on smoke-free environments and the Marketing Act do not apply to the Faeroe Islands and Greenland and may not be brought into force for the Faroe Islands and Greenland.

The draft Act compared to legislation currently in force

<i>Current wording</i>	<i>The draft Act</i>
	<b>§ 1</b>
	<p>The following amendments are made to the Act on tobacco products, etc., cf. Consolidation Act No. 1489 on 18 June 2021, as amended by § 2 of Act No. 2071 of 2q December 202, § 2 of Act No. 99 of 25 January 2022, § 1 of Act No. 738 of 13 June 2023, § 8 of Act No. 333 of 9 April 2024, and § 1xx of Act No. 651 of 11 June 2024:</p>
<p>1) The Act contains provisions transposing parts of 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 2014 L 127, p. 1) as well as provisions transposing parts of Commission Implementing Decision (EU) 2018/576 of 15 December 2017 on technical standards for security features applied to tobacco products, OJ 2018 L 96, p. 57. Furthermore, the Act contains provisions transposing parts of Commission Delegated Directive (EU) 2022/2100 of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Coun-</p>	<p><b>1.</b> In the <i>footnote</i> the title of the Act shall be inserted as <i>no. 5</i>: The Act 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).</p>

<p>cil as regards the withdrawal of certain exemptions in respect of heated tobacco products, OJ 2022 L 283, p. 4-6. The Act includes certain provisions of Commission Implementing Regulation (EU) 2018/574 of 15 December 2017 on technical standards for the establishment and operation of a traceability system for tobacco products, OJ 2018 L 96, p. 7. Under Article 288 of the Treaty on the Functioning of the European Union, regulations apply immediately in every Member State. The reproduction of these provisions in the Act is thus exclusively for practical reasons and does not affect the immediate validity of the regulations in Denmark.</p>	
<p><b>§ 2.</b> The following definitions apply for the purposes of this Act: Nos 1-9) - - - 10) Emissions: Substances released when tobacco or a herbal product for smoking is used as intended, such as substances present in smoke or substances released during the use of smokeless tobacco products.</p>	<p><b>2.</b> In § 2, no. 10, the following is inserted after ‘smoke-free tobacco products’: ‘and tobacco surrogates’.</p>
	<p>3. In § 2, the following is inserted after no. 11 as a new number: ‘12) Aroma: A smell or taste resulting from an additive or combination of additives, including fruit, spices, herbs, alcohol, sweets, menthol or vanilla, and which is framed or tasted before or during consumption of the tobacco surrogate.’</p> <p>Nos 12-32 subsequently become nos. 13-33.</p>
<p>17) Manufacturer: Any natural or legal</p>	<p>4. In § 2 no. 17, which becomes no. 18,</p>

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<p>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.</p>	<p>the following is inserted after ‘herbal product for smoking’: ‘etc.’.</p>
<p>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.</p> <p>19) Distributor: 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.</p> <p>20) Retailer: Any natural or legal person who markets tobacco products or herbal products for smoking to consumers.</p> <p>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</p>	<p>5. In § 2 nos. 18-21, which become nos. 19-22, the following is inserted after ‘herbal products for smoking’: ‘etc.’</p>
<p>Nos 22-32) - - -</p>	<p>6. In § 2, the following No 34 is inserted:</p> <p>‘34) Communications platform: Online platform which, with a view to making a profit, offers visitors the opportunity to create a profile and explore other profiles and whose primary function is to enable users of the platform to join and share messages or presentations with content in the form of characters,</p>

		words, writing, audio, images or video.'
		7. The heading of Chapter 3 is to be as follows:
Chapter 3 <i>Maximum emission levels for tobacco products and methods for measuring emissions</i>		'Chapter 3 Maximum emission levels for tobacco products, methods for measuring emission levels and limit values for tobacco surrogates, etc.'
		8. After § 10, the following shall be inserted before the heading before § 11: '§ 10a. Manufacturers and importers shall ensure that tobacco surrogates which they place on the market comply with the nicotine content limit, cf. para. 2. (2) The Minister for the Interior and Health shall lay down rules on maximum nicotine content in tobacco surrogates.'
		9. The heading of Chapter 4 is to be as follows:
Chapter 4 <i>Prohibition on the placing on the market of certain tobacco products, etc.</i>		'Chapter 4 Prohibition on the placing on the market of certain tobacco products, tobacco surrogates, etc.'
		10. The following is inserted after § 15a: '§ 15b. Tobacco surrogates and flavourings for use in flavoured tobacco surrogates shall not be marketed in Denmark. However, the prohibition shall not apply to a flavour of tobacco or menthol. (2) Devices used in connection with tobacco surrogates which make it possi-

	<p>ble to alter the smell or taste of such substitute tobacco shall not be placed on the market in Denmark.</p> <p>(3) The Danish Health and Medicines Authority may lay down detailed rules on the prohibition referred to in paragraph 1, including rules on whether a specific product is covered by the prohibition and on maximum levels for the content in products of additives or combinations of additives that impart a flavour.'</p>
<p><b>§ 17.</b> Tobacco products containing the following additives shall not be placed on the market in Denmark:</p>	<p>11. In § 17(1) the following is inserted after 'tobacco products': 'and tobacco surrogates'.</p>
<p>1) Vitamins or other additives which give the impression that a tobacco product has a health benefit or presents a limited risk to health. Nos 2-4) - - -</p>	<p>12. In § 17(1), no. 1, the following is inserted after 'tobacco product': 'or a tobacco surrogate'.</p>
	<p>13. The following shall be inserted after Chapter 4:</p>
	<p style="text-align: center;">'Chapter 4a Prohibition on the import, purchase, possession, etc. of certain tobacco surrogates, etc.</p>
	<p>§ 18a. It is not permitted to import, purchase, supply, receive, manufacture, process or possess tobacco surrogates covered by the prohibition in § 15b(1) or exceed the nicotine content limit for a tobacco surrogate as determined pursuant to § 10a.</p> <p>(2) The prohibition laid down in paragraph 1 shall not apply to the following:</p> <p style="margin-left: 40px;">1) Luggage of up to ten units for personal consumption and possession of up to ten units for personal con-</p>

		<p>sumption.</p> <p>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.</p> <p>3) Import, purchase, supply, receipt, manufacture, processing or possession for scientific or control purposes.'</p>
<p><b>§ 21.</b> The Danish Health and Medicines Authority shall lay down detailed rules on the size, shape, functionality and components of unit packets of cigarettes and roll-your-own tobacco.</p>		<p>14. In § 21, the following shall be inserted as (2-5):</p> <p>'(2) The Danish Health Authority shall lay down detailed rules on requirements for the appearance of cigarettes and roll-your-own tobacco, including paper, filters, etc.</p> <p>(3) The Danish Health Authority shall lay down detailed rules on ingredients in relation to unit packets of chewing tobacco.</p> <p>(4) The Danish Health Authority shall lay down detailed rules on requirements for the appearance of tobacco surrogates.</p> <p>(5) The Danish Health Authority shall lay down detailed rules on ingredients in relation to unit packets of tobacco surrogates.'</p>
<p>§ 21a. Any person placing tobacco products on the market in this country shall ensure that each unit packet and any outer packaging has a standardised format. This does not however apply to cigars and pipe tobacco.</p>		<p>15. In § 21a, the following is inserted as a new paragraph after paragraph 1:</p>

	<p>‘(2) The person placing technical equipment used with heated tobacco products on the market in Denmark shall ensure that each unit packet and any outside packaging is standardised.’</p> <p>Paragraph 2 then becomes paragraph 3.</p>
<p>(2) The Minister for Health shall lay down more detailed rules on the design of standardisation.</p>	<p>16. In § 21a(2), which becomes paragraph 3, the following is inserted after ‘design’: ‘within the meaning of paragraphs 1 and 2’</p>
	<p>17. The following is inserted after § 22c in Chapter 6:</p>
	<p>‘§ 22d. A person who markets tobacco surrogates in Denmark shall ensure that each unit packet and any outside packaging is standardised.</p> <p>(2) The Minister for the Interior and Health shall lay down detailed rules on the design of standardisation.’</p>
<p><b>§ 32a.</b> The Customs and Tax Administration shall check that unit packets of tobacco products bear security stamps, cf. § 31b(1) and (2).</p> <p>(2) The Customs and Tax Administration may require manufacturers, importers, distributors and retailers of tobacco products and herbal products to be provided with all the information necessary for the checks referred to in paragraph 1.</p>	<p>18. In §32 a, the following is to be inserted as (3):</p> <p>‘(3) The Customs and Tax Administration shall assist in checking that the rules laid down in Chapter 4a are complied with.’</p>

<p><b>§ 35a.</b> The Danish Safety Technology Authority may confiscate tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used with them, if it has reason to believe that they are contrary to the penalised rules of this Act, penalised rules laid down pursuant to this Act or penalised rules in regulations relating to the scope of this Act, and there is reason to believe that the product may serve as evidence or should be confiscated. <i>Paragraphs 2 and 3. - - -</i></p> <p><b>§ 35b.</b> The Customs and Tax Administration may detain tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used with them which are held by manufacturers, importers or retailers, etc., with a view to their transfer to the Safety Technology Authority with a view to their seizure, if the administration has reason to believe that they are in breach of the penal rules of this Act, penalised rules laid down pursuant to this Act or penalised rules in regulations relating to the scope of this Act.</p> <p>(2) The Customs and Tax Administration may detain tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used with them, which are in the course of transport; into the Danish customs territory from other parts of the customs territory of the EU or from a non-EU country, for the purpose of transferring the prod-</p>	<p>19. In § 35a(1) and § 35b(1)-(3), the following is inserted after 'equipment': 'and flavourings'.</p>
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<p>ucts to the Danish Safety Technology Authority, if: the administration has reason to believe that they are contrary to the rules subject to penalties of this Act, rules subject to penalties laid down pursuant to this Act, or rules subject to penalties in regulations relating to the scope of this Act.</p> <p>(3) In order to ensure customs duties and taxes, the Danish Safety Technology Authority may detain tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment used together with them which are held by manufacturers, importers or retailers, etc., in order to transfer the products to the Customs and Tax Administration.'</p>		
		<p>20. After § 35b, the following shall be inserted before the heading before § 36:</p>
		<p>'§ 35c. In cases involving an offence which is deemed not to result in a penalty higher than a fine, the perpetrator of the offence may, upon notification by the Danish Safety Technology Authority, accept the extra-judicial confiscation of illicit tobacco products, tobacco surrogates and herbal products for smoking, as well as equipment and flavourings used with them. The adoption of extra-judicial confiscation pursuant to paragraph 1 shall require the perpetrator of the offence to declare himself guilty of the offence and to accept the extra-judicial confiscation.</p> <p>(2) The rules of the Administration of</p>

	<p>Justice Act on requirements concerning the content of an indictment and the absence of an obligation on the accused person to make a statement shall apply mutatis mutandis to the adoption of confiscation under paragraph 1.'</p>
<p><b>§ 36.</b> The Danish Safety Technology Authority can prohibit the placing on the market of tobacco products, if (1) the product does not comply with the requirements laid down in §§ 10, 19(1), 20(1) and (2), 21a(1) or 22a, or in rules laid down pursuant to §§ 8(2), 9(2), 19(2), 20(3), 21 or 21a(2); Nos 2-5) - - -</p>	<p>21. In § 36(1), no. 1, '§ 21a(1)' is amended to: '§ 21a(1) and (2), § 22' and '§ 21 or § 21a(2)' is amended to read: '§ 21(1) - (3) or § 21a(3),'</p>
	<p>22. In § 36(1), no. 1, '§ 8(2), § 9(2)' is amended to: '§ 8(1) and (2), § 9(1) and (2),'</p>
<p><b>(2)</b> The Danish Safety Technology Authority can prohibit the placing on the market of tobacco surrogates, if (1) the product does not meet the requirements of § 19a(1) or in rules laid down pursuant to § 19a(2) or § 22c; No 2.</p>	<p><b>23.</b> In § 36(2), no. 1, '§ 19a(1)' is replaced by: '§ 10a(1), § 19a(1), § 22d(1)' and '§ 19a(2) or § 22c' are amended to: '§ 10a(2), § 19a(2), § 21(4) and (5), § 22c or 22d(2)'</p>
	<p><b>24.</b> The following is inserted after § 38b: '§ 38c. The Danish Safety Technology Authority may order a communications platform to modify or remove content referring to a product which does not comply with rules of this Act, rules laid down pursuant to this Act or regulations relating to the scope of this Act.'</p>
<p><b>§ 45.</b> Unless higher penalties are stipulated by other legislation, a fine will</p>	

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<p>be imposed on anyone who (1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2). 30(1) or 30a(1);</p>		<p>25. § 45(1)(1) is to be worded as follows: '(1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 22a, 24(1), 28(2), 30(1) or 30a(1),'</p>
		<p><b>26.</b> § 45(1), no. 1 is worded as follows: '(1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1), or 30a(1),'</p>
		<p>27. § 45(1), no. 1, is to be worded as follows: (1) infringes §§ 4(1), 5(1), 10, 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 18a(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1) or 30a(1),'</p>
		<p><b>28.</b> § 45(1), no. 1 is worded as follows: '(1) infringes §§ 4(1), 5(1), 10, 13, 14(1) and (3), 15, 15a, 15b(1) and (2), 16, 17, 18(1), 18a(1), 19(1), 19a(1), 20(1) and (2), 21a(1) and (2), 22a, 22d(1), 24(1), 28(2), 30(1), or 30a(1),'</p>
<p>Nos 1-3) - - - (4) infringes a prohibition issued pursuant to §§ 36 or 37;</p>		<p><b>29.</b> In § 45(1) no. 4, '§§ 36 or 37' is replaced by '§ 36 or § 37'</p>
<p>(5) fails to comply with an order or an obligation to provide information on the basis of §§ 3(1), 3a(1), 5(2), 7, 28(1), 32(3)-(5) or 38; Nos 6-12) - - -</p>		<p><b>30.</b> In § 45(1) no. 5, 'or § 38' is replaced by '§ 38 or § 38c';</p>

<p>(2) In rules laid down pursuant to §§ 8(2), 9(2), 19a(2), 21, 21a(2), 22c, 24(2), 30,</p>	<p><b>31.</b> § 45(2) is worded as follows:          ‘(2) In rules laid down pursuant to §§ 8(1) and (2), 9(1) and (2), 19(2), 19a(2), 21a(2), 22c, 24(2), 30(2) or 30a(2), fines may be imposed for infringement of the provisions of the rules.’</p>
	<p><b>32.</b> § 45(2) is worded as follows:          ‘(2) In rules laid down pursuant to §§ 8(1) and (2), 9(1) and (2), 10a(2), 19(2), 19a(2), 21, 21a(3), 22c, 22d(2), 24(2), 30(2) or 30a(2), fines may be imposed for infringement of the provisions of the rules.’</p>
	<p><b>33.</b> In § 45, the following shall be inserted as a new paragraph after (2):          ‘(3) In the case of particularly serious or repeated infringements of §§ 13, 14(1), 15-17, 18(1), 19(1), 19a(1), 20(1) and (2), 21a(1), 24(1), 30(1), 30a(1) or 36-38 and rules issued pursuant to § 19(2), § 19a(2), § 21a(2), § 22c, § 24(2), § 30(2) or § 30a(2) the right shall be removed for a period of time to place on the market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavourings used with them.’</p> <p>(3) subsequently becomes (4).</p>
	<p><b>34.</b> § 45(3) is amended as follows:          ‘(3) In case of particularly serious or repeated infringements of §§ 13, 14(1), 15, 15a, 15b(1) and (2), 16, 17(1) and (2), 18(1), 19(1), 19a(1), 20(1) and (2),</p>

	<p>21a(1) and (2), 22d(1), 24(1), 30(1), 30(1), or 36-38, and rules issued pursuant to §§ 10a(2), 19a(2), 21(3), 22c, 22d(2), 24(2), 30(2) or 30a(2), the right shall be removed for a period of time to place on the market tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, and equipment and flavours used with them.'</p>
	<p><b>35.</b> After § 45, the following shall be inserted before the heading before § 46:</p>
	<p><b>'§ 45a.</b> The Minister for the Interior and Health may, following negotiations with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 45(1), or rules laid down pursuant to the Act, which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case may be decided without legal proceedings if the perpetrator of the infringement declares himself guilty of the infringement and declares his willingness to pay a fine as specified in the application for a fine within a specified period.</p> <p>(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply mutatis mutandis to orders for fines.</p> <p>(3) If the fine is accepted, further pro-</p>

		ceedings shall cease. The adoption has the same repetitive effect as a judgement.'
		<b>§ 2</b>
		The Act on Electronic Cigarettes etc. (see Consolidation Act No. 1876 of 20 September 2021), as amended by § 3 of Act No. 2071 of 21 December 2020, § 1 of Act No. 99 of 25 January 2022, § 2 of Act No. 738 of 13 June 2023, and § 2 of Act No. 651 of 11 June 2024, is amended as follows:
<p><b>§ 2.</b> The following definitions apply for the purposes of this Act: Nos 1-4) - - -</p> <p>5) Characterising flavour: A prominent smell or taste other than tobacco, resulting from an additive or combination of additives, including fruit, spices, herbs, alcohol, sweets, menthol or vanilla, and which smells or can be tasted before or during consumption of an electronic cigarette with and without nicotine.</p>		<p><b>1.</b> In § 2 <i>no. 5</i>, the reference to 'Characterising flavour' is replaced by: 'flavour' and 'prominent' and 'other than tobacco' are deleted.</p>
<p>6) Manufacturer: Any natural or legal person who manufactures an electronic cigarette or a refill container with and without nicotine or has that product designed or manufactured, and markets that product under their name or trademark.</p> <p>7) Importer: The owner of, or a natural or legal person with a right of disposal over, electronic cigarettes or refill containers with and without nicotine imported into EU territory</p> <p>8) Distributor: Any natural or legal per-</p>		<p><b>2.</b> I § 2 <i>nos. 6-9</i>; the following is inserted after 'nicotine': 'etc.'.</p>

<p>son, other than a manufacturer or importer, who markets electronic cigarettes or refill containers with and without nicotine, with the exception of sales to consumers.</p> <p>9) Retailer: Any natural or legal person who places electronic cigarettes or refill containers with and without nicotine on the market to consumers.</p>		
<p>Nos 9-12) - - -</p>		<p>3. In § 2, the following No 13 is inserted:</p> <p>'13) Communications platform: Online platform which, with a view to making a profit, offers visitors the opportunity to create a profile and explore other profiles and whose primary function is to enable users of the platform to join and share messages or presentations with content in the form of characters, words, writing, audio, images or video.'</p>
<p style="text-align: center;">Chapter 2</p> <p style="text-align: center;"><i>Use of electronic cigarettes with or without nicotine</i></p> <p><b>§ 3.</b> It is not permitted to use electronic cigarettes with or without nicotine in or on the premises of</p> <p>1) nursery institutions, schools, boarding schools, secondary schools, establishments providing secondary education, places of residence and the like which have taken up children and adolescents under the age of 18, without prejudice to paragraphs 2 and 3;</p> <p>2) day care homes and other premises used for day care included in the municipal daycare and pooling schemes,</p>		<p><b>4.</b> <i>Chapter 2</i> is repealed.</p>

cf. §§ 20 and 21 of the Act on day, leisure and club offers, etc. for children and adolescents, during the time when children are in care, without prejudice to paragraph 4;

3) public means of transport, including Danish passenger ships and Danish and foreign registered passenger aircraft operating in accordance with Danish operating permits, regardless of whether the vessel or aircraft is outside Danish territory, without prejudice to paragraphs 5 and 6, and

4) taxis.

(2) In the case of locations intended for children and young people under 18 years of age which also act as a home for the young people, the local management may permit the young people to use electronic cigarettes outside in the area of the institution.

(3) At secured sections of residential institutions and partially closed residential institutions that also serve as housing for adolescents under the age of 18, the management can allow adolescents to use electronic cigarettes in rooms specifically dedicated to this purpose, in their own rooms and outdoors within the institution's perimeter.

(4) It is not permitted to use electronic cigarettes in rooms covered by (1), no. 2, if the room is primarily equipped as a play and living room for the children.

(5) The prohibition in (1), no. 3, does not apply, in the case of passenger ships, to the area of the ship reserved for the crew and to which the ship's passengers do not have access.

(6) On passenger ships, the management may allow passengers to use electronic cigarettes outdoors, cabins and rooms or booths designed for that purpose.

(7) The Minister for Health may lay down more detailed rules on which schools, boarding schools, secondary schools and secondary schools are covered by (1), number 1.

‘§ 3 a. In schools, boarding schools and efterskoler (secondary residential schools) that have taken children and young people under 18 years of age, the pupils may not use electronic cigarettes, with or without nicotine, during school hours.

(2) The head teacher of a school, boarding school or efterskole included in paragraph 1 shall inform the school about the prohibition under paragraph 1, including the consequences of a breach of this.

(3) The Minister for Health may lay down more detailed rules on which schools, boarding schools and secondary schools are covered by paragraph 1.

**§ 3 b.** In youth education facilities, pupils may not use electronic cigarettes, with or without nicotine, during school hours.

(2) The head teacher of an education institution offering youth education shall inform the education institution about the prohibition under paragraph 1, including the consequences of a breach of this.

(3) The Minister for Health may lay down more detailed rules on which up-

<p>per secondary education is covered by paragraph 1.</p> <p><b>§ 3c.</b> It is not permitted to sell electronic cigarettes and refill containers with or without nicotine in schools, boarding schools and efterskoler included in § 3a(1) or in educational establishments included in § 3b(1).</p> <p><b>§ 4.</b> In educational institutions and workplaces not covered by § 3(1) and places to which the public have access, the manager or employer shall prepare a written policy for the use of electronic cigarettes. The policy shall be accessible for users, staff and visitors.</p> <p>(2) The policy referred to in paragraph 1 shall at least include information on whether and, if so, where electronic cigarettes may be used.</p>	
<p><b>§ 15.</b> It is not permitted to place on the market electronic cigarettes and refill containers, with or without nicotine, for persons under 18 years of age.</p> <p><i>Paragraphs 2 and 3. - - -</i></p>	<p><b>5.</b> In § 15(1), replace ‘versus’ with the following: ‘to’.</p>
	<p><b>6.</b> After § 22b, the following shall be inserted before the heading before § 23:</p> <p><b>‘§ 22c.</b> In cases involving an offence which is deemed not to result in a penalty higher than a fine, the perpetrator of the offence may, upon notification by the Danish Safety Technology Authority, adopt the extra-judicial confiscation of illegal electronic cigarettes with or without nicotine, refill containers with or without nicotine,</p>

	<p>and equipment and flavourings intended to be used with them. The adoption of extra-judicial confiscation pursuant to paragraph 1 shall require the perpetrator of the offence to declare himself guilty of the offence and to accept the extra-judicial confiscation.</p> <p>(2) The rules of the Administration of Justice Act on requirements concerning the content of an indictment and the absence of an obligation on the accused person to make a statement shall apply mutatis mutandis to the adoption of confiscation under paragraph 1.'</p>
<p><b>§ 23.</b> The supervision of compliance with the provisions of Chapter 2 shall be carried out by the Danish Working Environment Authority, cf. § 79a of the Working Environment Act and § 66a of the Offshore Safety Act, the Danish Maritime Authority, cf. § 20a of the Maritime Safety Act, and the Minister for Transport, cf. § 150f of the Aviation Act.</p>	<p><b>7.</b> § 23 is deleted.</p>
<p><b>§ 25a.</b> Electronic cigarettes, refill containers with and without nicotine and flavourings for use in electronic cigarettes with a characterising flavour shall not be placed on the market in Denmark. However, the prohibition does not apply for a characterising flavour of menthol or tobacco.</p>	<p><b>8.</b> In § 25a (1), the words 'Electronic cigarettes, refill containers' are replaced by the following: 'Electronic cigarettes and refill containers'; and in two places, 'characterising flavour' is replaced by: 'flavour':</p>
<p>(2) - - - (3) The Danish Health Authority may lay down detailed rules on the prohibition in paragraph 1, including rules on</p>	<p><b>9.</b> In § 25a (3), 'characterising flavour' is replaced by: 'flavour':</p>

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<p>whether a specific product is covered by the prohibition and on maximum levels for the content in products of additives or combinations of additives that produce a characterising flavour.</p>		
<p><b>§ 26.</b> The Danish Safety Technology Authority, in the cases stated in § 25(1 and 2) or if the Authority otherwise considers that the products constitute a serious risk for human health, may instruct manufacturers, importers, distributors and retailers of electronic cigarettes and refill containers with nicotine to withdraw the products from the market or recall them from consumers.</p>		<p><b>10.</b> In § 26, the following is inserted after ‘§ 25 (1) and (2)’: ‘or where the products are covered by § 25a(1) and (2),’.</p>
		<p><b>11.</b> The following is inserted after § 27 b:  <b>‘§ 27c.</b> The Danish Safety Technology Authority may order a communication platform to modify or remove content referring to a product which does not comply with rules of this Act, rules laid down pursuant to this Act or regulations relating to the scope of this Act.  (2) The Danish Safety Technology Authority may order a communication platform to modify or remove content relating to the marketing of electronic cigarettes or refill containers with or without nicotine to persons under the age of 18.’</p>
<p><b>§ 33.</b> Unless higher penalties are stipulated under other legislation, fines will be imposed on those who:  (1) infringe §§ 3(1) and (4), 4, 9(1), 9a(1) and (2), 10(1), 11(1), 15(1)-(3),</p>		<p><b>12.</b> § 33(1) no. 1 is to be worded as follows:  ‘(1) infringes §§ 9(1), 9a(1) and (2),</p>

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<p>16(1), 17, 18a(1), 18b(1) or 25(1) and (2);</p>	<p>10(1), 11 1), 15(1)-(3), 16(1), 17, 18a(1), 18b(1) or 25a(1) and (2),'</p>
<p>Nos 2-3) - - - (4) violates prohibitions issued pursuant to § 25 or § 27(1);</p>	<p><b>13.</b> In § 33(1) no. 4, 'prohibition' is replaced by: 'prohibitions which are'.</p>
<p>(5) fails to comply with an order or an obligation to provide information based on §§ 11(2) or (3), 12(1), 19(2) or 26; Nos 6-7) - - -</p>	<p>14. In § 3 (1), no. 5, '§ 11(2) or (3), § 12(1), § 19(2), or § 26,' is amended to: '§ 11(2) or (3), 12(1), 19(2), 26 or 27c'.</p>
<p>(2) In rules laid down pursuant to § 7(2), § 8, § 9(2), § 9a(3), § 10(2), § 12(3), § 13(2), § 15(4), § 18 and § 18a(4), fines for infringements of the provisions of the rules may be imposed.</p>	<p>15. In § 33(2), 'which' is changed to: 'that'.</p>
<p>(3) Companies etc. (legal persons) may be rendered criminally liable in accordance with the provisions in Chapter 5 of the Penal Code.</p>	<p>16. In § 33, the following shall be inserted as a new paragraph after (2): '(3) In the event of particularly serious or repeated infringements of §§ 9a(1), 15(1)-(3), 18b(1), 25, 25a(1) and (2), 26 or 27(1) and rules issued pursuant to §§ 9a (3) and 15(4), the right to market electronic cigarettes and refill containers with and without nicotine, tobacco products, tobacco surrogates and herbal smoking products, and equipment and flavourings used together with them shall be deprived for a period of time.'  (3) subsequently becomes (4).</p>
	<p>17. After § 33, the following is to be inserted in Chapter 12:</p>
	<p><b>'§ 33a.</b> In the event of an infringement of § 18a(1) of the Act and rules laid down pursuant to paragraph 4, where the perpetrator of the infringement declares himself guilty of the in-</p>

	<p>fringement and declares that he is prepared to pay the fine within a specified period specified in the application for a fine, the Consumer Ombudsman may indicate that the case can be decided without legal proceedings.</p> <p>(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply mutatis mutandis to orders for fines.</p> <p>(3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.</p>
	<p><b>§ 33b.</b> The Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 33(1), or rules laid down pursuant to the Act, which are not deemed to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a penalty order that the case may be decided without legal proceedings if the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay a fine as specified in the application for a fine within a specified period.</p> <p>(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall ap-</p>

		<p>ply mutatis mutandis to orders for fines.</p> <p>(3) If the fine is accepted, further proceedings shall cease. The adoption of the same reoffending effect as a judgement.'</p>
		§ 3
		<p>The Act prohibiting 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 § 3 of Act No. 738 of 13 June 2023 and § 3 of Act No. 651 of 11 June 2024, is amended as follows:</p>
<p><b>§ 2.</b> Alcoholic beverages with an alcoholic strength of 1.2 % or more by volume may not be sold to persons under 16 years of age from retail shops.</p> <p>(2) Alcoholic beverages with an alcoholic strength of 16.5 % or more by volume may not be sold to persons under 18 years of age from retail shops.</p>		<p><b>1.</b> In § 2(1) and (2): delete 'from retail shops'.</p> <p>2. In § 2 (2), 'of 16.5 or more' is amended to: 'over 6'.</p>
		<p><b>3.</b> In § 2, the following is inserted as <i>paragraph 3</i>:</p> <p>'(3) In night-life zones, alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be sold or delivered to persons under 18 years of age from 22.00 to 08.00.'</p>
<p><b>§ 2 a. - - -</b></p> <p>(4) A person who sells alcoholic beverages with an alcohol volume of 16.5 % or more must require the presentation of a valid photo identification if the seller has doubts that the customer has reached the age of 18.</p>		<p><b>4.</b> In § 2a(4) and (5) 'equal to or greater than 16.5' is replaced by the following: 'over 6'.</p>

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<p>(5) 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><b>§ 2b.</b> The Danish Safety Technology Authority monitors the compliance with the requirements of §§ 1-2a and rules issued pursuant to § 2a(8). (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 §§ 1-2a and rules issued pursuant to § 2a(8).</p>		<p><b>5.</b> In § 2b(1) and (2), the following is inserted after '§§ 1-2a': ', § 4a'.</p>
<p><b>§ 3.</b> - - - (2) Alcoholic beverages with an alcoholic strength by volume between 1.2 and 16.4 may not be imported from other EU countries by persons under the age of 16.</p>		<p><b>6.</b> In § 3(2), '16.5' is replaced by: '6'.</p>
<p>(3) Alcoholic beverages with an alcoholic strength of 16.5 % or more may not be imported from other EU countries by persons under the age of 18.</p>		<p><b>7.</b> In § 3(3), 'of 16.5 or more' is replaced by the following: 'over 6'.</p>
		<p><b>8.</b> The following is inserted after § 3: <b>§ 4.</b> The Danish Safety Technology Authority may order a communication platform to modify or remove content relating to the labelling of tobacco products, tobacco surrogates or herbal products for smoking to persons under 18 years of age. (2) The Danish Safety Technology Au-</p>

	<p>thority may order a communication platform to amend or remove content relating to the marketing of alcoholic beverages with an alcoholic strength by volume of 1.2 % or more to persons under 16 years of age.</p> <p>(3) The Danish Safety Technology Authority may order a communication platform to amend or remove content relating to the marketing of alcoholic beverages with an alcoholic strength of more than 6 % by volume to persons under 18 years of age.</p>
	<p><b>§ 4a.</b> In brick-and-mortar shops where retail sales are made, the location of alcoholic beverages with an alcoholic strength by volume of 1.2 % or more may not be directed towards or linked to a context aimed at children and adolescents.</p> <p>(2) In complying with the prohibition set out in paragraph 1, the following are prohibited:</p> <ul style="list-style-type: none"> <li>5) juice, soft drinks, chips, sweets and similar products intended for children and adolescents are placed on the same shelf as the alcoholic beverages or adjacent shelf;</li> <li>6) alcoholic beverages are placed at the entrances;</li> <li>7) the impression is given that alcoholic beverages are associated with active sporting activities or events for children and adolescents; or</li> <li>8) alcoholic beverages are emphasised or alcoholic beverages are made to seem particularly urgent, provocative or otherwise particularly appealing to children and adolescents, including visual and textual content.</li> </ul> <p>(3) The requirement in paragraph 2, no. 1 shall not apply to refrigerators with beverages and pre-packed gift baskets.</p> <p>(4) The requirement laid down in para-</p>

	<p>graph nos. 1 and 2 shall not apply to brick-and-mortar shops specialised in the sale of alcoholic beverages.'</p>
<p><b>§ 5.</b> For infringements of § 1, § 2 or § 2a and rules issued pursuant to § 2a (8), the retailer, the person marketing professionally by means of distance selling, the restaurant, the hotel host, the canteen holder, etc. shall be liable to a fine. In determining the extent of the penalty, it is considered to be an especially aggravating circumstance if the violation of §§ 1-2a and regulations issued pursuant to § 2a(6) is of a gross or repeated nature. The provision in § 23 of the Danish Criminal Code shall not apply.</p>	<p><b>9.</b> In § 5(1), (1) and (2), '§ 1, § 2 or § 2a and rules issued pursuant to § 2a(8)' is replaced by: '§§ 1-2a or § 4a(1) and rules issued pursuant to § 2a(8)'.</p>
<p>(2) In the event of a particularly serious or repeated infringement of §§ 1 and 2a, the right to market tobacco, tobacco surrogates and herbal products for smoking shall be withdrawn for a period of time.</p>	<p><b>10.</b> § 5(2) is worded as follows: '(2) In the event of particularly serious or repeated infringements of §§ 1 and 2a(1), the right to place tobacco products, tobacco surrogates, herbal products for smoking, electronic cigarettes and refill containers with and without nicotine, as well as equipment and flavourings used with them, shall be withdrawn for a period of time.'</p>
<p>(3) Companies etc. (legal persons) may be rendered criminally liable in</p>	<p><b>11.</b> In § 5, the following is inserted as a new paragraph after paragraph 2: '(3) Unless higher penalties are stipulated under other legislation, fines will be imposed on those who: (1) fail to grant access to the Danish Safety Technology Authority in accordance with § 2b(2), or (2) infringe or fail to comply with an order issued by the Danish Safety Technology Authority pursuant to § 4.'</p>

<p>accordance with the provisions in Chapter 5 of the Penal Code.</p>		<p>(3) subsequently becomes (4).</p>
		<p><b>12.</b> The following is inserted after § 5:  <b>‘§ 5a.</b> The Minister for the Interior and Health may, after consultation with the Minister for Justice, lay down rules to the effect that, in specified cases concerning penalties under § 5(1) or rules laid down pursuant to the Act, concerning infringements of the provisions of this Act which are deemed not to result in a penalty higher than a fine, the Danish Safety Technology Authority may state in a financial order that the case can be decided without legal proceedings if the perpetrator of the offence declares himself guilty of the offence and declares that he is prepared to pay a fine as specified in the financial notice within the specified period.  (2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply mutatis mutandis to orders for fines.  (3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.’</p>
		<p>§ 4</p>
		<p>The Act on prohibition of tobacco advertising, etc. (cf. Consolidation Act No. 586 of 26 May 2021 as amended by § 1 of Act No. 2071 of 21 December</p>

		2020) is amended as follows:
<b>§ 7.</b> Infringements of §§ 3, 5, 4 and 5a shall be punishable by a fine.		<b>1.</b> In <i>paragraph 7(1)</i> ‘§§ 3, 4, 5 and 5a’ is replaced by: ‘§§ 3-5a’.
		<p><b>2.</b> After § 7, the following shall be inserted before the heading before § 8:</p> <p><b>‘§ 7a.</b> In the event of an infringement of § 5a(1) of the Act and rules laid down pursuant to § 5a(4), and where the perpetrator of the infringement declares himself guilty of the infringement and declares that he is prepared to pay the fine within a specified period specified in the application for a fine, the Consumer Ombudsman may declare that the case can be decided without legal proceedings.</p> <p>(2) The rules of the Administration of Justice Act on requirements as to the content of an indictment and on the fact that an accused person is not required to make a statement shall apply <i>mutatis mutandis</i> to orders for fines.</p> <p>(3) If the fine is accepted, further proceedings shall cease. The adoption has the same repetitive effect as a judgement.’</p>
		§ 5
		The Act on smoke-free environments, cf. Consolidation Act No. 1632 of 18 June 2021, as amended by § 4 of Act No. 738 of 13 June 2023, is amended as follows:
<b>§ 1.</b> The objective of the Act is to extend smoke-free environments with a		<b>1.</b> § 1(1) is worded as follows: ‘The purpose of the Act is to ensure

<p>view to preventing effects of passive smoking that are damaging to health and prevent anyone being involuntarily exposed to passive smoking. The objective of the Act is additionally to ensure that children and young people are not confronted with smoking or other use of tobacco products, tobacco surrogates and herbal smoking products during school hours.</p>	<p>that environments are secured where there is no smoking or use of other tobacco products or electronic cigarettes with or without nicotine. The purpose of the Act is also to ensure that children and adolescents are not confronted during school hours with smoking or other use of tobacco products, electronic cigarettes with or without nicotine, tobacco surrogates or herbal products for smoking.'</p>
<p>(2-3).</p> <p>(4) A tobacco surrogate is understood in this Act to be a product containing nicotine that is not a tobacco product, cf. § 2(2) of the Act on tobacco products etc. or an electronic cigarette, cf. § 2(1) of the Act on electronic cigarettes etc. and which is not approved by marketing permission in accor-</p>	<p><b>2.</b> In § 1, the following shall be inserted as new paragraphs after (3):          '(4) For the purposes of this Act, heated tobacco products are a novel category of tobacco products heated to produce an emission containing nicotine and other chemicals which are then inhaled by the user or users and which, depending on their characteristics, are smokeless tobacco products or smoking tobacco products.          (5) For the purposes of this Act, electronic cigarettes with or without nicotine shall mean a product that can be used for consumption of either a nicotine-containing or non-nicotine-containing steam through a mouthpiece, or parts of such a product, including a cartridge, a refillable tank and a device without a cartridge or refillable tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a refillable tank, or rechargeable with single-use cartridges.'</p> <p>Paragraphs 4 and 5 subsequently become paragraphs 6 and 7.</p>

<p>dance with the Act on medications or EU legislative regulations laying down common procedures for approval of medicinal products for human use and equipment intended to be used in conjunction with this product.</p> <p>(5) A herbal smoking product is understood in this Act to be a product based on plants, herbs or fruits which does not contain tobacco and which can be consumed using a combustion process.'</p>	
<p><b>§ 4.</b> In premises etc. covered by the Act, smoking indoors shall not be permitted unless otherwise provided for in the other provisions of the Act.</p> <p><b>§ 5.</b> - - -</p> <p><b>§ 6.</b> Smoking indoors in workplaces, cf. § 4, shall not be permitted.</p> <p>(2) It may be decided that smoking is permitted in cranes, company cars and other commercial vehicles which serve only as a workplace for one person at a time.</p> <p><i>Paragraphs 3 and 4.</i> - - -</p> <p><b>§ 7.</b> - - -</p> <p>(4) Service accommodation situated in the territory of the institutions referred to in paragraph 1 shall not be subject to the prohibition laid down in paragraph 1. However, smoking is not allowed when children and young people admitted to the institution, etc., are staying in the service accommodation.</p> <p>(5) - - -</p> <p><b>§ 7a to 7 c.</b> - - -</p> <p><b>§ 10.</b> Hospitals and similar institutions may, in exceptional cases, allow patients and relatives to smoke.</p> <p><b>§ 11.</b> - - -</p>	<p><b>3.</b> In § 4, § 6(1) and (2), § 7(4), § 10, § 11(2), § 12, § 15(1), § 16(2), § 18(1) and § 21(1), insert after 'smoking': 'or use heated tobacco products or electronic cigarettes with or without nicotine'.</p>

<p>(2) Residents may be required not to smoke in the room or home for the duration of staff stay there.</p> <p><b>§ 12.</b> In private homes where a public service in the form of personal and practical assistance is provided, residents may be required not to smoke during the period when the staff are staying in the dwelling.</p> <p><b>§ 13.</b> - - -</p> <p><b>§ 15.</b> In the municipal day-care system and in pool schemes, cf. §§ 21 (2) and 101 and 102 of the Durning Services Act, it is not permitted to smoke at the day-care home and in other day-care facilities when looking after children.</p> <p>(2)</p> <p><b>§ 16.</b> - - -</p> <p>(2) If the working room is used for accommodation, smoking in the room is allowed outside the working hours of the outside labour force.</p> <p><b>§ 17.</b> - - -</p> <p><b>§ 18.</b> In indoor premises to which the public has access, smoking shall not be permitted, cf. § 4.</p> <p>(2)</p> <p><b>§§ 19.-20.</b> - - -</p> <p><b>§ 21.</b> Smoking indoors at catering establishments, cf. § 4, shall not be permitted.</p> <p>(2-3). - - -</p>		
<p><b>§ 5.</b> Each employer must draw up a written smoking policy that must be accessible to all employees of the workplace.</p> <p>(2) The smoking policy shall include at least:</p> <ol style="list-style-type: none"> <li>1) Information on whether and where to smoke in the workplace.</li> </ol>		<p><b>4.</b> In § 5(2) no. 1, and § 11(1), insert after ‘smoked’: ‘or heated tobacco products or electronic cigarettes with or without nicotine are used’.</p>

<p>No 2.  <b>6.10.</b> - - -  <b>§ 11.</b> In nursing homes, residential institutions, home services and similar establishments, each resident may decide whether to smoke in the room or home serving as his or her private home.  (2) - - -</p>		
<p><b>§ 6.</b> - - -  (3) It may be decided to install smoking rooms and booths where smoking can take place.  (4) Workplaces that have or establish smoking rooms or booths where smoking can take place shall indicate by visible signs that the ambient air outside of them may be harmful to health.  (5) - - -  <b>§§ 7.-12.</b> - - -  <b>§ 13.</b> In shelters, heating rooms and similar services for socially vulnerable people, where there is only one space for users, it may be decided that smoking is allowed.  <b>§§ 15 and 16.</b> - - -  <b>§ 17.</b> It may be decided that smoking is permitted on ships in premises serving as private dwellings for one person at a time.  <b>§ 18.</b> - - -  (2) It may be decided to install smoking rooms and booths where smoking can take place.  <b>§ 19.</b> In hotel rooms, cabins and similar premises where overnight guests are received on a professional basis, it may be decided that smoking is allowed for guests.  <b>§ 20.</b> - - -</p>		<p><b>5.</b> In § 6(3) and (4), § 13. § 17. § 18(2). § 19, § 20(2), § 21(3), § 22 and § 26(2), insert after ‘smoking’: ‘or the use of heated tobacco products or electronic cigarettes with or without nicotine’.</p>

<p>(2) On passenger ships, it may be decided to install smoking rooms and booths where smoking can take place.</p> <p><b>§ 21.</b> - - -</p> <p>(3) It may be decided to install smoking rooms and booths where smoking can take place.</p> <p><b>§ 22.</b> It may be decided that smoking is allowed indoors in small traditional shelters and on-premises;</p> <p>Nos 1-4) - - -</p> <p><b>§ 26.</b> - - -</p> <p>(2) An employer, owner restaurateur, manager or tenant who permits smoking in violation of the regulations in this Act is punished by fine.</p> <p>(3) - - -</p>	
<p><b>§ 7.</b> Without prejudice to paragraphs 2 to 4, no smoking or use tobacco products, tobacco surrogates or herbal products shall be permitted in nursery establishments, schools, boarding schools, nursery schools, secondary schools, establishments providing secondary education, accommodation and the like which have taken up children and adolescents under the age of 4 years.</p> <p>(2) to (5). - - -</p> <p>“§ 7 a. In schools, boarding schools and efterskoler (secondary residential schools) that have taken children and young people under 18 years of age, the pupils are not permitted to smoke or use tobacco products, tobacco surrogates or herbal smoking products during school hours.</p> <p><i>Paragraphs 2 and 3.</i> - - -</p> <p>§ 7 b. In youth educational establish-</p>	<p><b>6.</b> In § 7(1), § 7a(1). § 7b(1) and § 7c(1), the following is inserted after ‘tobacco products’: ‘, electronic cigarettes with or without nicotine’.</p>

<p>ments, the pupils are not permitted to smoke or use tobacco products, tobacco surrogates or herbal smoking products during school hours.  <i>Paragraphs 2 and 3. - - -</i>                  § 7 c. It is not permitted to sell tobacco products, tobacco surrogates or herbal smoking products in schools, boarding schools and efterskoler included in § 7a(1) and in educational establishments included in § 7b(1).'</p>		
<p><b>§ 7. - - -</b>                  (2) For shelters targeted at children and adolescents under the age of 18 who also serve as housing for young people, it may be decided that the smoking of young people is permitted outdoors in the premises of the institution.                  (3) For secure departments of residential and semi-closed residential institutions, which also serve as accommodation for young people under the age of 18, it may be decided that the smoking of young people outside the premises of the institution is allowed.  <i>Paragraphs 4 and 5. - - -</i></p>		<p><b>7.</b> In § 7(2) and (3), insert after 'smokes': 'or use heated tobacco products or electronic cigarettes with or without nicotine'.</p>
<p><b>§ 15. - - -</b>                  (2) Rooms which are primarily equipped as a play and living room for the children shall therefore be smoke-free all day.</p>		<p><b>8.</b> In § 15(2), insert after 'smoke-free': 'and free from heated tobacco products and electronic cigarettes with or without nicotine'.</p>
<p><b>§ 20.</b> In collective transport and taxis, it is not permitted to smoke indoors, cf. § 4.                  (2) - - -</p>		<p><b>9.</b> In § 20(1), insert after 'smoking': 'or use heated tobacco products or electronic cigarettes with or without nicotine' and 'indoors, cf. § 4' is deleted.</p>
		<p><b>10.</b> The following shall be inserted in</p>

	<p><i>Chapter 4 after § 20:</i></p> <p><b>‘§ 20a.</b> In outdoor stadia intended for major sporting events, there shall be zones where smoking or the use of heated tobacco products or electronic cigarettes with or without nicotine is prohibited.</p> <p>(2) The management of a stadium covered by paragraph 1 shall be responsible for announcing the requirement and for determining and disclosing the consequences of any breach thereof. It will also be the responsibility of the management to enforce the requirement.</p> <p><b>§ 20b.</b> The municipal council may decide that smoking or the use of heated tobacco products or electronic cigarettes with or without nicotine shall not be permitted in outdoor municipal playgrounds.</p> <p>(2) The municipal council will be responsible for providing information on the prohibition in paragraph 1 and on the consequences of infringement of this prohibition. It will also be the responsibility of the municipal council to enforce the ban.’</p>
<p><b>§ 23.</b> The employer, the holder, the retainer, the manager and the lessee shall ensure that smoking is carried out only in accordance with the rules of this Act.</p>	<p><b>11.</b> In § 23 the following shall be inserted after the word ‘smoking’: ‘and the use of heated tobacco products and electronic cigarettes with or without nicotine’.</p>
<p><b>§ 25.</b> An employee’s infringement of the ban on smoking in a workplace shall be treated in accordance with the rules applicable to the employment re-</p>	<p><b>12.</b> In § 25 the following shall be inserted after the words ‘smoking ban’: ‘or the ban on the use of heated tobacco products or electronic cigarettes</p>

lationship of that employee.		with or without nicotine’.
		§ 6
		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 of children and young people), as amended by § 5 of Act No. 738 of 13 June 2023 and § 4 of Act No. 651 of 11 June 2024, is hereby amended as follows:
<b>§ 2. - - -</b> <b>21.</b> In § 45(1)(1), ‘§ 14(1),’ is changed to: ‘§ 14(1) and (3),’.		<b>1.</b> § 2, No 21, shall be repealed.
<b>§ 7. - - -</b> (7) The Minister for Health and the Elderly shall determine the date of entry into force of §§ 2 (6), (13), (14) and (21) and 3 (8) of the Act.		<b>2.</b> In <i>paragraph 7 (7)</i> , the words ‘and 21’ are deleted.
		§ 7
		The Act on Marketing, cf. Consolidation Act No. 866 of 15 June 2022, as amended by § 343 of Act No. 718 of 13 June 2023 and § 2 of Act No. 732 of 13 June 2023, shall be amended as follows:
<b>§ 25. - - -</b> <i>Paragraphs 1 and 2. - - -</i>		<b>1.</b> In § 25, the following shall be inserted as a new paragraph after (2):

		<p>‘(3) When monitoring commercial practices under § 11 (2), the Consumer Ombudsman may make use of a hidden identity.’</p> <p>Paragraphs 3-5 shall henceforth be paragraphs 4-6.</p>
<p><b>§ 39.</b> The Minister for Business and Industry may delegate his powers under the Act to an authority under the authority of the Ministry. This does not apply to powers under § 25 (5). Where the Minister submits his powers to an authority under the Ministry, the Minister may lay down rules on the right of appeal, including that appeals may not be brought before any other administrative authority.</p>		<p><b>2.</b> In § 39, ‘§ 25 (5)’ is replaced by ‘§ 25 (6)’.</p>
		§ 8
		<p>The Act on safety at sea, cf. Consolidation Act No. 221 of 11 February 2022, as amended by § 3 of Act No. 243 of 7 March 2023 and § 1 of Act No. 1773 of 28 December 2023, is hereby amended as follows:</p>
<p><b>§ 20a.</b> As part of the monitoring activities under this Act, the Danish Maritime Authority may also monitor compliance with the Act on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. on Danish ships and with compliance with the Act on seafarers’ employment conditions, etc., the Ships’ Crews Act, the Ship Measurement Act, §§ 153, 154a and 168, § 4 (170), § 471, § 170a (2) and</p>		<p><b>1.</b> I <i>Paragraph 20a (1)</i> and <i>in paragraph 3</i>: “and Chapter 2 of the Act on electronic cigarettes, etc.” is deleted.</p>

<p>(3), and §§ 186, 197, 198, 403a to 403 c, 440, 169 and 486 of the Maritime Act and rules issued pursuant thereto and EU regulations within the scope of the Acts. The Danish Maritime Authority can require that conditions which conflict with the specified Acts or rules issued pursuant to those Acts are rectified immediately or by a specified deadline.</p>		
		§ 9
		<p>The Working Environment Act, cf. Consolidation Act No. 2062 of 16 November 2022, as amended by § 2 of Act No. 2588 of 28 December 2021, in Act No. 566 of 10 May 2022, § 9 of Act No. 893 of 21 June 2022, § 2 of Act No. 324 of 28 March 2023 and § 1 of Act No. of Act No. 1540 of 12 December 2023, is amended as follows:</p>
<p><b>§ 79a.</b> As part of the inspection activities provided for in this Act, the Danish Working Environment Authority shall monitor compliance with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc., the Danish Working Environment Authority may, under specified conditions, order that any circumstances contrary to the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. be rectified immediately or within a specified time limit. (2) to (4). - - -</p>		<p><b>1.</b> In two locations in § 79a(1), ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted.</p>
		§ 10

		The following amendments are made to the Offshore Safety Act, see Consolidation Act No. 125 of 06 February 2018, as amended by § 34 of Act No. 1436 of 29 June 2021:
<p><b>§ 66a.</b> As part of the monitoring activities under this Act, the Minister for Employment shall monitor compliance with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc., the Minister for Employment may, if necessary under specified conditions, order that any circumstances which conflict with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc. be corrected immediately or within a specified time limit. (2) to (4). - - -</p>		<p><b>1.</b> In two locations in § 66 a(1), ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted.</p>
		§ 11
		The Aviation Act, cf. Consolidation Act No. 118 of 31 January 2024, is amended as follows:
<p><b>§ 150f.</b> As part of the monitoring activities provided for in this Act, the Minister for Transport shall monitor compliance with the legislation on smoke-free environments and Chapter 2 of the Act on electronic cigarettes, etc., the Minister for Transport may, if necessary under specified conditions, order that circumstances which conflict with the legislation on smoke-free environments and Chapter 2 of the Act</p>		<p><b>1.</b> In two locations in § 150f (1) ‘and Chapter 2 of the Act on electronic cigarettes, etc.’ is deleted.</p>

on electronic cigarettes, etc. be rectified immediately or within a specified period. <i>Paragraphs 2 and 3. - - -</i>		
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