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COUNCIL DIRECTIVE 92/80/EEC

of 19 October 1992

on the approximation of taxes on manufactured tobacco other than cigarettes

(OJ L 316, 31.10.1992, p. 10)

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

NB: This consolidated version contains references to the European unit of account and/or the ecu, which from 1 January 1999 should be understood as references to the euro — Council Regulation (EEC) No 3308/80 (OJ L 345, 20.12.1980, p. 1) and Council Regulation (EC) No 1103/97 (OJ L 162, 19.6.1997, p. 1).

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COUNCIL DIRECTIVE 92/80/EEC

of 19 October 1992

on the approximation of taxes on manufactured tobacco other than 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 in Title I general provisions on excise duty which are applicable to all manufactured tobacco; whereas, under Title II, special provisions have already been adopted for cigarettes; whereas special provisions have yet to be adopted for other types of manufactured tobacco;

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

Whereas, in order to establish the internal market on 1 January 1993, it is necessary to establish minimum excise duties for manufactured tobacco other than cigarettes;

Whereas a harmonized incidence of tax should be established for all products belonging to the same group of manufactured tobacco;

Whereas the setting of an overall minimum excise duty expressed as a percentage, as an amount per kilogram or for a given number of items is the most appropriate for achieving the internal market;

Whereas the Italian Republic and the Kingdom of Spain should be granted until 31 December 1998 the possibility of a lower rate of tax on cigars and cigarillos in respect of rolls of tobacco consisting entirely of natural tobacco which are not cigarettes;

Whereas a procedure should be introduced to enable the rates or amounts laid down in this Directive to be reviewed periodically on the basis of a Commission report taking account of all the appropriate factors;

Whereas a mechanism should be set up to enable specific amounts expressed in ecu to be converted into national currency,

HAS ADOPTED THIS DIRECTIVE:

Article 1

The following groups of manufactured tobacco produced in the Community and imported from non-member countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 3:

([1]) OJ No C 12, 18. 1. 1990, p. 8.
([2]) OJ No C 94, 13. 1. 1992, p. 38.
([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.

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(a) cigars and cigarillos;

(b) fine-cut tobacco intended for the rolling of cigarettes;

(c) other smoking tobaccos.

Article 2

For the purposes of this Directive, the definitions of the products referred to in Article 1 shall be those laid down in Articles 2, 4 and 4a respectively of Directive 79/32/EEC.

Article 3

▼M1

1. 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 Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco ([1]),

(b) or a specific duty expressed as an amount per kilogram or in the case of cigars and cigarillos alternatively for a given number of items,

(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 establish a minimum amount of excise duty.

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 and cigarillos: 5 % of the retail selling price inclusive of all taxes, or EUR 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 EUR 24 per kilogram,

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

As from 1 January 2001, the amounts of EUR 9, EUR 24 and EUR 18 in the preceding three indents shall be replaced by EUR 10, EUR 25 and EUR 19 respectively.

▼M2

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;

(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;

([1]) OJ L 291, 6.12.1995, p. 40.

▼M2

(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.

▼M4

From 1 January 2011, the overall excise duty (specific duty and/or *ad valorem* duty excluding VAT) on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 40 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 40 per kilogram.

From 1 January 2013, the overall excise duty (specific duty and/or *ad valorem* duty excluding VAT) on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 43 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 47 per kilogram.

From 1 January 2015 the overall excise duty (specific duty and/or *ad valorem* duty excluding VAT) on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 46 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 54 per kilogram.

From 1 January 2018, the overall excise duty (specific duty and/or *ad valorem* duty excluding VAT) on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 48 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.

From 1 January 2020, the overall excise duty (specific duty and/or *ad valorem* duty excluding VAT) on fine-cut smoking tobacco intended for the rolling of cigarettes shall represent at least 50 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or at least EUR 60 per kilogram.

The weighted average retail selling price shall be calculated by reference to the total value of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, based on retail selling price including all taxes, divided by the total quantity of fine-cut smoking tobacco intended for the rolling 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.

From 1 January 2011, 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 following:

(a) in the case of cigars or cigarillos, 5 % of the retail selling price inclusive of all taxes or EUR 12 per 1 000 items or per kilogram;

(b) in the case of smoking tobaccos, other than fine-cut smoking tobacco intended for the rolling of cigarettes, 20 % of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

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2. The rates or amounts referred to in paragraph 1 shall be effective for all products belonging to the group of manufactured tobaccos concerned, without distinction within each group as to quality, presentation, origin of the products, the materials used, the characteristics of the firms involved or any other criterion.

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3. The Italian Republic and the Kingdom of Spain may until 31 December 1998 apply to rolls of tobacco consisting entirely of natural tobacco which are not cigarettes a rate or amount which may be up to 50 % less than the normal national rate of excise duty for cigars and cigarillos and which may fall below the minimum rate laid down in paragraph 1.

▼M4

4. By way of derogation from paragraph 1, France may continue to apply, for the period from 1 January 2010 to 31 December 2015, a reduced rate of excise duty to manufactured tobacco other than cigarettes released for consumption in the departments of Corsica. The reduced rate shall be:

(a) for cigars and cigarillos:

at least 10 % of the retail selling price, inclusive of all taxes;

(b) for fine-cut smoking tobacco intended for the rolling of cigarettes:

— until 31 December 2012, at least 27 % of the retail selling price, inclusive of all taxes,

— from 1 January 2013, at least 30 % of the retail selling price, inclusive of all taxes,

— from 1 January 2015, at least 35 % of the retail selling price, inclusive of all taxes;

(c) for other smoking tobacco:

at least 22 % of the retail selling price, inclusive of all taxes.

Article 4

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

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 [1], 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 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

▼M4

1. 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.

[1] OJ L 9, 14.1.2009, p. 12.

▼M4

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

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2. Member States may maintain the amounts of the excise duties in force at the time of the annual adjustment provided for in paragraph 1 if the conversion of the amounts of the excise duties expressed in ecu would result in an increase of less than 5 % or ECU 5, whichever is the lower amount, in the excise duty expressed in national currency.

Article 6

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 7

This Directive is addressed to the Member States.