

**Proposal for a Council Directive 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**

(98/C 203/10)

*COM(1998) 320 final — 98/0189(CNS)*

*(Submitted by the Commission on 18 May 1998)*

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas in its first report on the structure and rates of excise duties<sup>(1)</sup>, drawn up in accordance with the provisions of Council Directive 92/79/EEC<sup>(2)</sup> and Council Directive 92/80/EEC<sup>(3)</sup>, the Commission merely drew attention to certain difficulties encountered in implementing the Directives without proposing any precise solutions;

Whereas a consultation process involving national authorities, business representatives and interest groups has since taken place;

Whereas the first stage in this consultation process was the Lisbon Conference, the purpose of which was to assess the performance of the present Community arrangements and to assist the Commission in its task of planning future excise-duty policy;

Whereas the consultation process has led to a second Commission report;

Whereas the consultation process revealed difficulties in applying the 57 % minimum incidence rule;

Whereas the rules must be interpreted and implemented more uniformly in the Member States if the single market is to operate smoothly;

Whereas, moreover, rules which can be implemented more easily in practice must be established if the single market is to operate smoothly;

Whereas the Member States should nonetheless be allowed sufficient flexibility to identify and implement policies tailored to national circumstances;

Whereas, for practical reasons, the Member States must be allowed some flexibility to adjust the incidence of the overall minimum excise duty in line with certain changes, including those in VAT rates;

Whereas Member States must be given the option of neutralising the impact of changes in the VAT rate on the overall minimum excise duty;

Whereas the existence of this option must not lead to distortions of competition or to malfunctioning of the single market;

Whereas the options open to the Member States regarding the application of the Directives must be limited over time;

Whereas there is nothing to prevent Member States from being authorised to apply a minimum excise duty to cigars, cigarillos and smoking tobacco where such an option already exists for cigarettes and hand-rolling tobacco;

Whereas there is a need to establish a regular review procedure;

Whereas the present period of two years is too short for changes in the legislation of the Member States to be properly evaluated;

<sup>(1)</sup> COM(95) 285 final, 13.9.1995.

<sup>(2)</sup> OJ L 316, 31.10.1992, p. 8.

<sup>(3)</sup> OJ L 316, 31.10.1992, p. 10.

Whereas, for this reason, reviews must take place at five-yearly intervals;

Whereas, in order to avoid a fall in the value of the Community minimum rates of duty on cigars, cigarillos and hand-rolling tobacco, a schedule of increases is needed;

Whereas, therefore, Council Directives 92/79/EEC and 95/59/EC<sup>(1)</sup>, need to be amended,

HAS ADOPTED THIS DIRECTIVE:

#### Article 1

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

1. A new article Article 2a is inserted:

#### 'Article 2a

1. When a change in the retail selling price of cigarettes in the most popular price category occurs in a Member State, thereby bringing the incidence of the overall minimum excise duty below the level specified in the first paragraph of Article 2, the Member State in question may refrain from adjusting the incidence of the overall minimum excise duty until not later than 1 January of the second year following that in which the change occurs.

2. When a Member State increases the rate of value added tax on cigarettes, it may reduce the incidence of the overall minimum excise duty by an amount which, expressed as a percentage of the retail selling price, is equal to the increase in the rate of value added tax, also expressed as a percentage of the retail selling price, even if such an adjustment has the effect of reducing the incidence of the overall minimum excise duty to below the level laid down in Article 2.

3. If, in accordance with paragraph 2, a Member State has reduced the incidence of the overall minimum excise duty to a level below that laid down in the first paragraph of Article 2, it shall raise that incidence so as to reach at least that level not later than 1 January of the second year after that in which the reduction took place.'

2. Article 4 is replaced by the following:

#### 'Article 4

Every five years, and for the first time not later than 31 December 2002, 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 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.'

#### Article 2

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

1. Article 3(1) is replaced by the following:

'1. Not later than 1 January 1993, Member States shall apply an excise duty which may be:

- (a) either an *ad valorem* duty calculated on the basis of the maximum retail selling price of each product, freely determined by manufacturers established in the Community and by importers from non-member countries in accordance with Article 9 of Directive 95/59/EC,
- (b) or a specific duty expressed as an amount per kilogram or for a given number of items in the case of cigars and cigarillos,
- (c) or a mixture of both, combining an *ad valorem* element and a specific element.

In cases where excise duty is either *ad valorem* or mixed, Member States may levy a minimum excise duty expressed in the same way as the excise duty referred to at (b).

As of 1 January 1999, the overall excise duty expressed as a percentage, as an amount per kilogram or for a given number of items shall be at least equivalent to the rates or minimum amounts laid down for:

- cigars or cigarillos: 5 % of the retail selling price inclusive of all taxes, or ECU 9 per 1 000 items or per kilogram
- fine-cut smoking tobacco intended for the rolling of cigarettes: 30 % of the retail selling price inclusive of all taxes, or ECU 24 per kilogram

<sup>(1)</sup> OJ L 291, 6.12.1995, p. 40.

— other smoking tobaccos: 20 % of the retail selling price inclusive of all taxes, or ECU 18 per kilogram.

As of 1 January 2001 the amounts of ECU 9 for cigars and cigarillos, ECU 24 for fine-cut smoking tobacco intended for the rolling of cigarettes and ECU 18 for other smoking tobaccos shall be replaced by ECU 10, ECU 25 and ECU 19 respectively.'

2. Article 4 is replaced by the following:

*'Article 4*

Every five years, and for the first time not later than 31 December 2002, 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*

Article 16 of Directive 95/59/EC is hereby amended as follows:

1. The following paragraph 2a is inserted:

'2a. By way of derogation from paragraph 2, where, for instance, due to a variation in VAT rates, a change in the retail selling price of cigarettes in the most popular price category occurs in a Member State, thereby bringing the specific component of the

excise duty, expressed as a percentage of the total tax burden, below 5 % or above 55 % of the total tax burden, the Member State in question may refrain from adjusting the amount of the specific excise duty until not later than 1 January of the second year following that in which the change occurs.'

2. In paragraph 3, the phrase 'If the excise duty or the turnover tax levied' is replaced by 'If the excise duty levied'.

*Article 4*

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 1999. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, they shall contain a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall communicate to the Commission the text of the main 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 its publication in the *Official Journal of the European Communities*.

*Article 6*

This Directive is addressed to the Member States.