

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 433 final

Brussels, 7 November 1990

Proposal for a

COUNCIL DIRECTIVE

amending Council Directives 72/464/EEC and 79/32/EEC
on taxes other than turnover taxes which are levied on the
consumption of manufactured tobacco

(presented by the Commission)

EXPLANATORY MEMORANDUM

I. INTRODUCTION

1. The present proposal for a Directive is concerned with the harmonization of the structures of excise duty on manufactured tobacco, to be undertaken no later than 31 December 1992. Where harmonization is necessary, it amends certain articles in Council Directives 72/464/EEC and 79/32/EEC on taxes other than turnover taxes which affect the consumption of manufactured tobacco, the objective being to ensure the establishment and the functioning of the internal market as stipulated in Article 99 of the Treaty establishing the European Economic Community.

This proposal for a Directive supplements the proposals drawn up in 1987,¹ and amended by the 1989 proposal,² on the approximation of taxes on manufactured tobacco.

The provisions relating to the rules for collecting the excise duty and to the rules on the movement of raw and manufactured tobacco are the subject of a separate Directive dealing with the general arrangements and with the holding and movement of products subject to excise duty.³

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- 1 At present proposals for Directives COM(87)325 and COM(87)326, OJ No C 251, 19.9.1987.
 - 2 At present proposal for a Directive COM(89)525 final, OJ No C 12, 18.1.1990.
 - 3 At present proposal for a Directive COM(90)...

II. CURRENT SITUATION CONCERNING THE STRUCTURES OF EXCISE DUTY ON MANUFACTURED TOBACCO

2. The manufactured tobacco sector is the only one which is at present subject to Community rules as part of the harmonization of excise duties required by Article 99 of the EEC Treaty.
3. The Council has laid the foundations for harmonization in the Directive of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (72/464/EEC).
4. The Second Council Directive of 18 December 1978 (79/32/EEC) on taxes other than turnover taxes which affect the consumption of manufactured tobacco established the definitions of the various types of manufactured tobacco.
5. The tax barriers to the free movement of manufactured tobacco derive from differences between the excise duty rates charged by Member States and disparities, from one Member State to another, in the structures of the excise duty systems now in force.
6. The aim of the present proposal for a Directive is to eliminate these structural differences as part of the abolition of tax frontiers on 1 January 1993.

III. THE PRINCIPAL AMENDMENTS TO BE MADE TO COUNCIL DIRECTIVES 72/464/EEC AND 79/32/EEC

7. It should be noted that at this stage already - under the terms of Article 4 of Council Directive on the

approximation of taxes on cigarettes¹ - Article 1, Article 4(3) and (4), and Titles II and IIa of Directive 72/464/EEC cease to apply once Member States have brought into force the national provisions necessary to comply with the abovementioned Directive on the approximation of taxes on cigarettes.

8. Article 8 of Directive 79/32/EEC of 18 December 1978, under which certain Member States are granted derogations for the treatment of tobacco products, also lapses, as laid down in Article 8(4) of the abovementioned Directive. This Article is effectively redundant and should therefore be deleted.

9. The principal amendments made to Directives 72/464/EEC and 79/32/EEC for the purpose of harmonizing the structures of excise duty on manufactured tobacco as part of the abolition of tax frontiers on 1 January 1993 relate primarily to:

9.1. Changes in the concepts of manufacturing and importing directed at Article 5, paragraph 1 and Article 6, paragraph 2 of Directive 72/464/EEC of 19 December, 1972.

- The manufacturer should be deemed to be the natural or legal person who actually prepares the manufactured tobacco (irrespective of whether this is a parent company or a subsidiary or other manufacturer working under licence) and who sets the maximum retail selling price for each Member State of the Community for which the products in question are to be released for consumption.

¹ At present proposal for a Directive COM(89)525 final, OJ No C 12, 18.1.1990, p. 7.

- The concept of importing should be understood in the context of the abolition of tax frontiers.

- 9.2. Calculation of VAT on the basis of the maximum retail selling price directed at Article 5, paragraph 1 of Directive 72/464/EEC of 19 December 1972.

Because of the particular nature of the manufactured tobacco sector, which is characterised by the fact that the excise duty is calculated on the basis of the maximum retail selling price inclusive of all taxes (including therefore VAT), it is necessary to make provisions concerning the collection of VAT on the basis of the maximum retail selling price inclusive of all taxes.

In the case of Member States which collect VAT at source by means of tax stamps, in the same way as excise duty, the transaction value of the tobacco products may, in certain cases, prove to be slightly less than the maximum retail price for manufactured tobacco, when for example the retailer gives a discount to his clients.

So as to simplify collection of the tax and prevent certain types of tax evasion or avoidance, the Member States which collect charges by means of tax stamps will calculate such charges on the basis of the maximum retail selling price.

- 9.3. Establishment of the main exemptions in the field of manufactured tobacco now applied by a majority of Member States and not covered in Council Directives 72/464/EEC and 79/32/EEC.

Member States are free to decide whether or not to apply these exemptions and to determine the conditions and formalities to which they are subject.

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on taxes other than turnover taxes which are levied on the
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THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,¹

Having regard to the opinion of the Economic and Social
Committee,²

Whereas Council Directive 72/464/EEC,³ as last amended by
Directive ...,⁴ lays down general provisions relating to excise
duties on manufactured tobacco and special provisions relating
to the structure of excise duties applicable to cigarettes;

Whereas Council Directive 79/32/EEC⁵, as amended by
Directive 80/369/EEC⁶ and by the Act of Accession of Portugal
and Spain, laid down the definitions of the different types
of manufactured tobacco;

Whereas in Article 4(1) and Article 6(2) of Council
Directive 72/464/EEC, the concepts of importation and release
for consumption should be amended in connection with the
abolition of tax frontiers;

Whereas in Article 5(1) of Council Directive 72/464/EEC, the
concept of manufacturer should be defined as the natural or

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3 OJ No L 303, 31.12.1972, p. 1.

4 At present proposal for a Directive COM(89)525 final,
OJ No C 12, 18.1.1990, p. 4.

5 OJ No L 10, 16.1.1979, p. 8.

6 OJ No L 90, 3.4.1980, p. 42.

legal person who actually prepares the tobacco products and who sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption;

Whereas in Article 6 of Council Directive 72/464/EEC, for the purpose of simplifying collection of the tax and of preventing certain types of evasion or avoidance with regard to value added tax, this tax should be calculated on the basis of the maximum retail selling price when the VAT and excise duties are collected by way of tax-stamps;

Whereas, since a majority of Member States traditionally exempt certain types of manufactured tobacco, exemptions for special uses should be established in this Directive;

Whereas, since the definitions of the tobacco products are completely exhaustive, it is therefore appropriate to delete the reference to subheading 24.02 E of the Common Customs Tariff from Article 2(3) and (4) of Directive 79/32/EEC;

Whereas Article 8 of Directive 79/32/EEC has become redundant and should therefore be deleted;

HAS ADOPTED THIS DIRECTIVE:

Council Directive 72/464/EEC is hereby amended as follows:

1. Article 4 is hereby amended as follows:

- (a) in paragraph 1, the phrase "national and imported cigarettes" shall be replaced by "cigarettes manufactured in the Community and those imported from non-member countries";
- (b) in paragraph 2, after the word "cigarettes", the following phrase shall be added: "in accordance with the provisions of Directive ...".¹

2. Article 5(1) is replaced by the following:

"1. Manufacturers and importers in the Community shall be free to determine the maximum retail selling price for each of their products for each Member State for which the products in question are to be released for consumption. The natural or legal person who converts the tobacco into manufactured products prepared for retail sale shall be deemed to be a manufacturer".

1 [At present proposal for a Directive COM(89) 525 final, OJ No C 12, 18.1.1990].

3. Article 6 is hereby amended as follows:

(a) The following third subparagraph is added to paragraph 1:

"Member States which collect value added tax at source by means of tax stamps, in the same way as excise duty, shall calculate value added tax on the maximum retail selling price."

(b) In paragraph 2, first line, the word "national" is deleted.

4. The following Article 6a is inserted:

"Article 6a

The following may be exempted from excise duty:

(a) denatured manufactured tobacco used for industrial or horticultural purposes;

(b) manufactured tobacco which is destroyed under administrative supervision;

(c) manufactured tobacco which is solely intended for scientific tests connected with the determination of tar and/or nicotine levels.

Member States shall determine the conditions and formalities to which the above-mentioned exemptions are subject."

5. Article 12(1) is hereby amended as follows:

(a) in paragraph 1, first subparagraph, the second sentence is deleted;

(b) in paragraph 1 the second subparagraph is deleted.

Article 2

Council Directive 79/32/EEC is hereby amended as follows:

1. Article 1 is hereby amended as follows:

(a) in paragraph 1, the figure "1" is deleted;

(b) paragraph 2 is repealed.

2. Article 2 is hereby amended as follows:

(a) in paragraph 3, the words "falling within subheading 24.02 E of the Common Customs Tariff" is deleted;

(b) in paragraph 4, the words "falling within subheading 24.02 E of the Common Customs Tariff" is deleted.

3. Article 8 of Council Directive 79/32/EEC of 18 December 1978 is hereby repealed.

4. In Article 9(2) the first subparagraph is deleted.

Article 3

Where necessary, the Community measures to give effect to the provisions of this Directive, shall be adopted by the Commission according to the procedure provided for in Title VI of Council Directive ... concerning the general arrangements for products subject to excise duty and on the holding and movement of such products.¹

Article 4

The Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive not later than 31 December 1992.

When the Member States adopt such provisions they shall contain a reference to this Directive or shall be accompanied by such a reference on official publication. The Member States shall lay down the manner in which such reference shall be made.

Article 5

This Directive is addressed to the Member States.

Done at

For the Council

¹ OJ No, p. ; (COM(90)

STATEMENT OF IMPACT ON SMES AND EMPLOYMENT

The present proposal for a Directive is directed towards the approximation of the structures of excise duties on manufactured tobacco; it is necessary if tax frontiers are to be abolished and forms an integral part of the measures for completing the internal market.

I. Administrative obligations on businesses arising from application of the present Directive:

- None.

II. What are the advantages for businesses?

- None.

III. Are there any drawbacks for businesses in terms of additional costs?

- Application of the present Directive will not impose any additional costs on businesses.

IV. Effects on employment:

- None.

V. The two sides of industry have not been consulted.

VI. No less binding alternative is available with a view to abolishing tax frontiers.

FINANCIAL STATEMENT

Application of the present Directive will not produce an increase in Community own resources.

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DOCUMENTS

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