
New rules for heated tobacco products

Law 5/2024 has been published, which transposes the Commission Delegated Directive (EU) 2022/2100 and introduces amendments to the rules for the marketing of heated tobacco products.

Portugal – Legal Update

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Key aspects

Law 5/2024 of January 15 (“Law 5/2024”):

- > prohibits the sale of all heated tobacco products that contain distinct aromas or flavorings; and
- > extends the requirement for combined health warnings to include heated tobacco products when they involve a combustion process.



New rules for heated tobacco products

Law 5/2024 was published on January 15, 2024, transposing Commission Delegated Directive (EU) 2022/2100 of June 29, 2022 (the “Delegated Directive”). The Delegated Directive is aimed at strengthening the measures for preventing and controlling the use of heated tobacco products.

(i) Heated tobacco products containing aromas and flavorings

The main amendment made by Law 5/2024—which the tobacco industry had anticipated—concerns the use of aromas and flavorings in heated tobacco products.

Following the transposition of the Delegated Directive, the components of heated tobacco products can no longer contain distinct aromas or flavorings. Previously, these restrictions only applied to cigarettes and roll-your-own tobacco, but they now encompass all types of heated tobacco products.

> Impact

Heated tobacco products: Effective January 16, 2024, manufacturers of heated tobacco products are prohibited from producing products that contain aromas and flavorings. However, products that were introduced to the market before January 15, 2024, and contain distinct aromas or flavorings, may continue to be sold until stocks are depleted and before their special stamp expires.

Accessories or devices sold separately: Unlike the government proposal that gave rise to Law 5/2024 initially foreseen, the ban still does not extend to accessory products or devices that can alter the smell or flavor of tobacco products, but that are sold separately from the tobacco products themselves. Consequently, Portuguese lawmakers leave open the possibility of the smell or flavor of tobacco products being altered by using accessories or devices that are sold separately, such as flavor injectors.

(ii) Combined health warnings

Law 5/2024 also establishes amendments regarding the packaging of heated tobacco products. Specifically, the packaging must now display combined health warnings in the form of both images and text.

> Impact

Only applicable to products with combustion processes: Unlike the ban on using distinct aromas and flavorings, the amendment concerning combined health warnings only applies to heated tobacco products that involve a combustion process (from January 16, 2024, without an adaptation period applying).

However, as the main heated tobacco products currently sold in Portugal are smokeless, this rule will not affect them. Therefore, manufacturers of these products will not be required to modify the packaging of their products or include combined health warnings on them.

(iii) Conclusion

It is worth recalling that the original government proposal that gave rise to Law 5/2024 included additional restrictions on the sale of tobacco products and extended the smoking ban to various places and venues. However, due to the political crisis and the subsequent dissolution of parliament, the transposition of the Delegated Directive had to be expedited. This resulted in these additional restrictions being abandoned and the amendments being limited to heated tobacco products.

To conclude, Portuguese lawmakers have merely transposed the amendments established in the Delegated Directive, without introducing any new regulations for heated tobacco products.

Moreover, there have been no amendments regarding other tobacco products (such as cigarettes, roll-your-own tobacco or others), or electronic cigarettes. Therefore, these changes have no impact on electronic cigarette components, which can go on containing distinct aromas or flavorings.

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