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LIQUID FOR ELECTRONIC CIGARETTES AS AN EXCISE GOOD

ANDRZEJ GORGOL*

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Abstract

Under Polish excise legislation, liquid for electronic cigarettes is classified as an excise good. This regulatory solution is not uniformly applied across the Member States of the European Union and does not result from obligations imposed by EU harmonisation directives. This article undertakes a doctrinal and systemic analysis of the statutory construction that defines liquid for e-cigarettes as a separate category of excise goods. The research hypothesis, requiring further doctrinal verification, assumes that the current legal definition of liquid for e-cigarettes does not accurately reflect the essential characteristics of a product subject to excise duty. The study therefore seeks to identify the nature and scope of legislative deficiencies, assess their significance for the interpretation and application of excise legislation, evaluate whether the statutory definition captures the substantive essence of the regulated excise good, and examine the internal and external systemic coherence of the defining provision from both horizontal and vertical perspectives.

Keywords: excise duty, excise good, liquid for e-cigarettes

INTRODUCTORY REMARKS

The issue of excise taxation of liquid for electronic cigarettes is among those legal matters that have become the subject of academic research in Poland only relatively recently and have not yet been the focus of scholarly studies fully adequate to the fiscal function of this excise product, comprehensively and thoroughly analysing the numerous issues associated with its regulation, interpretation, and the application of excise legislation. Excise duty is a technical tax, characterised by a high degree

* LLD hab. Professor of University of Zielona Góra, Institute for Legal Sciences, University of Zielona Góra (Poland), e-mail: agorgol@gmail.com, ORCID: 0000-0002-4313-4426

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of casuistic regulation, in which legal terminology is employed that is borrowed not only from other branches of law but even from physics and chemistry.[1] The complexity of excise legislation makes its interpretation difficult. Undoubtedly, this observation also applies to the provisions on liquid for electronic cigarettes contained in this legal act. This category of products was brought within the material scope of excise duty only as a result of an amendment to the Excise Duty Act that entered into force on 1 February 2018.[2] During the eight years in which these new provisions have been in force, they have been reflected in the academic literature primarily in commentaries[3] and in a limited number of articles.[4]

The subject matter of this study focuses on the issue of defining liquid for electronic cigarettes as one of the categories of excise goods. The choice of this research topic is not accidental. As already noted, it may be justified primarily by the current state of the published output of legal scholars, which is inadequate in relation to the theoretical and practical significance of the statutory definition of liquid for electronic cigarettes. Legislative activity is, to a considerable extent, carried out within the framework of legislative discretion. The creation of legal concepts and the definition of their meaning for the purposes of applying a given legal act are subject to limitations arising from the assumption of the rationality of the legislative process.[5] Praxeological standards of legislative activity require account to be taken of social, economic, and political conditions, accurately diagnosed problems justifying action by public authorities, the selection of appropriate measures aimed at eliminating them, and the formulation of a reliable assessment of the effects of legal regulation. Legislative rationality has both a formal and a substantive dimension. However, the author's considerations presented in this study deliberately omit issues relating to the legislative procedure itself preceding the entry into force of the amendment to

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[1] The technicisation of excise duty is essential for the proper shaping of its structural elements. See A. Gorgol, 'Ustalenie podstawy opodatkowania akcyzą – wybrane zagadnienia', in: Nowak T., Stanisławiszyn P. (eds), *Prawo celne i podatek akcyzowy. Kierunki przeobrażeń i zmian*, Warszawa, 2014, pp. 66–86.

[2] Cf. Article 1 and Article 6 of the Act of 12 December 2017 amending the Excise Duty Act (Journal of Laws of 2018, item 137).

[3] E.g. M. Zimny (ed.), *Akcyza. Komentarz*, Warszawa, 2020; W. Modzelewski (ed.), *Komentarz do ustawy o podatku akcyzowym 2025*, Warszawa, 2025; J. Matarewicz, *Ustawa o podatku akcyzowym. Komentarz*, Warszawa, 2020.

[4] E.g. P. Fatyga-Wiśniewska, 'Ewolucja definicji płynu do papierosów elektronicznych oraz wpływ interesariuszy na jej kształt w kontekście finansów publicznych', *Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych*, 2024, No. 10, pp. 20–28; M. Sadzyńska, 'Akcyza na płyn do e-papierosów i wyroby nowatorskie', *Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych*, 2021, No. 2, pp. 25–32; M. Charkiewicz, D. Popielarczyk, 'Opodatkowanie płynu do papierosów elektronicznych w świetle ustawy o podatku akcyzowym – wnioski *de lege lata*', *Przegląd Podatkowy*, 2024, No. 3, pp. 45–50.

[5] S. Wronkowska, 'Prawodawca racjonalny jako wzór dla prawodawcy faktycznego', in: Wronkowska S., Zieliński M. (eds), *Szkice z teorii prawa i szczegółowych nauk prawnych*, Poznań, 1990, pp. 120–121; J. Wróblewski, 'Racjonalny model tworzenia prawa', *Państwo i Prawo*, 1973, No. 11, pp. 4–6; P. Kantor-Kozdrowicki, 'Racjonalność prawodawcy jako paradygmat nauk prawnych', *Folia Iuridica Universitatis Wratislaviensis*, 2018, Vol. 7, No. 1, pp. 95–110. See § 10 of the Annex to the Regulation of the President of the Council of Ministers of 20 June 2002 on the 'Principles of Legislative Technique' (consolidated text: Journal of Laws of 2016, item 283, as amended), hereinafter referred to as 'the PLT'.

the Excise Duty Act regulating liquid for electronic cigarettes. From the perspective of the principal research objective, these matters are not the most significant for its achievement. Of greater importance is the outcome of legislative activity, which takes the form of a legal definition of liquid for electronic cigarettes and the entire group of excise goods, as well as the casuistic regulation of trade in such liquid and its taxation. The scope of this study covers only a segment of these issues, focusing on the essence of liquid for alternative cigarettes and its reflection in excise regulations. Such a research approach is warranted by the fundamental importance of legal concepts and their definitions, which describe general institutions also employed in the interpretation and application of the detailed regulations contained in tax legislation.

An initial research assumption has been adopted, which is also a hypothesis requiring further verification, namely that liquid for electronic cigarettes is not correctly defined as one of the categories of excise goods. For this reason, it is considered appropriate to determine how legislative errors manifest themselves, whether they are significant for the process of interpreting and applying excise regulations, whether the legal definition of liquid for electronic cigarettes reflects the essence of this excise good, and whether the defining provision demonstrates internal and external systemic coherence, considered from both a horizontal and a vertical perspective. The achievement of a research objective framed in this way depends on the appropriate selection of research methods. The author's analysis, aimed at demonstrating the validity of the adopted hypothesis, will require the use of the doctrinal method typical of legal scholarship, as well as theoretical, historical-comparative, and semiotic methods. However, the comparative method will be limited to a vertical analysis of the relationship between EU law and Polish law. This research approach is justified by the fact that excise duty in the European Union is a harmonised tax.[6] All Member States are obliged to implement, within their national legal systems, the measures specified in the excise directives[7] when those directives are addressed to them.[8] In this way, national excise provisions are approximated[9] but not unified.[10] Nevertheless, differences in the definition of liquid for electronic cigarettes in Poland and in other Member States cannot be significant, as this would disrupt the functioning of the common market. For this reason, verification of the validity of the adopted thesis does not require a comparison of national excise provisions at the vertical level.

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[6] See Article 113 of the Treaty on the Functioning of the European Union of 26 October 2012 (consolidated version: OJ C 202, 7.6.2016, p. 47), hereinafter referred to as 'the TFEU'.

[7] C. Kosikowski, 'Harmonizacja prawa polskiego z prawem wspólnotowym w zakresie akcyz', in: Brzeziński B., Głuchowski J., Kosikowski C., *Harmonizacja prawa podatkowego Unii Europejskiej i Polski*, Warszawa, 1998, pp. 147–185; E. Sygut, 'Harmonizacja podatku akcyzowego w warunkach jednolitego rynku europejskiego', *Studia Ekonomiczne. Zeszyty Naukowe Uniwersytetu Ekonomicznego w Katowicach*, 2016, No. 271, pp. 232–242; A. Gorgol, 'Władztwo podatkowe Polski w zakresie kształtowania konstrukcji akcyzy w warunkach członkostwa w Unii Europejskiej', in: Nowak T., Stanisławiszyn P. (eds), *Prawo celne i podatek akcyzowy. Blaski i cienie dziesięciu lat członkostwa Polski w Unii Europejskiej*, Warszawa, 2016, pp. 116–135.

[8] See Article 288 TFEU.

[9] R. Tokarczyk, 'Problemy harmonizacji polskiej kultury prawnej z kulturą prawną Unii Europejskiej', *Studia Europejskie*, 2004, No. 3, p. 69; J. Osiejewicz, *Harmonizacja prawa państw członkowskich Unii Europejskiej*, Warszawa, 2016, pp. 13–16.

[10] The instrument for the harmonisation of law is an EU regulation, not a directive.

THE NATURE OF AN EXCISE PRODUCT

In everyday Polish, the term 'excise product' does not exist. This is evidenced by the absence of a dictionary definition. From this observation, one may also infer the specialised, highly professional character of this lexical phrase. Clearly, it is complex in nature, as it consists of the noun *wyrób* ('product') and the adjective *akcyzowy* ('excise'), which specifies its meaning. In everyday Polish, this noun has two meanings.[11] First, it refers to the act of making or producing something. Its second meaning is limited to the material result of this activity, that is, the product, namely the thing that has been produced. It is worth noting that an alternative term used for such an item is *towar* ('goods').[12] This term appears in the nomenclature of the Polish version of value added tax.[13] In the tax context, 'goods' means things and their parts, as well as all forms of energy.[14] From this perspective, its material character is emphasised. Goods may take the form of a tangible asset where they are a movable, an immovable, or a component part of a thing. Alternatively, they may take the form of energy, as energy is non-tangible in nature. The very name of the tax on goods and services indicates that services cannot be regarded as a product. For this reason, they do not fall within the semantic scope of the terms *wyrób akcyzowy* ('excise product') or *płyn do papierosów elektronicznych* ('liquid for electronic cigarettes'). Excise duty is a selective tax.[15] By contrast, VAT is a form of general taxation of chargeable civil-law transactions of a professional nature. Value added tax and excise duty have a common material scope of taxation, extending to the chargeable circulation of certain goods. This results from the fact that an excise product is a qualified good. This means that every excise product must be a good, but not every good constitutes such an excise product. The tax-law classification of a product is determined by the criteria set out in the excise legislation and used to define excise products. In this context, it is worth emphasising that in everyday Polish usage the term *akcyzowy* ('excise') is correctly understood as *związany z akcyzą – podatkiem* ('related to excise duty – a tax').[16]

An excise product is a commodity intended for consumption. It should not be equated with the subject matter of excise duty,[17] as excise duty is a form of taxation of specific legal acts and factual events defined in tax legislation.[18] It should also be

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[11] *Słownik języka polskiego*; https://sjp.pl (accessed: 3 January 2026); *Słownik języka polskiego PWN*; https://sjp.pwn.pl (accessed: 3 January 2026); *Wielki słownik języka polskiego PAN*; https://wsjp.pl (accessed: 3 January 2026).

[12] *Synonim.net*; https://synonim.net (accessed: 3 January 2026).

[13] See Article 1 of the Act of 11 March 2004 on tax on goods and services, consolidated text: Journal of Laws of 2025, item 775, as amended, hereinafter referred to as 'the VAT Act'.

[14] See Article 2(6) VAT Act.

[15] For a broader discussion of the nature of excise duty and its comparison with VAT, see A. Gorgol, 'Podatek akcyzowy', in: Smoleń P., Wójtowicz W. (eds), *Prawo podatkowe*, Warszawa, 2025, pp. 267–277; A. Tatara, *Prawne ograniczenia swobody kształtowania akcyzy w Polsce*, Zielona Góra, 2022, pp. 121–132.

[16] *Wielki słownik*…, op. cit.

[17] A. Gorgol, 'Podatek akcyzowy', in: Wójtowicz W. (ed.), *Zarys finansów publicznych i prawa finansowego*, 9th edn, Warszawa, 2020, p. 269.

[18] Chapter 1 of Title II of the Excise Duty Act of 6 December 2008 (consolidated text: Journal of Laws of 2025, item 126), hereinafter referred to as 'the EDA'.

emphasised that the existence of an excise product is not a necessary condition for a tax liability to arise. Passenger cars are also subject to excise duty.[19] Originally, they belonged to the category of non-harmonised excise goods.[20] However, they are no longer regarded as excise goods of any kind.[21] This legislative change was necessitated by the need to implement European Union standards into Polish law. As already mentioned, European Union directives are a means of approximating the laws of the Member States. Only those excise goods expressly listed in their provisions may be regarded as harmonised. Passenger cars do not satisfy this requirement. Under Polish tax law, they are therefore the only non-harmonised subject of excise duty. It should be emphasised that the current legal solution raises doubts as to the justification for its application. The statutory catalogue of excise goods is, in fact, being steadily expanded. It also includes goods not listed in the EU excise directives. A telling example is raw tobacco. From a formal point of view, there are therefore no obstacles to classifying passenger cars as excise goods. Still, for obvious reasons, they cannot be regarded as liquid for electronic cigarettes or as part of the other groups of such products currently distinguished in the excise legislation. Any potential change in tax law would thus involve further internal differentiation of the statutory catalogue of excise goods by adding a new category relating to passenger cars.

From a civil-law perspective, things are divided into movables, land immovables, building immovables, and premises immovables.[22] A component part, however, is not a separate object of civil-law transactions, as it is permanently attached to another thing.[23] It shares its legal status with that thing. Tangible excise goods may therefore be either homogeneous items or complex substances. Certainly, their combination into larger aggregates should not be used to avoid excise taxation. Referring this point to liquid for electronic cigarettes, it is worth noting that it may be a separate thing or a component part of a larger device forming a functional whole. As the very nomenclature of this liquid indicates, it is used in electronic cigarettes.[24] However, it is also functionally associated with heaters,[25] multifunctional devices,[26] or devices used for vaporisation.[27] In the economic interpretation of law, the principle of 'substance over form'[28] applies. This means that the actual substance of a transaction or event

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19 Cf. Article 1(1) and Article 100(4) EDA.

20 A. Gorgol, 'Ustalenie podstawy…', op. cit., pp. 66–86; W. Modzelewski, 'Wyrób akcyzowy – refleksje teoretyczno-prawne', *Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych*, 2011, No. 12, p. 13.

21 A. Gorgol, 'Podatek akcyzowy', in: Wójtowicz W. (ed.), *Zarys…*, op. cit., p. 275.

22 Cf. Article 45 and Article 46 (1) of the Act of 23 April 1964 – Civil Code (consolidated text: Journal of Laws of 2024, item 1061), hereinafter referred to as 'the CC'.

23 See Article 47 CC.

24 See Article 2(1)(34), (34a) and (34b) EDA.

25 See Article 2(1)(34c) EDA.

26 See Article 2(1)(34d) EDA.

27 See Article 2(1)(34e) EDA.

28 P.E. Meyer, 'A Framework for Understanding "Substance Over Form" in Accounting', *The Accounting Review*, 1976, Vol. 51, No. 1, pp. 80–89; J. Rusek, 'Wykorzystanie koncepcji *substance* z perspektywy międzynarodowych regulacji podatkowych', *Kwartalnik Prawa Podatkowego*, 2019, No. 1, pp. 45–60; J. Rusek, 'Rozwój koncepcji treści ekonomicznej (*substance*) w Wielkiej Brytanii', *Kwartalnik Prawa Podatkowego*, 2017, No. 3, pp. 85–96.

takes precedence over its legal form. Under this rule for interpreting excise provisions, it should be recognised that, for tax purposes, collections of things should be treated in the same way as their final combination into a single product. The term *zestaw części do urządzenia do waporyzacji* ('set of parts for a vaporisation device') is a separate legal concept.[29] It denotes a set of parts that may be used to create such a device by assembling or connecting the parts included in that set. In this case, the intended use of this collection of items is of significant economic importance. They have been selected deliberately, as they will be used to produce the final vaporisation device. The word *komplet* ('set') accurately indicates the holistic and functional connection of the entire collection of things. By contrast, the noun *część* ('part') denotes an element of that collection. Still, it is not a component part in the civil-law sense. At most, it may be regarded as a part *in statu nascendi* of the future device that will be created by assembling or connecting all the constituent elements of the collection of items.

Excise goods are defined in terms of their scope by being listed in a closed statutory catalogue.[30] The *definiens* of this legal term includes both collective and individual concepts. Liquid for electronic cigarettes is described in the singular, which reflects its individual essence. The remaining excise goods are, in principle, presented in the plural, with the exception of raw tobacco and, indeed, liquid for electronic cigarettes. This means that they constitute sets of elements possessing both common and individual features. The specific characteristics of an excise good may be considered in relation to all other goods or to certain groups of them, and may therefore vary in their degree of specificity.

An intrasystemic interpretation of the provision defining excise goods supports the view that there are three principal categories of such goods. This classification takes into account both the content and the formal structure of Section IV of the Excise Duty Act, which contains detailed provisions governing the tax base and the tax rates used to calculate the amount of tax due. Chapter 1 of this part of the statutory regulation relates to energy products and electricity. Chapter 2 sets out the structural elements of excise duty on alcoholic products. By contrast, the final Chapter 3 contains the broadest and most diversified group of excise goods. It is worth noting that its title contains an extensional, simple enumeration of such goods. This legislative solution has two advantages. First, it confirms that the goods listed in Chapter 3 are excise goods. This issue should therefore be considered in relation to the legal definition of excise goods, which is a general legal regulation. The defining provision is, in fact, contained in Section I of the Excise Duty Act, entitled 'General Provisions'. It undoubtedly has fundamental significance for the application of the entire legal act.[31] By contrast, the detailed provisions relate to that statutory matter which has a narrower scope of application.[32] They concern only certain excise authorities. In practice, both general and specific provisions should be applied, covering both the entire catalogue of excise goods and their individual categories. In this case, the general provisions are not displaced by the specific provisions under the principle *lex specialis derogat legi generali*. Secondly, the

[29] See Article 2(1)(34f) EDA.
[30] See Article 2(1)(1) EDA.
[31] See § 21 PLT.
[32] See § 23(1) PLT.

extensional statutory catalogue indicates, by way of negative interpretation, what the constituent elements of the set of excise goods are not. Liquid for electronic cigarettes appears in the title of Chapter 3 of Section IV of the Excise Duty Act. For this reason, it should not be classified as energy products, electricity, or alcoholic beverages.

It should be emphasised that defining the nature of liquid for electronic cigarettes by exclusion does not end at the stage of identifying and analysing the division of Section IV of the Excise Duty Act into three chapters. The interpretative findings made in this way may be further developed and refined by taking into account the title of Chapter 3. As of 1 April 2025, the title of this structural unit of the legal act is: 'Tobacco products, raw tobacco, liquid for electronic cigarettes, novel products, vaporisation devices, sets of parts for vaporisation devices, nicotine pouches and other nicotine products'.[33] This enumeration comprises as many as eight elements, seven of which are regulated in a positive manner. The designation 'other nicotine products', by contrast, is formulated by exclusion, and therefore in a negative legislative formula. It follows from this analysis that the conclusion follows that liquid for electronic cigarettes cannot be regarded as tobacco products, raw tobacco, novel products, vaporisation devices, sets of parts for vaporisation devices, nicotine pouches, or other nicotine products.

The designation 'other nicotine products', used at the end of the title of Chapter 3 of Section IV of the Excise Duty Act, makes it possible to identify a common characteristic shared by liquid for electronic cigarettes and the other goods regulated within this structural unit of the legal act. It not only refers to one element of the set of excise goods but also indicates the existence among them of a collective group of nicotine products. It is worth noting that this group of products is differentiated in formal and legal terms into the named category *inne wyroby nikotynowe* ('other nicotine products') and the doctrinally distinguished set of *pozostałe wyroby nikotynowe* ('remaining nicotine products'). In this interpretative approach, the word *inne* ('other') refers to all excise goods listed before it in the title of Chapter 3. A surprising finding is that, for the purposes of applying excise legislation, the nature of each such product has not been defined. However, there is a statutory definition of the more specific term 'other nicotine products'.[34] The semantic scope of this legal term extends to products containing nicotine or its compounds or derivatives which may be used for their absorption by humans, other than tobacco products, raw tobacco, liquid for electronic cigarettes, novel products, and nicotine pouches, excluding products used solely for medical purposes. The *definiens* begins with a positive element, which links nicotine products to their content, described by means of chemical terms as nicotine and its compounds and derivatives. These substances are functionally connected with the possibility of their use by humans as a result of their absorption, which causes their gradual consumption. At the end of the *definiens*, there is a structurally complex negative element which limits and specifies the nature of other nicotine products. First, it contains a list of products that meet the positive condition for being recognised

[33] The terminological modification was introduced by the Act of 20 February 2025 amending the Excise Duty Act, the Public Health Act and Certain Other Acts, Journal of Laws of 2025, item 340.

[34] See Article 2(1)(36b) EDA.

as this excise category but are not regarded as other nicotine products in the statutory sense. It is worth noting that there are differences between the content of the analysed definition and the title of Chapter 3 of Section IV of the Excise Duty Act. In the provision defining other nicotine products, the catalogue of excise goods is narrower. Vaporisation devices and sets of parts for vaporisation devices have rightly been omitted from it. For obvious reasons, they are not nicotine products. By contrast, tobacco products, raw tobacco, liquid for electronic cigarettes, novel products, and nicotine pouches do possess this nature. Secondly, the negative element of the *definiens* excludes nicotine products used solely for medical purposes from the category of both other nicotine products and excise goods. It therefore narrows the material scope of taxation. It should be recognised that nicotine content is a necessary characteristic of liquid for electronic cigarettes. Such liquid should not be regarded as a tobacco product, a category which, for tax-law purposes, includes tobacco products and raw tobacco. As already noted, nicotine products are more diverse than those products. Liquid for electronic cigarettes may be regarded as a qualified nicotine product, as it has its own distinctive characteristics specified in its legal definition.[35]

A nicotine product cannot exist without nicotine. Yet, tax provisions do not define this term. The absence of a definition of this term, which appears in the Excise Duty Act in adjectival form, requires its dictionary meaning to be established. In everyday Polish, nicotine is understood as: (1) an alkaloid contained in tobacco leaves which, in small doses, stimulates the nervous system, raises blood pressure, and accelerates heart rate;[36] (2) an alkaloid contained in tobacco leaves, a very strong poison;[37] and (3) a substance occurring in tobacco leaves, used to stimulate the nervous system, which is toxic and addictive.[38] The term 'alkaloid', in turn, denotes: an organic compound, usually toxic, which in small doses may be used as a medicine;[39] or an organic compound occurring in plants that has a toxic effect on the human nervous system.[40] Certainly, nicotine is a highly specialised biochemical concept. Since it occurs in tobacco leaves, it is of plant origin. As a poison, it generally has a negative effect on human health.[41] However, nicotine may also be used as a medicinal product to treat a disease or alleviate its symptoms and course. As already noted, its medicinal use supports the exclusion, in such circumstances, of nicotine products from the category of other nicotine products and excise goods and, consequently, from the material scope of excise duty.

An extrasystemic interpretation indicates that nicotine is a term defined in a provision that does not belong to tax law.[42] According to the legal definition, it

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35 See Article 2(1)(35) EDA.

36 *Słownik języka polskiego*, op. cit.

37 Ibidem.

38 Ibidem.

39 Ibidem.

40 Ibidem.

41 Z. Zdrojewicz, D. Pypno, B. Bugaj, A. Burzyńska, 'Elektroniczne papierosy: wpływ na zdrowie, nikotynowa terapia zastępcza, regulacje prawne', *Pediatria i Medycyna Rodzinna*, 2017, Vol. 13, No. 1, pp. 63–71.

42 Provisions of tax law constitute a concept defined in Article 3(2) of the Act of 29 August 1997 – Tax Ordinance, consolidated text: Journal of Laws of 2025, item 111, as amended.

denotes a nicotine alkaloid.[43] It should be emphasised that the defining provision does not meet the requirements of proper legislation. Nicotine should not be defined by means of the adjective *nikotynowy* ('nicotinic'), since the consequence of this legislative action is the logical error *idem per idem*. It is worth noting that this vicious circle does not occur in dictionary definitions of this concept in everyday Polish. In the statutory provision, the *definiendum* is explained by means of the designation 'alkaloid', which is used in general Polish. As already mentioned, dictionary definitions of this concept are more informative than the statutory definition. For this reason, the question arises whether the analysed legal solution meets the requirements of legislative technique and legislative rationality. The use of a legal definition is justified where at least one of the following situations occurs: (1) a given term is ambiguous; (2) it is desirable to limit its vagueness; (3) its meaning is not commonly understood; or (4) due to the subject matter being regulated, there is a need to establish a new meaning for a given term.[44] It is worth noting that Polish language dictionaries differ in explaining the nature of nicotine. In this context, it is an ambiguous concept and it is not commonly understood. Nevertheless, there is no need to increase its degree of precision or to assign it a different meaning because of the subject matter of the legal regulation. It should therefore be concluded that there were grounds for formulating a statutory definition of nicotine. Still, the legislative intention was implemented ineptly and fails to meet the requirements of legislative rationality. The *definiens* contained in the statutory definition is very narrow in scope compared with dictionary definitions of the concept of nicotine. From a praxeological perspective, this manner of defining the term cannot be regarded as an adequate or effective instrument for enhancing the intelligibility of the legislative message.

It follows from the negative doctrinal definition of liquid for electronic cigarettes that such liquid cannot simultaneously be a novel product, as the two represent two different excise goods. However, this thesis is undermined by the use of the concept of such liquid in the statutory definition of novel products.[45] One of the three forms of such products is a mixture of specified substances and liquid for electronic cigarettes occurring separately alongside that mixture.[46] The Act does not specify the functional relationship between these components. It may nevertheless be assumed that they are used jointly for the consumption of a novel product. Only at that point are they combined, becoming a mixture or a chemical compound. For this reason, in the legal definition, the mixture is considered in the form of a good intended for consumption, and thus at the stage preceding its consumption. It is worth noting that the semantic scope of the term 'mixture', as used in the statutory definition of novel products, does not include liquid for electronic cigarettes or products used exclusively for medical purposes. Its ingredients, however, should include at least tobacco, raw tobacco, or another substance. The mixture may therefore be nicotinic if

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[43] See Article 2(10) of the Act of 9 November 1995 on the Protection of Health Against the Consequences of Tobacco Use and Tobacco Products (consolidated text: Journal of Laws of 2024, item 1162, as amended, hereinafter referred to as the 'Anti-Nicotine Act' or 'ANA').

[44] See § 146(1) PLT.

[45] See Article 2(1)(36) EDA.

[46] See Article 2(1)(36) (c) EDA.

it contains nicotine alkaloids derived from tobacco. In turn, the absence of tobacco or raw tobacco in its composition gives it a non-tobacco character.[47] In that case, novel products are not nicotine products either,[48] meaning that they cannot contain liquid for electronic cigarettes.[49] Both such liquid and novel products, when heated, produce an aerosol without combustion of the mixture. The vaporisation of these biochemical compounds does not occur separately, but only after they have been mixed. For this reason, liquid for electronic cigarettes becomes a component of the same mixture in factual terms. It should be emphasised that the classification of this solution under different categories of excise goods is an error in the definition. The overlap between the semantic scopes of liquid for electronic cigarettes and novel products gives rise to numerous further interpretative doubts, the resolution of which is not possible based on an analysis of the excise regulations in their current wording. Since such a solution has a hybrid and dual nature from the perspective of its classification within categories of excise goods, it is distinguished from other forms of such liquid. It may be regarded as a qualified excise good. In this case, doubts arise as to whether its production and circulation should comply with the requirements applicable either to liquid for electronic cigarettes or to excise goods, or possibly to both of these product groups, and whether the correct structure of excise duty on a novel product should be determined by the technical elements of the tax applicable to electronic cigarettes.

LEGAL DEFINITION OF LIQUID FOR ELECTRONIC CIGARETTES

The term *płyn do papierosów elektronicznych* ('liquid for electronic cigarettes') appears in numerous provisions of the Excise Duty Act, both general and specific. As already mentioned, it represents a highly specialised concept within the language of law and legal discourse. Clearly, there is therefore a need to assign it a specific meaning for the purposes of applying excise regulations. Yet, it is surprising that this legal term is used only in national law and does not appear in the EU Tobacco Products Directive[50] (TPD).[51] Instead, the TPD uses a more general term *płyn* and in the English version, 'liquid'.[52] Only an analysis of the context in which it is used makes it possible to

[47] For this reason, it is not appropriate to use the term 'novel tobacco products', which appears in EU law and was cited in the commentary to Article 2, in: M. Zimny (ed.), *Akcyza…*, op. cit., p. 61.

[48] E. Piechota-Oloś, 'Nomenklatura pojęciowa w zakresie wyrobów tytoniowych', in: Stanisławiszyn P., Tatara A. (eds), *Struktura rynku wyrobów tytoniowych i ich alternatyw w latach 2013–2023 r. Aspekty prawne, ekonomiczne i legislacyjne*, Zielona Góra, 2025, p. 98.

[49] See Article 2(1)(36)(b) EDA.

[50] Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC, OJ L 127, 29.4.2014, p. 1, hereinafter referred to as 'the TPD'.

[51] This English abbreviation, corresponding to the initial letters Tobacco Products Directive, may be translated into Polish as *Dyrektywa tytoniowa* or *Dyrektywa w sprawie wyrobów tytoniowych*. However, it governs a broader group of nicotine-containing products, not only tobacco products as defined in the Polish Excise Duty Act.

[52] Cf. Article 2(17) and Article 20(3) TPD.

establish that this term is associated with electronic cigarettes.[53] It is worth noting that the EU definition of these cigarettes clearly indicates that they are used to consume nicotine-containing vapour via a mouth piece.[54] Certainly, a change in physical state from liquid form (a liquid or solution) to gaseous form (vapour or aerosol) does not result in the formation of nicotine. This biochemical substance must therefore be contained in the liquid for electronic cigarettes. This conclusion is confirmed by the EU definition of a refill container.[55] The meaning of this legal term is a container holding a nicotine-containing liquid that may be used to refill an electronic cigarette. As in the Polish anti-nicotine legislation, the Tobacco Products Directive defines this biochemical substance as a tobacco alkaloid.[56]

Liquid for electronic cigarettes was originally defined in the Excise Duty Act as a solution intended for use in electronic cigarettes, both with and without nicotine, including a base for such a solution containing glycol or glycerine.[57] The essence of this excise good is its character as a solution, as aptly reflected in its name. This term refers to the liquid occurring in a physical state of a liquid. Therefore, it does not include gas or solid forms. The fact that, under Polish law, liquid for electronic cigarettes may contain no nicotine should be assessed critically. As already noted, nicotine is essential for the existence of a nicotine product, and even more so of a tobacco product. The Tobacco Products Directive requires the presence of nicotine in liquid for electronic cigarettes. For this reason, the inclusion of solutions devoid of this tobacco alkaloid in this category of excise goods should be regarded as a legal fiction and an improper implementation into national law. Another legislative flaw is the *idem per idem* error, evident in the fact that the same term, 'electronic cigarette', appears in the statutory definition both in the *definiendum* and in the *definiens*. It should be recognised that the *ratio legis* of the defining provision is to assign meaning to the concept of 'liquid' for the purposes of applying the Excise Duty Act. However, the nomenclature used for a given category of excise goods requires its consistent application also within the definition of liquid for electronic cigarettes.

According to the statutory definition, a mandatory component of the solution is its base containing glycol or glycerine. Liquid used in electronic cigarettes is therefore a complex chemical compound. As already noted, these two base substances should also be in a liquid state.[58] It should be emphasised that neither the Polish anti-nicotine legislation nor the Tobacco Products Directive requires the use of either glycol or glycerine in liquid for electronic cigarettes. The definitional

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[53] Article 20(3) of the TPD is contained in Chapter III, entitled 'Electronic cigarettes and herbal products for smoking'. Undoubtedly, the term 'liquid' refers only to electronic cigarettes. It is not used in Articles 21 and 22 TPD, which regulate only herbal products for smoking. By contrast, Article 20 TPD is entitled 'Electronic cigarettes'.

[54] See Article 2(16) TPD.

[55] See Article 2(17) TPD.

[56] Cf. Article 2(19) TPD and Article 2(10) ANA.

[57] See Article 2(1)(35) of the EDA in its original wording.

[58] Katarzyna Wawrzonkiewicz has expressed a different view, namely that a base in the chemical sense does not have to be a solution. See K. Wawrzonkiewicz, 'Opodatkowanie akcyzą glikolu i gliceryny', *Doradztwo Podatkowe – Biuletyn Instytutu Studiów Podatkowych*, 2024, No. 7, pp. 50–53.

provision therefore represents an example of the overregulation of excise goods in an area not covered by the process of national law harmonisation.

Both legal doctrine and case law emphasise the functional aspect of the definition of liquid for electronic cigarettes. A key element, signalled both in the name of this excise good[59] and in the description of its semantic scope contained in the *definiens*, is its connection with a device[60] that heats the liquid in order to produce an aerosol and subsequently enable its consumption. It is worth noting that this process occurs not through combustion but through vaporisation, that is, evaporation. This is because the solution is heated at low temperature, resulting in the release of active components from the biochemical substance in the form of vapour, without the emission of smoke characteristic of pyrolysis.[61] It should be emphasised that, in the original wording of the statutory definition of liquid for electronic cigarettes, doubts arose as to the relevant point in time for determining its intended use, and thus also the event giving rise to the existence of an excise good. In practice, the problem came down to choosing between the actual use of the solution in a vaporisation device and the possibility of its use in this way.[62] This issue was reflected in numerous administrative court judgments,[63] which favoured a broader, pro-fiscal approach to the functional relationship between the liquid and electronic cigarettes. The line of case law shaped in this way was only a preliminary step towards clarifying the interpretation of the nature of this excise good. Only the incorporation of this body of case law into the wording of the definitional provision was the intended legislative solution.

The amendment to the statutory definition of liquid for electronic cigarettes entered into force on 1 January 2023.[64] It consisted in expanding the content of the

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[59] Without the intended use of the liquid in an electronic cigarette, no excise duty liability arises, as the solution does not constitute an excise good. Dawid Kurach rightly observed that the entity placing the liquid on the market determines its intended use. However, he incorrectly, and *contra legem*, argued that the composition of the product or its actual use by the consumer is irrelevant for excise taxation. See D. Kurach, 'Przesłanki delimitujące wyroby akcyzowe w zakresie płynów do papierosów elektronicznych i wyrobów nowatorskich', in: *Ogólnopolska Konferencja Naukowa. Podatek akcyzowy: doświadczenia i kierunki ewolucji w czasach recesji*, Warszawa, 2021, pp. 134–135.

[60] It is referred to in excise legislation as a heater (Article 2(1)(34c) EDA), a multifunctional device (Article 2(1)(34d) EDA), a vaporisation device (Article 2(1)(34e) EDA), disposable electronic cigarettes (Article 2(1)(34a) EDA), and reusable electronic cigarettes (Article 2(1)(34c) EDA).

[61] D. Yu, Z. Chen, 'A Theoretical Analysis on Enthalpy of Vaporization: Temperature-Dependence and Singularity at the Critical State', *Fluid Phase Equilibria*, 2020, Vol. 516, pp. 1–9; https://doi.org/10.1016/j.fluid.2020.112611 (accessed: 27 July 2026).

[62] Products that could be used as a liquid for electronic cigarettes or as a base for preparing such a solution were often declared by taxpayers as intended for uses not subject to excise duty, for example, fireplace fragrances or air fresheners. See P. Milczek, 'Komentarz do art. 2', in: Modzelewski W., Milczek P. (eds), *Komentarz do ustawy o podatku akcyzowym 2025*, Warszawa, 2025, Legalis/el.

[63] For example, judgment of the Voivodeship Administrative Court in Bydgoszcz of 22 March 2022, I SA/Bd 39/22, CBOSA; judgment of the Voivodeship Administrative Court in Gorzów Wielkopolski of 24 March 2022, I SA/Go 44/22, CBOSA; judgment of the Voivodeship Administrative Court in Bydgoszcz of 29 March 2022, I SA/Bd 40/22, CBOSA; and judgment of the Voivodeship Administrative Court in Kielce of 7 April 2022, I SA/Ke 43/22, CBOSA.

[64] See Article 1 of the Act of 1 December 2022 amending the Excise Duty Act and Certain Other Acts, Journal of Laws of 2022, item 2707.

definiens by adding another sentence clarifying what is to be understood by a solution intended for use in such cigarettes. It should be assessed as a modification refining[65] the definitional provision, rather than as a fundamental substantive change. The current statutory definition recognises as an excise good not only a solution actually used in electronic cigarettes, but also one that may be used in that way[66] due to its composition and physicochemical properties, regardless of where it is sold or offered for sale.[67] As rightly noted in the literature on the subject, there are products available on the market that may be a substrate for liquid for electronic cigarettes, but are not originally intended for that purpose. For this reason, glycol, glycerine, and other independent components of such a solution whose composition or properties do not indicate their use for vaporisation should not be taken into account for the purposes of excise duty.[68] This means that the amended statutory definition of liquid for electronic cigarettes continued, and continues, to give rise to controversy,[69] which has not been removed by the general interpretation of tax law provisions.[70]

As already noted, the Tobacco Products Directive was already in force at the time of the amendment to the provision defining this excise good. For this reason, a question arises as to whether the legislative change should have been more extensive and accompanied by the adaptation of the Excise Duty Act to EU standards. The provisions do not specify the requirements that liquid for electronic cigarettes should meet. The preamble to the Tobacco Products Directive provided for the regulation of trade in such a solution by imposing a maximum nicotine concentration limit, set at 20 mg/ml.[71] This limit, specifying the physicochemical properties of the liquid, is not accidental, as it corresponds to an amount of nicotine comparable to the permitted dose delivered by a conventional cigarette during the time required to smoke it. Regulation of the packaging of this solution is also intended to help counteract nicotine addiction by specifying the maximum sizes of refill containers, tanks, and cartridges.[72] This legal solution raises concerns, as a large number of small packages with capacities of up to 10 ml or 2 ml translates into an increase in waste, which is harmful to environmental protection. It seems that the application of this EU standard may be justified on the basis that the adverse effects of nicotine products on consumers are more immediate and serious than the environmental considerations involved. In the hierarchy of protected values,

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65 In the literature, the view has even been expressed that this clarification is merely ostensible. See P. Fatyga-Wiśniewska, 'Ewolucja definicji…', op. cit., p. 25.

66 The expression 'may be used' (*może być użyty*) is ambiguous, which gives rise to interpretative doubts. See J. Matarewicz, *Ustawa o podatku akcyzowym. Komentarz aktualizowany*, LEX/el., 2025.

67 See Article 2(1)(35) EDA.

68 D. Popielarczyk, M. Charkiewicz, 'Odpowiedzialność karna skarbowa i karna w sferze papierosów elektronicznych – rzeczywistość znana i nieznana', *Monitor Podatkowy*, 2024, No. 3, pp. 20–24.

69 M. Charkiewicz, D. Popielarczyk, 'Opodatkowanie płynu…', op. cit., p. 50.

70 General Interpretation No. DAG1.8101.1.2024 of the Minister of Finance of 21 June 2024 on the correct classification of propylene glycol and glycerine for excise duty purposes, Official Gazette of the Minister of Finance of 2024, item 66.

71 See recital 38 of the TPD.

72 See Article 20(3)(a) TPD.

human health and life should be placed higher than the protection of environmental resources. Due to the toxicity of nicotine, liquid containing it should be placed on the market for use in electronic cigarettes and in special packaging only if it meets specific safety and quality requirements. The Tobacco Products Directive imposes an obligation on Member States to implement in national law a ban on adding the following substances to the solution: (1) vitamins or other additives that create the impression that the tobacco product has a health benefit or presents reduced health risks; (2) caffeine or taurine, or other additives and stimulant compounds that are associated with energy and vitality; (3) additives having colouring properties for emissions; (4) additives that facilitate inhalation or nicotine uptake; and (5) additives that have CMR properties (chemical substances that are carcinogenic, mutagenic, or toxic to reproduction) in unburnt form.[73] Liquid for electronic cigarettes should be manufactured using ingredients of high purity. Harmful substances may be present in its composition only in trace amounts if there is no technical possibility of eliminating them during production.[74] A nicotine solution must not contain any additives, whether heated or unheated, that pose a risk to human health.[75] Undoubtedly, the solutions outlined serve anti-nicotine purposes, are aimed at reducing its consumption, and seek to change the composition of the solution so that it is more health-oriented.

It should be emphasised that the EU requirements relating to liquid for electronic cigarettes have been implemented in anti-tobacco legislation.[76] As already noted, they represent instruments of public health policy.[77] There is no doubt that they are also related to excise goods, the trade in which has fiscal consequences in the form of an obligation to pay excise duty. The act regulating this tax, despite its title, is not merely a tax act, as it also contains provisions concerning economic matters typical of public economic law. For this reason, it becomes necessary to determine whether the standards of the Tobacco Products Directive should be implemented in excise regulations or in anti-tobacco legislation. *Prima facie*, it might seem that, since liquid for electronic cigarettes is a tax-law concept, its defining characteristics should be set out in tax legislation. Nonetheless, this solution would have a significant practical drawback. It would create an opportunity for tax avoidance through unfair practices by entrepreneurs who would knowingly fail to comply with the requirements laid down in the Tobacco Products Directive. In this way, they could demonstrate that their business activity does not involve an excise good but rather a solution similar to it. In turn, compliant taxpayers would be disadvantaged, as payment of excise duty they would place them in a weaker competitive position. Incorporating EU health-policy standards into the statutory definition of liquid for electronic cigarettes would also undermine the constitutional principle of equality of entities before

73 Cf. Article 20(3) and Article 7(6) TPD.
74 See Article 20(3)(d) TPD.
75 See Article 20(3)(e) TPD.
76 See Article 11c ANA.
77 See Article 3 ANA.

the law.[78] It is worth noting that, unlike VAT, excise duty[79] is payable even where the taxable activities or events are not legally effective.[80] This principle would be violated by incorporating the requirements of the Tobacco Products Directive into the provision defining liquid for electronic cigarettes.

CONCLUSION

In concluding the critical analysis of the source material, it should be emphasised that the research assumption and hypothesis formulated in this study have been verified as correct. Liquid for electronic cigarettes has not been, and still is not, properly defined in the excise legislation. The amendment refining the content of the provision defining this excise good was necessary due to numerous well-founded controversies relating to its interpretation and application. Nonetheless, the proposed legal solution to the identified issues does not meet the requirements of sound legislation or the standards of praxeology. The statutory definition of the term *płyn do papierosów elektronicznych* ('liquid for electronic cigarettes') lacks precision. Clarifying its meaning through court judgments, interpretations of tax-law provisions made by tax authorities and their stakeholders, as well as studies by representatives of legal doctrine does not eliminate the cause of these legislative defects. It may only mitigate their impact on the social, economic, and political environment in which excise provisions are applied.

The definition of liquid for electronic cigarettes does not reflect the essence of this excise good. As demonstrated in this study, it is also erroneous to classify such a solution as one of the three categories of novel products. From the positive extensional definition of excise goods, it follows that the set of such goods should consist of distinct elements with non-overlapping semantic scopes of the legal terms used. Only then would the distinction between liquid for electronic cigarettes and novel products be logical and consistent with the principles of legislative drafting and the standards of praxeology. By contrast, the current statutory solution means that such a solution may be classified differently for tax-law purposes. There is no substantive justification for distinguishing a specific form of such liquid that is both liquid for electronic cigarettes and a novel product. In this case, doubts arise as to whether the solutions common to both categories of consumer goods, or only to one of them, should be applied to its circulation and the resulting tax consequences. According to the principles of legislative drafting, a term of legal language should always have the same meaning regardless of its placement within a statute. Yet, solutions classified as typical liquid for electronic cigarettes and as hybrid novel products have different referents. Certainly, the identified definitional error is also significant because it results in defects in the statutory definition of excise goods.

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[78] See Article 32 of the Constitution of the Republic of Poland of 2 April 1997, Journal of Laws No. 78, item 483, as amended.

[79] See Article 6(2) VAT Act.

[80] K. Radzikowski, 'Opodatkowanie akcyzą nielegalnego poboru energii elektrycznej', in: Walaszek-Pyzioł A. (ed.), *Interdyscyplinarne problemy nielegalnego poboru energii*, Warszawa, 2016.

According to the negative doctrinal definition of liquid for electronic cigarettes, it cannot simultaneously be a novel product.

On the basis of the *argumentum a rubrica*, the placement of a given term within a legal act is a deliberate legislative action, which also carries significant weight in the process of interpreting and applying that regulation. The conclusions drawn on this basis support the view that liquid for electronic cigarettes constitutes one of the nicotine products. In statutory terms, however, it is not a tobacco goods, that is, neither a tobacco product nor raw tobacco. This position is reflected in the title of Chapter 3 of Section IV of the Excise Duty Act. Its correctness is further supported by the use, in the *definiens* of liquid for electronic cigarettes, of a reference to 'nicotine' rather than to 'tobacco'. Still, the extension of the normative description of its referent to include solutions that do not contain nicotine is flawed, as it contradicts the very nature of this excise good. It should be recognised that there is an internal, horizontal inconsistency between the definitional provision and the title of Chapter 3 of Section IV of the Excise Duty Act.

Excise duty is a harmonised tax. Nevertheless, in the case of liquid for electronic cigarettes, this result has not been achieved through tax directives. On this basis, incorrect views are advanced to the effect that this solution is a non-harmonised excise good. In turn, under EU treaty law, every directive serves as a means of approximating the laws of the Member States. For this reason, the Tobacco Products Directive may be a reference point for resolving the question of whether the statutory definition of liquid for electronic cigarettes is systemically coherent in a vertical sense. It should be emphasised that this excise good is not defined in that EU act of secondary law. The inclusion of its definition in the tax act is a manifestation of the overregulation of excise duty, extending beyond the scope of matters subject to harmonisation. Nonetheless, the Tobacco Products Directive introduces significant requirements that liquid for electronic cigarettes should meet. Without taking these standards into account, it is not possible to determine correctly the characteristics that such a solution should possess when lawfully manufactured and placed on the market. In Poland, these requirements have been implemented in public health legislation, not in tax law. The failure to include them in the definition of liquid for electronic cigarettes as an excise good is therefore not flawed, but rational. Excise duty is, indeed, a form of taxation of activities and events that may also be classified as illegal. Tax provisions should reflect the constitutional standard of equality before the law and should not create incentives to breach the principle of fair competition through the avoidance or evasion of public levies.

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