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COUNCIL DIRECTIVE 92/79/EEC

of 19 October 1992

on the approximation of taxes on cigarettes

(OJ L 316, 31.10.1992, p. 8)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Directive 1999/81/EC of 29 July 1999	L 211	47	11.8.1999
►**M2**	Council Directive 2002/10/EC of 12 February 2002	L 46	26	16.2.2002
►**M3**	Council Directive 2003/117/EC of 5 December 2003	L 333	49	20.12.2003
►**M4**	Council Directive 2010/12/EU of 16 February 2010	L 50	1	27.2.2010

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COUNCIL DIRECTIVE 92/79/EEC

of 19 October 1992

on the approximation of taxes on cigarettes

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 ([1]),

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

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

Whereas Directive 72/464/EEC ([4]) lays down general provisions concerning excise duties on manufactured tobacco and special provisions concerning the structure of excise duties applicable to cigarettes;

Whereas Directive 79/32/EEC ([5]) laid down the definitions of the various groups of manufactured tobacco;

Whereas for the completion on 1 January 1993 of an internal market without frontiers it is necessary to establish an overall minimum excise duty for cigarettes;

Whereas it is necessary for the Kingdom of Spain to have a transitional period of two years in order to attain that overall minimum excise duty;

Whereas the Portuguese Republic should be granted the possibility of a reduced rate for cigarettes made by small-scale producers and consumed in the most remote regions of the Azores and Madeira;

Whereas a procedure should be introduced so that, as regards the overall incidence and the structure of excise duties on cigarettes, it will be possible every two years to make the adjustments necessary to take account of the proper functioning of the internal market and the wider objectives of the Treaty,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. Not later than 1 January 1993, Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Directive.

2. Paragraph 1 shall apply to the taxes which, pursuant to Directive 72/464/EEC, are levied on cigarettes and which comprise:

(a) a specific excise duty per unit of the product;

(b) a proportional excise duty calculated on the basis of the maximum retail selling price;

(c) a VAT proportional to the retail selling price.

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Article 2

1. The overall excise duty (specific duty and *ad valorem* duty excluding VAT) on cigarettes shall represent at least 57 % of the

([1]) OJ No C 12, 18.1.1990, p. 4.
([2]) OJ No C 94, 13.4.1992, p. 35.
([3]) OJ No C 225, 10.9.1990, p. 56.
([4]) OJ No L 303, 31.12.1972, p. 1. Last amended by Directive 92/78/EEC, (see page 5 of this Official Journal).
([5]) OJ No L 10, 16.1.1979, p. 8.

▼M4

weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 64 per 1 000 cigarettes irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least EUR 101 per 1 000 cigarettes on the basis of the weighted average retail selling price need not comply with the 57 % requirement set out in the first subparagraph.

2. From 1 January 2014, the overall excise duty on cigarettes shall represent at least 60 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least EUR 115 per 1 000 cigarettes on the basis of the weighted average retail selling price need not comply with the 60 % requirement set out in the first subparagraph.

Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland and Romania shall be allowed a transitional period until 31 December 2017 in order to reach the requirements laid down in the first and second subparagraphs.

3. The weighted average retail selling price shall be calculated by reference to the total value of all cigarettes released for consumption, based on the retail selling price including all taxes, divided by the total quantity of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

4. Member States shall gradually increase excise duties in order to reach the requirements referred to in paragraph 2 on the dates set therein.

5. The Commission shall publish once a year the value of the euro in national currencies to be applied to the amounts of the overall excise duty.

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 Union*. They shall apply from 1 January of the following calendar year.

6. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 5 if the conversion of the amounts of the excise duties expressed in EUR would result in an increase of less than 5 % or less than EUR 5, whichever is the lower amount, in the excise duty expressed in national currency.

Article 2a

1. Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the overall excise duty below the levels specified in the first sentences of paragraphs 1 and 2 of Article 2 respectively, the Member State concerned may refrain from adjusting that duty until 1 January of the second year following that in which the change occurs.

2. Where a Member State increases the rate of value added tax on cigarettes, it may reduce the overall excise duty up to an amount which, expressed as a percentage of the weighted average retail selling price, is equal to the increase in the rate of value added tax, also expressed as a percentage of the weighted average retail selling price, even if such an adjustment has the effect of reducing the overall excise duty to below the levels, expressed as a percentage of the weighted average retail selling price, laid down in the first sentences of paragraphs 1 and 2 of Article 2 respectively.

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However, the Member State shall raise that duty again so as to reach at least those levels by 1 January of the second year after that in which the reduction took place.

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Article 3

1. The Kingdom of Spain shall have a transitional period of two years, starting on 1 January 1993, to attain the overall minimum excise duty laid down in Article 2.

2. The Portuguese Republic may apply a reduced rate of up to 50 % less than that laid down in Article 2 to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

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3. Notwithstanding Article 2, the Kingdom of Sweden may postpone, up to and including 31 December 2002, the application of an overall minimum excise duty equivalent to 57 % of the retail selling price (inclusive of all taxes) of cigarettes in the most popular price category. In addition, the Kingdom of Sweden may not reduce the overall excise duty below the level applied on 1 August 1998.

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4. By way of derogation from Article 2, France may continue to apply for the period from 1 January 2010 to 31 December 2015, a reduced rate of excise duty to cigarettes released for consumption in the departments of Corsica up to an annual quota of 1 200 tonnes. The reduced rate shall be:

— until 31 December 2012, at least 44 % of the price for cigarettes in the price category most in demand in those departments,

— from 1 January 2013, at least 50 % of the weighted average retail selling price of cigarettes released for consumption. The excise duty shall not be less than EUR 88 per 1 000 cigarettes irrespective of the weighted average retail selling price,

— from 1 January 2015, at least 57 % of the weighted average retail selling price of cigarettes released for consumption. The excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.

Article 4

1. Every 4 years, the Commission shall submit to the Council a report and, where appropriate, a proposal concerning the rates of excise duty laid down in this Directive and the structure of excise duty 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 ([1]).

The report by the Commission 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.

2. The report referred to in paragraph 1 shall be based in particular on the information provided by the Member States.

3. The Commission shall, in accordance with the procedure referred to in Article 43 of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty ([2]), determine a list of statistical data needed for the report, excluding data relating to individual natural persons or legal entities. Apart from data readily available to Member States, the list shall only contain data

([1]) OJ L 291, 6.12.1995, p. 40.
([2]) OJ L 9, 14.1.2009, p. 12.

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the collection and assembly of which does not involve a disproportionate administrative burden on the part of the Member States.

4. The Commission shall not publish or otherwise divulge those data where it would lead to the disclosure of a commercial, industrial or professional secret.

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Article 5

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than 31 December 1992. They shall forthwith inform the Commission thereof.

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

2. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field governed by this Directive.

Article 6

This Directive is addressed to the Member States.