

Proposal for a Council Directive amending Directive 92/79/EEC, Directive 92/80/EEC and Directive 95/59/EC as regards the structure and rates of excise duty applied on manufactured tobacco

(2001/C 180 E/19)

COM(2001) 133 final — 2001/0063(CNS)

(Submitted by the Commission on 14 March 2001)

THE COUNCIL OF THE EUROPEAN UNION,

other than turnover taxes which affect the consumption of manufactured tobacco.

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

(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.

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

(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 euros, 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 which already levy a high level of excise duty should be allowed greater leeway in setting the rates.

Having regard to the opinion of the Economic and Social Committee,

Whereas:

(1) In accordance with Article 4 of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes⁽¹⁾ and Article 4 of Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes,⁽²⁾ an in-depth review of the rates and structure of excise duties on tobacco products has been carried out.

(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.

(2) The Commission's first report on the subject, of 13 September 1995⁽³⁾, merely drew attention to certain difficulties encountered in implementing the Directives, without proposing any specific solutions.

(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.

(3) The Commission's second report of 15 May 1998⁽⁴⁾, 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⁽⁵⁾.

(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.

(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

(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⁽⁶⁾, 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.

⁽¹⁾ OJ L 316, 31.10.1992, p. 8; Directive as amended by Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47).

⁽²⁾ OJ L 316, 31.10.1992, p. 10; Directive as amended by Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47).

⁽³⁾ Com(95) 285 final.

⁽⁴⁾ Com(98) 320 final.

⁽⁵⁾ OJ C 203, 30.6.1998, p. 16.

⁽⁶⁾ OJ L 291, 6.12.1995, p. 40, Directive as amended by Directive 1999/81/EC.

(11) 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 most popular price category.

(12) 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.

(13) 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 amended as follows:

1. Article 2 is replaced by the following

'Article 2

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 EUR 70 per 1 000 cigarettes for cigarettes of the price category most in demand.

Member States which levy a total excise duty of at least EUR 100 per 1 000 cigarettes for cigarettes of the price category most in demand need not comply with the 57 % minimum incidence requirement.

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.'

2. Article 4 is replaced by the following:

'Article 4

Not less frequently than every four years after the Council's previous examination, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the overall minimum excise duty laid down in Article 2 and in Article 3(2) 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 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 and the wider objectives of the Treaty.

(*) OJ L 291, 6.12.1995, p. 40.'

Article 2

Directive 92/80/EEC is amended as follows:

1. In Article 3(1) the following subparagraphs are added:

'As from 1 January 2002, the overall excise duty levied on fine-cut smoking tobacco intended for the rolling of cigarettes shall be at least equal to 33 % of the retail selling price inclusive of all taxes, or EUR 28 per kilogram.

As from 1 January 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;

(b) in the case of fine-cut smoking tobacco intended for the rolling of cigarettes: 36 % of the retail selling price inclusive of all taxes, or EUR 31 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 January 2004, the overall excise duty levied on fine-cut smoking tobacco intended for the rolling of cigarettes shall be at least equal to 39 % of the retail selling price inclusive of all taxes, or EUR 34 per kilogram.'

2. Article 4 is replaced by the following:

'Article 4

Not less frequently than every four years after the Council's previous examination, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the rates of duty laid down herein 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 duty and the wider objectives of the Treaty.'

Article 3

Directive 95/59/EC is amended as follows:

1. Article 3, points (3) and (4) are 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) is replaced by the following:

'5. Member States may levy a minimum excise duty on cigarettes, provided that it does not exceed the excise duty levied on cigarettes of the most popular price category.'

Article 4

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

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

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 twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 6

This Directive is addressed to the Member States.
