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Preamble

Objectives

Objective 1: Ensuring comprehensive health protection

Objective 2: Implementation of Implementing Decisions (EU) 2016/586 and (EU) 2015/1735

Contents

The proposed legislation primarily comprises the following measures:

Measure 1: Inclusion of new products (tobacco-free nicotine product, tobacco-free nicotine substitute product in the regulatory regime of the TNRSG)

Measure 2: Prohibition of electronic cigarettes that are single-use products

Measure 3: Clarification of the ban on mail order trading

Measure 4: Implementation of Implementing Decisions (EU) 2016/586 and (EU) 2015/1735

Significant impacts

The proposed legislation has a material impact in the following impact category(ies):

Financial impact

Environmental

Minors

Financial impacts on the federal budget and other public budgets

Simplified presentation of the financial impact

Increase in administrative penalty proceedings to be initiated by district administrative authorities in the case of non-compliant products (tobacco-free nicotine products, tobacco-free nicotine substitute products).

Elimination of administrative penalty proceedings for non-compliant electronic cigarettes that are single-use products.

Overall, the expected administrative costs for the authorities in the state governments as a result of the amendment/TNRSG will not exceed EUR 1 million.

Relationship with European Union legislation

The proposed legislation goes beyond the obligation to implement mandatory provisions of Union law

Special features of the legislative procedure

None

Outcome-oriented impact assessment

Amendments to the Tobacco and Non-Smoker Protection Act (TNRSG)

Submitting entity: Federal Ministry of Labour, Social Affairs, Health, Care and Consumer Protection

Title of the proposed legislation: Federal act amending the Federal act on producing and placing on the market of tobacco products and related products as well as advertising tobacco products and related products and the protection of non-smokers

Type of proposed legislation: Act	Entry into force/ effective date:	2026
Year created: 2025	Last update:	03/12/2025

Contribution to outcome objective or measure in the federal budget

Contribution to:

- Outcome objective: Preserving the health of consumers in particular through safe food, consumer goods and cosmetic products, as well as sufficient clear information on food quality and nutrition. Ensuring animal health and animal welfare in order to meet the expectations of consumers and ensure the movement of animals and goods. (Breakdown 24 Health - Federal Budget 2025)

Systems analysis

Definition of the problem

Tobacco and nicotine consumption is considered one of the most significant health risks worldwide. Numerous fatal diseases such as cardiovascular diseases, respiratory diseases and a wide range of cancers are attributed to smoking and second-hand smoking. As part of the Global Burden of Disease monitoring programme, it has been estimated that approximately 8 500 deaths in Austria in 2021 were attributable to tobacco smoking (including second-hand smoking). That equates to around 10% of all deaths.

In addition, the 2025-2029 government agreement laid the foundations for strict regulation of new nicotine products and e-cigarettes. These are to be implemented with this draft legislation. In addition, single-use e-cigarettes – with or without nicotine – are to be banned in waste management due to their particular appeal to minors in terms of design and price, as well as due to frequent disposal problems and spontaneous combustion. Nicotine-containing and nicotine-free related products, such as nicotine pouches and comparable products containing other substances, often stimulants (caffeine, guarana, etc.), are to be regulated to a similar extent as tobacco products or e-cigarettes for reasons of health protection and thereby subject to a comprehensive level of protection. The provisions on prohibited substances are also to be expanded from nicotine-containing to nicotine-free e-cigarettes and liquids.

Furthermore, problems have arisen in the enforcement of the TNRSG and the regulations issued on its basis, as well as in the established case law on this matter, particularly with regard to the ban on mail order trading in § 2a TNRSG (see VwGH [Supreme Administrative Court] 29 April 2025, 2024/11/0084). It is therefore necessary to amend the relevant legal provisions on mail order trading and to enable the control and enforcement authorities to make anonymous purchases of tobacco and nicotine products as well as tobacco or nicotine substitute products.

In order to ensure a high level of health protection for the youngest members of society and in the interests of comprehensive tobacco prevention among children, as also underlying the Council Recommendation of 3 December 2024 on smoke-free and aerosol-free environments, C/2024/7425, a smoking ban in public playgrounds is also being standardised.

Furthermore, Commission Implementing Decision (EU) 2016/586 of 14 April 2016 on technical standards for the refill mechanism of electronic cigarettes and Implementing Decision (EU) 2015/1735 on the precise position of the general warning and the information message on roll-your-own tobacco marketed in pouches of 24 September 2015 are transposed into national law.

Baseline scenario and any alternatives

A baseline scenario would likely result in a significant increase in the number of people addicted to nicotine, as tobacco-free nicotine products in particular could be advertised and sponsored almost without restriction, the products could be traded by mail order, and, subject to any youth protection laws in the state governments to the contrary, these products could also be sold to minors with virtually no regulation.

Internal evaluation

Date of internal evaluation: 2030

Specific revenue data is available internally at BMASGPK [Federal Ministry for Labour, Social Affairs, Health, Care and Consumer Protection] for evaluation purposes.

Objectives

Objective 1: Ensuring comprehensive health protection

Description of the objective:

Expansion and safeguarding of uniform and comprehensive health protection through the regulation of new product categories (tobacco-free nicotine products, tobacco-free nicotine substitute products)

Implemented by:

Measure 1: Inclusion of new products (tobacco-free nicotine products, tobacco-free nicotine substitute products) in the regulatory regime of the TNRSG

Measure 2: Prohibition of electronic cigarettes that are single-use products

Measure 3: Clarification of the ban on mail order trading

A successful outcome would be:

Indicator 1 [milestone]: Protecting consumers from the avoidable harmful effects of consuming tobacco and related products

Initial situation: 07/10/2025

According to HBSC 2022, 18.7% of boys and 8.3% of girls have used nicotine pouches in the last month. In the general population, daily consumption of nicotine pouches has almost doubled between 2020 and 2022. In addition, around 1 500 people are treated as inpatients in Austrian hospitals every year for nicotine poisoning. Furthermore, there is an increase in nicotine poisoning among schoolchildren due to tobacco-free nicotine products.

Target situation: 01/01/2029

Reducing the number of consumers (especially minors) and poisoning incidents.

Indicator 2 [milestone]: Expansion of the smoking ban to public playgrounds

Initial situation: 07/10/2025

Under the current legal situation, smoking or vaping is permitted in public playgrounds outdoors. This leads to exposure to harmful fumes, particularly for minors. There is also a risk of them ingesting discarded cigarette butts, which could potentially cause associated nicotine poisoning.

Target situation: 31/12/2025

Public outdoor playgrounds become non-smoking areas.

Note: Target situation refers to 2026 (entry into force of the TNRSR amendment). This cannot be selected in the corresponding entry field.

Objective 2: Implementation of Implementing Decisions (EU) 2016/586 and (EU) 2015/1735

Description of the objective:

Mandatory transformation of Commission Implementing Decision (EU) 2016/586 of 14 April 2016 on technical standards for the refill mechanism of electronic cigarettes and Implementing Decision (EU) 2015/1735 on the on the precise position of the general warning and the information message on roll-your-own tobacco marketed in pouches of 24 September 2015 into national law.

Implemented by:

Measure 4: Implementation of Implementing Decisions (EU) 2016/586 and (EU) 2015/1735

A successful outcome would be:

Initial situation: 07/10/2025

To date, there are no clear provisions governing the design of the refill mechanism for electronic cigarettes. This Implementing Decision is intended to specify and clarify these points.

Target situation: 31/12/2025

This Implementing Decision is intended to specify and clarify these points. The Republic of Austria is obliged under EU law to comply with those requirements. Note: Target situation refers to 2026 (entry into force of the TNRSR amendment). This cannot be selected in the corresponding entry field.

Indicator 2 [milestone]: Arrangement of the general warning and the information message on roll-your-own tobacco sold in pouches

Initial situation: 07/10/2025

Target situation: 31/12/2025

There are no clear rules thus far for the arrangement of the general warning and the information message on roll-your-own tobacco sold in pouches.

This Implementing Decision is intended to specify and clarify these points. The Republic of Austria is obliged under EU law to comply with those requirements. Note: Target situation refers to 2026 (entry into force of the TNRSRG amendment). This cannot be selected in the corresponding entry field.

Measures

Measure 1: Inclusion of new products (tobacco-free nicotine products, tobacco-free nicotine substitute products) in the regulatory regime of the TNRSRG

Description of the measure:

Nicotine is acutely toxic and has a strong addictive effect.

These products are essentially substitutes for prohibited tobacco for oral use (snus, etc.) and are particularly attractive to minors, in whom even only short-term consumption can lead to rapid nicotine tolerance and thus addiction. In addition, nicotine-containing products for chewing or sucking can be consumed discreetly, even in places where smoking is prohibited.

Unlike tobacco for oral use or chewing tobacco, however, nicotine pouches do not contain tobacco, but nicotine in various concentrations. This is added in the form of nicotine, nicotine salt or nicotine bound to plastic (polymethacrylic acid). Cellulose (powder), plant fibres or tea (*Camellia sinensis*) often serve as carrier substances.

These small, permeable sachets are usually consumed orally in the same way as tobacco. The sachet is placed under the upper lip and left there for approximately 20 to 30 minutes. Moisture (saliva) dissolves nicotine, among other substances, which is then absorbed by the body through the oral mucosa.

This Federal Act is intended to regulate nicotine-containing, tobacco-free products (e.g. nicotine pouches, also known as nicotine sachets or nicopods) that were previously not subject to the regulatory regime of Directive 2014/40/EU, the TNRSRG or the LMSVG.

Tobacco-free or nicotine-free products, such as those for oral/nasal use, which are consumed in the same way as tobacco or tobacco-free nicotine products, such as caffeinated/flavoured powders for nasal use or CBD/herbal pouches or sachets for oral use, which are currently not regulated under substantive law, but which, due to their comparable use and increasing popularity among minors, are considered gateway products for tobacco products and related products, are now included in the scope of the TNRSRG as tobacco-free nicotine substitute products.

Implementation of:

Objective 1: Ensuring comprehensive health protection

A successful outcome would be:

Indicator 1 [milestone]: Control of consumption

Initial situation: 07/10/2025

Target situation: 07/10/2025

According to HBSC 2022, 18.7% of boys and 8.3% of girls have used nicotine pouches in the last month. Prevention of consumption by children or minors. Note: The target situation refers to 1 January 2029 (this cannot be selected in the corresponding input field).

Measure 2: Prohibition of electronic cigarettes that are single-use products

Description of the measure:

A ban on single-use electronic cigarettes shall be enacted. Electronic cigarettes (e-cigarettes) containing nicotine are highly addictive and pose a number of health risks. Nevertheless, they are often mistakenly regarded by the general public as harmless lifestyle products or even as a ‘healthier alternative’ to tobacco products. Many different types of e-cigarettes have come onto the market in recent years. E-cigarettes offer the widest range of flavours of any tobacco and nicotine product. These factors, along with the design of many devices, especially single-use versions, appeal in particular to adolescents and young adults. Many of them are unaware of the high risk that e-cigarettes pose as a gateway product to nicotine addiction. Single-use e-cigarettes have been growing in popularity for some time, especially among adolescents. They are small, usually colourful in design, come in eye-catching packaging and are significantly cheaper than reusable devices for immediate use.

The health risks associated with the consumption of ‘normal’ e-cigarettes essentially apply equally to single-use e-cigarettes. However, it is difficult to make a general health assessment because there are vast differences in filling volume, device performance and technology, liquid contents, etc. This also causes variations in the quantity and composition of the aerosol produced, the nicotine released and the harmful substances, meaning that the specific risks would have to be determined for each individual product. However, based on current knowledge, the following general risks can be assumed: Carcinogenic substances that have been detected in the aerosol include formaldehyde, acetaldehyde, acrolein, reactive oxygen compounds and metals such as nickel, chromium and lead.

Examples of known health risks associated with e-cigarettes include lung disease, increased heart rate and blood pressure, damage to the inner walls of blood vessels, cells and genetic material, oxidative stress, and impairment of the immune system and wound healing. Consuming these products during pregnancy can disrupt the development of the child’s lungs, lead to lower birth weight and height, and can cause pregnancy complications.

Nicotine is also highly addictive and impairs brain development in adolescents. The trend in consumption of these newer products is generally on the rise worldwide, including in Austria. The increase in single-use e-cigarettes is above average, especially among adolescents.

The various flavours, packaging options, designs and colours, easy availability in online shops (concealment of age) and low price, as well as the fact that the products are thrown away after use and replaced by other new and increasingly attractive products, make them particularly appealing to adolescents. Social media and influencer marketing, which is often very aggressive, is particularly problematic, as age or health warnings are practically non-existent in these contexts. Furthermore, the advertising and sponsorship ban standardised in the TNRSRG is practically unenforceable on such platforms, given the sheer volume of social media channels and posts.

Lithium batteries in single-use e-cigarettes can also cause fires during disposal (e.g. if damaged during the transfer of residual waste). If disposed of carelessly (littering), various ingredients are harmful to the environment. That is why the ARGE Austrian Waste Management Association and the European umbrella organisation Municipal Waste Europe are also advocating a ban on single-use e-cigarettes. According to Global 2000, about three million lithium batteries end up in general waste each year in Austria.

Implementation of:

Objective 1: Ensuring comprehensive health protection

Measure 3: Clarification of the ban on mail order trading

Description of the measure:

In the enforcement of the TNRSG and the regulations issued on its basis, as well as in the established case law on this matter, revealed problems, particularly with regard to the ban on mail order trading in § 2a TNRSG (see VwGH 29 April 2025, 2024/11/0084). It is therefore necessary to expand the definition of 'mail order trading' to include the act of offering goods for sale. This is also in line with the purpose of Article 6 of Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulation (EC) No 765/2008 and (EU) No 305/2011.

Implementation of:

Objective 1: Ensuring comprehensive health protection

Measure 4: Implementation of Implementing Decisions (EU) 2016/586 and (EU) 2015/1735

Description of the measure:

This amendment transposes into national law the Commission Implementing Decision (EU) 2016/586 of 14 April 2016 on technical standards for the refill mechanism of electronic cigarettes and Implementing Decision (EU) 2015/1735 on the on the precise position of the general warning and the information message on roll-your-own tobacco marketed in pouches of 24 September 2015.

Implementation of:

Objective 2: Implementation of Implementing Decisions (EU) 2016/586 and (EU) 2015/1735

Impact assessment

Simplified presentation of the financial impact

Increase in administrative penalty proceedings to be initiated by district administrative authorities in the case of non-compliant products (tobacco-free nicotine products, tobacco-free nicotine substitute products).

Elimination of administrative penalty proceedings for non-compliant electronic cigarettes that are single-use products.

Overall, the expected administrative costs for the authorities in the state governments as a result of the amendment/TNRSG will not exceed EUR 1 million.

Impact on the equal treatment of women and men

Distribution of expected tax revenue and direct and indirect burden and relief among women and men

Other material impacts

Fees will be levied in accordance with the Tobacco Fees Ordinance in order to cover the costs of market surveillance for new products. In contrast, due to the ban on electronic cigarettes, which are single-use products, fees for market surveillance of these products will no longer be applicable.

Companies

Financial impact on businesses, in particular SMEs

The proposed legislation has no material financial impact on enterprises.

Explanation:

The current amendment to the TNRSG affects around 16 existing wholesalers and around 20 additional wholesalers, as well as around 4 400 tobacco retailers, including almost 2 150 specialist tobacco shops (due to the new products covered by the TNRSG).

The BMASGPK has no data on the number of possible manufacturers of newly covered products in Austria.

Environmental impacts

Impacts on minors

Impact on the risk of children being physically or emotionally harmed or suffering any other physical, psychological or health damage

Nicotine is acutely toxic and has a strong addictive effect. According to Regulation (EC) 1272/2008 on the classification, labelling and packaging of substances and mixtures, nicotine is classified as H300, H310 and H330 ('fatal if swallowed, fatal in contact with skin or fatal if inhaled'). Due to their nicotine content, nicotine pouches (above a certain nicotine content) are subject to the provisions of chemical legislation and must therefore carry appropriate hazard warnings. Above a threshold value of 16.7 milligrams per gram of nicotine (classification: acutely toxic, Category 3 - H301), a poison purchase permit must also be obtained in accordance with § 41 in conjunction with § 35 of the Chemicals Act 1996, Federal Law Gazette I No 53/1997 as amended, in conjunction with Annex VI of the CLP Regulation.

Around 1 500 people receive inpatient treatment for nicotine poisoning in Austrian hospitals every year. Of those with a primary diagnosis of nicotine poisoning, 58% are under four years of age, 13% are between ten and fourteen years of age, and 8% are between fifteen and nineteen years of age. The number of calls to the Poison Control Centre due to nicotine poisoning has also been rising steadily since 2020. This is primarily due to cigarette/tobacco poisoning, followed by nicotine pouches. It should be noted that nicotine addiction per se is a nicotine-induced mental disorder recognised by ICD-11. Minors are particularly susceptible to addiction.


Information on materiality

In the opinion of the body submitting this assessment, the following impact categories are not materially affected by this proposal for the purposes of Annex 1 to the Basic Ordinance for the Outcome Oriented Impact Assessment.

Impact category	Impact subcategory	Materiality criterion
Companies	Financial effects on businesses	At least 10 000 enterprises concerned or EUR 2.5 million in terms of total additional cost or relief per year

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