

COUNCIL DIRECTIVE 2002/10/EC

of 12 February 2002

amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC as regards the structure and rates of excise duty applied on manufactured tobacco

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 93 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Whereas:

- (1) In accordance with Article 4 of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes ⁽⁴⁾ and Article 4 of Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes ⁽⁵⁾, an in-depth review of the rates and structure of excise duties on tobacco products has been carried out.
- (2) The Commission's first report on the subject, of 13 September 1995, merely drew attention to certain difficulties encountered in implementing the Directives, without proposing any specific solutions.
- (3) The Commission's second report, of 15 May 1998, examined the necessary technical amendments, which were mainly to do with adjusting the incidence of the overall minimum duty on cigarettes, but kept the structures and rates of duty unchanged. The report, submitted to the Council on 18 May 1998, included a proposal for an amending Directive ⁽⁶⁾.
- (4) The proposals made by the Commission were largely adopted in Council Directive 1999/81/EC of 29 July 1999 amending Directive 92/79/EEC on the approximation of taxes on cigarettes, Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 95/59/EC on taxes other than turnover taxes which affect the consumption of manufactured tobacco ⁽⁷⁾.
- (5) An analysis of the changes of prices and excise rates for tobacco products in the Community shows that there are still considerable differences between Member States

which may disturb the operation of the internal market as it is now and as it will be after enlargement.

- (6) Greater convergence between the tax rates applied in the Member States would help reduce fraud and smuggling within the Community. The introduction of a fixed minimum amount expressed in euro, in addition to the minimum excise incidence of 57 % of the retail selling price of cigarettes of the price category most in demand, will ensure that a minimum level of excise duties is levied on such cigarettes. Member States for which the immediate introduction of this fixed minimum amount expressed in euro would be problematic for economic reasons, should be authorised to postpone the implementation of this new requirement until 31 December 2004 at the latest. Member States which already levy a high level of excise duty should be allowed greater leeway in setting the rates. A further increase of the fixed minimum amounts, on 1 July 2006, should be foreseen. In view of the economic difficulties that could be caused by the implementation at this date of this increased amount, the Kingdom of Spain and the Hellenic Republic should be authorised to postpone its implementation until 31 December 2007.
- (7) The Treaty requires that the definition and implementation of all Community policies and activities ensure a high level of human health protection. Cigarettes and fine-cut tobacco intended for the rolling of cigarettes are both harmful to consumers' health. The level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. For this reason, it is necessary gradually to bring the minimum rates for fine-cut rolling tobacco closer to the minimum rate for cigarettes.
- (8) In order to avoid a fall in the value of the Community minimum rates of duty on cigars, cigarillos, fine-cut tobacco intended for the rolling of cigars and other smoking tobaccos, a phased increase in the minimum rates, expressed as a specific amount, is needed.
- (9) Any harmonisation of the structures of excise duties should be such as to prevent distortions of competition between different categories of manufactured tobacco belonging to the same group and thereby facilitate access to the domestic markets of the Member States.

⁽¹⁾ OJ C 186 E, 28.6.2001, p. 235.

⁽²⁾ Opinion delivered on 5 February 2002 (not yet published in the Official Journal).

⁽³⁾ OJ C 36, 8.2.2002, p. 111.

⁽⁴⁾ OJ L 316, 31.10.1992, p. 8. Directive as amended by Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47).

⁽⁵⁾ OJ L 316, 31.10.1992, p. 10. Directive as amended by Directive 1999/81/EC.

⁽⁶⁾ OJ C 203, 30.6.1998, p. 16.

⁽⁷⁾ OJ L 211, 11.8.1999, p. 47.

- (10) In the interests of uniform and fair taxation, the definition of cigars and cigarillos, set out in Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco ⁽¹⁾, should be adapted so that a type of cigar which is similar in many respects to a cigarette is treated as a cigarette for excise purposes.
- (11) The Federal Republic of Germany should be authorised to postpone the implementation of this new definition until 31 December 2007 at the latest, in view of the economic difficulties that immediate implementation could cause for the German operators concerned.
- (12) Member States should be given more effective means to deal with unfair pricing practices or the appearance of products which disrupt the market. This objective can be achieved by authorising Member States to levy a minimum excise duty on cigarettes on condition that it does not exceed the excise duty levied on cigarettes of the price category most in demand.
- (13) It is necessary to provide for a regular review procedure. However, a four-yearly review period would be more appropriate, to allow time to evaluate the amendments introduced by this Directive.
- (14) Directives 92/79/EEC, 92/80/EEC and 95/59/EC should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 92/79/EEC is hereby amended as follows:

1. Article 2 shall be replaced by the following:

'Article 2

1. Each Member State shall apply an overall minimum excise duty (specific duty plus *ad valorem* duty excluding VAT), the incidence of which shall be set at 57 % of the retail selling price (inclusive of all taxes) and which shall not be less than EUR 60 per 1 000 cigarettes for cigarettes of the price category most in demand. As from 1 July 2006, the figure of "EUR 60" shall be replaced by "EUR 64".

2. Member States which levy an overall minimum excise duty of at least EUR 95 per 1 000 cigarettes for cigarettes of the price category most in demand need not comply with the 57 % minimum incidence requirement. As from 1 July 2006 the figure of "EUR 95" shall be replaced by "EUR 101".

3. The overall minimum excise duty on cigarettes shall be determined on the basis of cigarettes of the price category most in demand according to data established as at 1 January of each year.

4. Notwithstanding paragraph 1, Member States which on 1 July 2001 applied an overall minimum excise duty less than EUR 60 per 1 000 cigarettes for cigarettes of the price

category most in demand, may postpone up to and including 31 December 2004 the application of an overall minimum excise duty of EUR 60 per 1 000 cigarettes for cigarettes of the price category most in demand.

5. The value of the euro in national currencies to be applied to the amounts of the overall minimum excise duty shall be fixed once a year. The exchange rates to be applied shall be those obtained on the first working day of October and published in the *Official Journal of the European Communities* and shall have effect from 1 January of the following calendar year.

6. By way of derogation from the preceding paragraph, Member States which have not adopted the euro shall be authorised to apply the value of the euro in national currency on the first working day of October 2000 for the conversion of the amount of EUR 95 referred to in paragraph 2. The present derogation shall be re-examined in the next report to be submitted by the Commission in accordance with Article 4.;

2. Article 4 shall be replaced by the following:

'Article 4

Every four years, the Commission shall submit to the Council a report and, where appropriate, a proposal concerning the rates of excise duty laid down herein and the structure of excise duties as defined by Article 16 of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (*). The Council shall examine this report and this proposal and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the examination by the Council shall take into account the proper functioning of the internal market, the real value of the levels of excise duty in Article 2 calculated solely in accordance with inflation and the wider objectives of the Treaty.

(*) OJ L 291, 6.12.1995, p. 40. Directive as amended by Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47).'

Article 2

Directive 92/80/EEC is hereby amended as follows:

1. in Article 3(1), the following subparagraphs shall be added:

'As from 1 July 2002, the overall excise duty levied on fine-cut smoking tobacco intended for the rolling of cigarettes shall be at least equal to 32 % of the retail selling price inclusive of all taxes, or EUR 27 per kilogram.

As from 1 July 2003, the overall excise duty shall be at least equal to the following rates or minimum amounts:

- (a) in the case of cigars or cigarillos: 5 % of the retail selling price inclusive of all taxes or EUR 11 per 1 000 items or per kilogram;

(1) OJ L 291, 6.12.1995, p. 40. Directive as amended by Directive 1999/81/EC.

- (b) in the case of fine-cut smoking tobacco intended for the rolling of cigarettes: 33 % of the retail selling price inclusive of all taxes, or EUR 29 per kilogram;
- (c) in the case of other smoking tobaccos: 20 % of the retail selling price inclusive of all taxes, or EUR 20 per kilogram.

As from 1 July 2004, the overall excise duty levied on fine-cut smoking tobacco intended for the rolling of cigarettes shall be at least equal to 36 % of the retail selling price inclusive of all taxes, or EUR 32 per kilogram.;

2. Article 4 shall be replaced by the following:

Article 4

Every four years, the Commission shall submit a report and, where appropriate, a proposal concerning the rates of excise duty laid down herein. The Council shall examine this report and this proposal and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the examination by the Council shall take into account the proper functioning of the internal market, the real value of the rates of excise duty and the wider objectives of the Treaty.'

Article 3

Directive 95/59/EC is hereby amended as follows:

1. Article 3, points 3 and 4, shall be replaced by the following:
- '3. rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar covering the product in full, including where appropriate the filter but not in the case of tipped cigars, the tip, and a binder, both being of reconstituted tobacco, where the unit weight, not including filter or mouth-piece, is not less than 1,2 g and where the wrapper is fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar;
 - 4. rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouth-piece, is not less than 2,3 g and the circumference over at least one third of the length is not less than 34 mm.;

2. Article 16(5) shall be replaced by the following:

'5. Member States may levy a minimum excise duty on cigarettes sold at a price lower than the retail selling price for cigarettes of the price category most in demand, provided that such excise duty does not exceed the amount of the excise duty levied on cigarettes of the price category most in demand.'

Article 4

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 2002 at the latest. They shall forthwith inform the Commission thereof.

2. By way of derogation from paragraph 1:

- the Federal Republic of Germany shall be authorised to bring into force the provisions necessary to comply with Article 3(1) of this Directive by 1 January 2008 at the latest,
- the Kingdom of Spain and the Hellenic Republic shall be authorised to bring into force the provisions necessary to comply with Article 1(1) of this Directive (with regard to Article 2(1), second sentence, of Directive 92/79/EEC) by 1 January 2008 at the latest.

3. When Member States adopt these measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such a reference shall be laid down by the Member States.

4. Member States shall communicate the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 5

This Directive shall enter into force on the 20th day following that of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.

Done at Brussels, 12 February 2002.

For the Council

The President

R. DE RATO Y FIGAREDO