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EUROPEAN COMMISSION

Brussels, 9.11.2010
COM(2010) 641 final

2007/0206 (CNS)

Amended proposal for a

COUNCIL DIRECTIVE

on the structure and rates of excise duty applied to manufactured tobacco

(Codification)

EXPLANATORY MEMORANDUM

1. On 11 October 2007, the Commission presented a proposal for a Council Directive codifying Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes, Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes and Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco¹.
2. In its opinion of 21 November 2007 the Consultative Working Party of the legal services set up under the Interinstitutional Agreement of 20 December 1994 on an accelerated working method for official codification of legislative texts² has stated that the proposal referred to in point 1 does indeed confine itself to straightforward codification, without any substantive changes to the acts covered by it.
3. Having regard to the amendment adopted³ in respect of the proposal referred to in point 1 and in view of the work already carried out in the course of the legislative procedure, the Commission has decided to present – in accordance with Article 293(2) of the TFEU – an amended proposal for codification of the Directives in question.

This amended proposal also takes account of the purely formal or editorial changes proposed by the Consultative Working Party of the legal services, where these changes are considered justified⁴.

4. The changes made in this amended proposal, compared with the proposal referred to in point 1, are the following:
 - (1) The first citation is replaced by the following:

‘Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,’.
 - (2) In the second citation, the word ‘European’ is inserted before ‘Commission’.
 - (3) The following third citation is inserted:

‘After transmission of the draft legislative act to the national Parliaments,’.
 - (4) A new final citation is added, reading as follows:

‘Acting in accordance with a special legislative procedure,’.

¹ COM(2007) 587 final of 11.10.2007.

² OJ C 102, 4.4.1996, p. 2.

³ OJ L 50, 27.2.2010, p. 1.

⁴ Cf. the opinion of the Consultative Working Party of 21.11.2007.

(5) The following recital 2 is inserted:

‘(2) The Union's fiscal legislation on tobacco products needs to ensure the proper functioning of the internal market and, at the same time, a high level of health protection, as required by Article 168 of the Treaty on the Functioning of the European Union, bearing in mind that tobacco products can cause serious harm to health and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC). Account should be taken of the situation prevailing for each of the various types of manufactured tobacco.’

(6) The former recital 2 is re-numbered recital 3 and is replaced by the following:

‘(3) One of the objectives of the Treaty on the European Union is to maintain an economic union, whose characteristics are similar to those of a domestic market, within which there is healthy competition. As regards manufactured tobacco, achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in this sector does not distort conditions of competition and does not impede their free movement within the Union.’

(7) The former recital 3 is re-numbered recital 9.

(8) Recital 4 is replaced by the following:

‘(4) The various types of manufactured tobacco, distinguished by their characteristics and by the way in which they are used, should be defined.’

(9) The former recital 5 is re-numbered recital 6, and the former recital 6 is re-numbered recital 5.

(10) The former recital 8 is re-numbered recital 11.

(11) The following recital 8 is inserted:

‘(8) In the interests of uniform and fair taxation, a definition of cigarettes, cigars and cigarillos and of other smoking tobacco should be laid down so that, respectively, rolls of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more for excise purposes, a type of cigar which is similar in many respects to a cigarette is treated as a cigarette for excise purposes, smoking tobacco which is similar in many respects to fine-cut tobacco intended for the rolling of cigarettes is treated as fine-cut tobacco for excise purposes, and tobacco refuse is clearly defined. In view of the economic difficulties that immediate implementation could cause for the German and Hungarian operators concerned, Germany and Hungary should be authorised to postpone the application of the definition of cigars and cigarillos until 1 January 2015.’

- (12) The former recitals 9 and 10 are replaced by the following, which is re-numbered recital 17:

‘(17) As regards products other than cigarettes, a harmonised incidence of tax should be established for all products belonging to the same group of manufactured tobacco. 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 the functioning of the internal market.’.

- (13) The former recitals 11, 13 and 14 are deleted.

- (14) The former recital 12 is renumbered recital 20; the words *‘The Portuguese Republic’* are replaced by the word *‘Portugal’* in that recital.

- (15) The following recitals 12 to 16, 18, 19, 21 and 22 are inserted:

‘(12) Without prejudice to the mixed tax structure and the maximum percentage of the specific component of the total tax burden, Member States should be given effective means to levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum amount of taxation applies throughout the Union.

(13) For the proper functioning of the internal market, it is necessary to establish minimum excise duties for all categories of manufactured tobacco.

(14) As regards a price related minimum requirement for cigarettes, neutral conditions of competition for manufacturers should be assured, the partitioning of the tobacco markets should be reduced and health objectives should be underscored. This requirement should thus refer to the weighted average retail selling price, whereas a monetary minimum should be applicable to all cigarettes. For the same reasons, the weighted average retail selling price should also serve as a reference for measuring the importance of specific excise duty within the total tax burden.

(15) As regards prices and excise levels, in particular for cigarettes — by far the most important category of tobacco products — as well as for fine cut-tobacco intended for the rolling of cigarettes, there are still considerable differences between Member States which may disturb the operation of the internal market. A certain degree of convergence between the tax levels applied in the Member States would help reduce fraud and smuggling within the Union.

(16) Such convergence would also help to ensure a high level of protection for human health. The level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. Fraud and smuggling undermine tax induced price levels, in particular of cigarettes and fine-cut tobacco intended for the rolling of cigarettes, and

thus jeopardise the achievement of tobacco control and health protection objectives.

- (18) *As regards fine-cut tobacco intended for the rolling of cigarettes, a Union price related minimum requirement should be expressed in such a way as to obtain effects similar to those in the field of cigarettes and should take the weighted average retail selling price as the point of reference.*
- (19) *It is necessary to bring the minimum levels for fine-cut tobacco intended for the rolling of cigarettes closer to the minimum levels applicable to cigarettes, so as to better take account of the degree of competition existing between the two products, reflected in consumption patterns observed, as well as their equally harmful character.*
- (21) *Transitional periods should allow Member States to adapt smoothly to the levels of the overall excise duty, thus limiting possible side effects.*
- (22) *In order to prevent damage to Corsica's economic and social equilibrium it is both essential and justifiable to provide for a derogation, until 31 December 2015, by which France may apply a rate of excise duty that is lower than the national rate to cigarettes and other manufactured tobaccos released for consumption in Corsica. By that date the tax rules for manufactured tobaccos released for consumption there should be brought fully into line with the rules for mainland France. Nevertheless, too abrupt a change should be avoided and there should therefore be a stepwise increase in the excise duty currently levied on cigarettes and fine-cut tobacco intended for the rolling of cigarettes in Corsica.’.*
- (16) The former recital 15 is re-numbered recital 23.
- (17) The former recital 16 is re-numbered recital 24; the word ‘introduced’ is replaced by the words ‘provided for’ in that recital.
- (18) The former recital 17 is re-numbered recital 25.
- (19) In Article 2(3), the words ‘Community provisions’ are replaced by the words ‘Union provisions’.
- (20) In Article 3, paragraph 2 is replaced by the following:

‘2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 8 cm but not longer than 11 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 11 cm but not longer than 14 cm, and so on.’.

(21) Article 4 is replaced by the following:

‘Article 4

1. For the purposes of this Directive the following shall be deemed to be cigars or cigarillos if they can be and, given their properties and normal consumer expectations, are exclusively intended to be smoked as they are:

- (a) rolls of tobacco with an outer wrapper of natural tobacco;*
- (b) 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 mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm.*

2. By way of derogation from paragraph 1, Germany and Hungary may continue to apply until 31 December 2014 Article 3 of Directive 95/59/EC as amended by Directive 2002/10/EC.

3. Products which consist in part of substances other than tobacco but otherwise fulfil the criteria set out in paragraph 1 shall be treated as cigars and cigarillos.’.

(22) In Article 5, point (b) of paragraph 1 is replaced by the following:

‘(b) tobacco refuse put up for retail sale which does not fall under Articles 3 and 4 and which can be smoked. For the purpose of this Article, ‘tobacco refuse’ shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.’.

(23) In Article 5, paragraph 2 is replaced by the following:

‘2. Smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than 1,5 millimetre shall be deemed to be fine-cut tobacco for the rolling of cigarettes.

Member States may also deem smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of 1,5 millimetre or more and which was sold or intended to be sold for the rolling of cigarettes to be fine-cut tobacco for the rolling of cigarettes.’.

(24) In Article 6, in the introductory words of Article 13, in point (a) of paragraph 1 of Article 14 and in the first subparagraph of Article 15(1), the word ‘Community’ is replaced by the word ‘Union’.

(25) Article 7 is re-numbered Article 9. In point (c) of paragraph 2 of that Article, the words ‘value-added tax (VAT)’ are replaced by the word ‘VAT’.

(26) Article 8 is re-numbered Article 7. The following changes are introduced in that Article:

- (i) in the first subparagraph of paragraph 1, the word ‘Community’ is replaced by the word ‘Union’;
- (ii) in the second subparagraph of paragraph 1, the words ‘each Member State’ are replaced by the words ‘Member States’;
- (iii) paragraph 4 is replaced by the following:

‘4. Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty as laid down in Article 8 is strictly respected.’.

(27) Article 9 is re-numbered Article 10 and is replaced by the following:

‘Article 10

1. The overall excise duty (specific duty and ad valorem duty excluding VAT) on cigarettes shall represent at least 57 % of the 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, the 57 % requirement set out in the first subparagraph shall not apply to 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.

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, the 60 % requirement set out in the first subparagraph shall not apply to 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.

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

- (28) Article 10 is re-numbered Article 11 and is replaced by the following:

‘Article 11

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 10 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 VAT 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 VAT, 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 10 respectively.

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.’.

- (29) Article 11 is re-numbered Article 8 and is replaced by the following:

‘Article 8

1. The percentage of the specific component of excise duty in the amount of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price.

2. 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.

3. Until 31 December 2013, the specific component of the excise duty shall not be less than 5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

- (a) specific excise duty;*
- (b) the proportional excise duty and the value added tax (VAT) levied on the weighted average retail selling price.*

4. From 1 January 2014, the specific component of the excise duty on cigarettes shall not be less than 7,5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

- (a) specific excise duty;
- (b) the proportional excise duty and the VAT levied on the weighted average retail selling price.

5. By way of derogation from paragraphs 3 and 4, where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the specific component of the excise duty, expressed as a percentage of the total tax burden, below the percentage of 5 % or 7,5 %, whichever is applicable, or above the percentage of 76,5 % of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until 1 January of the second year following that in which the change occurs.

6. Subject to paragraphs 3, 4 and 5, Member States may levy a minimum excise duty on cigarettes.’.

(30) Article 12 is replaced by the following:

‘Article 12

1. Portugal may apply a reduced rate of up to 50 % less than that laid down in Article 10 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.

2. By way of derogation from Article 10, 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:

- (a) until 31 December 2012, at least 44 % of the price for cigarettes in the price category most in demand in those departments;
- (b) 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;
- (c) 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.’.

(31) In Article 14, paragraph 2 is replaced by the following:

‘2. 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:

- (a) cigars or cigarillos: 5 % of the retail selling price inclusive of all taxes or EUR 12 per 1 000 items or per kilogram;*
- (b) fine-cut smoking tobacco intended for the rolling of cigarettes: 40 % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption, or EUR 40 per kilogram;*
- (c) other smoking tobaccos: 20 % of the retail selling price inclusive of all taxes, or EUR 22 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.’.

(32) In Article 14, paragraph 4 is replaced by the following:

‘4. By way of derogation from paragraphs 1 and 2, 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:

(i) until 31 December 2012, at least 27 % of the retail selling price, inclusive of all taxes;

(ii) from 1 January 2013, at least 30 % of the retail selling price, inclusive of all taxes;

(iii) 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.’

(33) The title of Chapter 5 is replaced by the following:

‘Determination of the maximum retail selling price of manufactured tobacco, collection of excise duty, exemptions and refunds’.

(34) In the second subparagraph of Article 15(1), the words ‘Community legislation’ are replaced by the words ‘Union legislation’.

(35) In the first subparagraph of Article 15(2), the words ‘Community products’ are replaced by the words ‘products originating in the Union’.

(36) In Article 16, paragraph 2 is replaced by the following:

‘2. Importers and manufacturers of manufactured tobacco established in the Union shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.’.

(37) In Article 18, paragraph 1 is replaced by the following:

‘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.

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.’.

(38) Article 18(2) is deleted.

(39) Article 18(3) is re-numbered 18(2) and is replaced by the following:

‘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 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.’.

(40) Article 19 is replaced by the following:

‘Article 19

1. Every four 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, 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 data where it would lead to the disclosure of a commercial, industrial or professional secret.’.

(41) Article 20 is deleted.

(42) Article 21 is re-numbered Article 20.

(43) Article 22 is re-numbered Article 21. In the first paragraph of that article, the word ‘acts’ is replaced by the word ‘Directives’.

(44) Article 23 is re-numbered Article 22, and is replaced by the following:

‘This Directive shall enter into force on 1 January 2011.’.

(45) Article 24 is re-numbered Article 23.

(46) In Annex I:

(a) Part A is replaced by the following:

‘Part A

*Repealed Directives with list of their successive amendments
(referred to in Article 21)*

*Council Directive 92/79/EEC
(OJ L 316, 31.10.1992, p. 8)*

<i>Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)</i>	<i>only Article 1</i>
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<i>Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)</i>	<i>only Article 1</i>
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<i>Council Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49)</i>	<i>only Article 1</i>
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<i>Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)</i>	<i>only Article 1</i>
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*Council Directive 92/80/EEC
(OJ L 316, 31.10.1992, p. 10)*

<i>Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)</i>	<i>only Article 2</i>
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<i>Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)</i>	<i>only Article 2</i>
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<i>Council Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49)</i>	<i>only Article 2</i>
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<i>Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)</i>	<i>only Article 2</i>
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*Council Directive 95/59/EC
(OJ L 291, 6.12.1995, p. 40)*

<i>Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)</i>	<i>only Article 3</i>
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<i>Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)</i>	<i>only Article 3</i>
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<i>Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)</i>	<i>only Article 3’</i>
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(b) in Part B, the following line is added:

‘2010/12/EU’ / ‘31 December 2010’ / ‘1 January 2011’

5. The Correlation Table, in Annex II, has been amended in accordance with the foregoing.
6. To facilitate reading and examination, the full text of the amended proposal for codification is attached hereto.

↓ 92/79/EEC, 92/80/EEC, 95/59/EC (adapted)

2007/0206 (CNS)

Amended proposal for a

COUNCIL DIRECTIVE

on ☒ the structure and rates of excise duty applied to manufactured tobacco ☒

(Codification)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty ☒ on the Functioning of ☒ the European ☒ Union ☒ , and in particular Article ☒ 113 ☒ thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament⁵,

Having regard to the opinion of the European Economic and Social Committee⁶,

Acting in accordance with a special legislative procedure,

Whereas:



- (1) Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes⁷, Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes⁸ and Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco⁹ have been substantially amended several times¹⁰. In the interests of clarity and rationality the said Directives should be codified by assembling them in a single act.

⁵ OJ C [...], [...], p. [...].

⁶ OJ C [...], [...], p. [...].

⁷ OJ L 316, 31.10.1992, p. 8.

⁸ OJ L 316, 31.10.1992, p. 10.

⁹ OJ L 291, 6.12.1995, p. 40.

¹⁰ See Annex I, Part A.

↓ 2010/12/EU recital 2 (adapted)

- (2) The Union's fiscal legislation on tobacco products needs to ensure the proper functioning of the internal market and, at the same time, a high level of health protection, as required by Article 168 of the Treaty on the Functioning of the European Union, bearing in mind that tobacco products can cause serious harm to health and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC). Account should be taken of the situation prevailing for each of the various types of manufactured tobacco.

↓ 95/59/EC recital 2 (adapted)

- (3) One of the objectives of the Treaty on the European Union is to maintain an economic union, whose characteristics are similar to those of a domestic market, within which there is healthy competition. As regards manufactured tobacco, achievement of this aim presupposes that the application in the Member States of taxes affecting the consumption of products in this sector does not distort conditions of competition and does not impede their free movement within the Union.

↓ 95/59/EC recitals 8 and 9 (adapted)

- (4) The various types of manufactured tobacco, distinguished by their characteristics and by the way in which they are used, should be defined.

↓ 95/59/EC recital 11

- (5) A distinction needs to be made between fine-cut tobacco for the rolling of cigarettes and other smoking tobacco.

↓ 95/59/EC recital 14

- (6) Rolls of tobacco capable of being smoked as they are after simple handling should also be deemed to be cigarettes for the purposes of uniform taxation of these products.

↓ 95/59/EC recital 12

- (7) A manufacturer needs to be defined as a natural or legal person who actually prepares tobacco products and sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption.

↓ 2010/12/EU recital 14
(adapted)

- (8) In the interests of uniform and fair taxation, ☒ a ☒ definition of cigarettes, cigars and cigarillos and of other smoking tobacco should be ☒ laid down ☒ so that, respectively, rolls of tobacco which according to their length can be considered as two cigarettes or more are treated as two cigarettes or more for excise purposes, a type of cigar which is similar in many respects to a cigarette is treated as a cigarette for excise purposes, smoking tobacco which is similar in many respects to fine-cut tobacco intended for the rolling of cigarettes is treated as fine-cut tobacco for excise purposes, and tobacco refuse is clearly defined. In view of the economic difficulties that immediate implementation could cause for the German and Hungarian operators concerned, Germany and Hungary should be authorised to postpone the ☒ application ☒ of the definition of cigars and cigarillos until 1 January 2015.

↓ 95/59/EC recital 3

- (9) As far as excise duties are concerned, harmonisation of structures must, in particular, result in competition in the different categories of manufactured tobacco belonging to the same group not being distorted by the effects of the charging of the tax and, consequently, in the opening of the national markets of the Member States.

↓ 95/59/EC recital 7

- (10) The imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco.

↓ 95/59/EC recital 4

- (11) The structure of the excise duty on cigarettes must include, in addition to a specific component calculated per unit of the product, a proportional component based on the retail selling price, inclusive of all taxes. The turnover tax on cigarettes has the same effect as a proportional excise duty and this fact should be taken into account when the ratio between the specific component of the excise duty and the total tax burden is being established.

↓ 2010/12/EU recital 4 (adapted)

- (12) Without prejudice to the mixed tax structure and the maximum percentage of the specific component ☒ of ☒ the total tax burden, Member States should be given effective means to levy specific or minimum excise duty on cigarettes, so as to ensure that at least a certain minimum amount of taxation applies throughout the Union.

↓ 92/80/EEC recital 3 (adapted)

- (13) ☒ For the proper functioning of ☒ the internal market , it is necessary to establish minimum excise duties for ☒ all categories of ☒ manufactured tobacco .
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↓ 2010/12/EU recital 3 (adapted)

- (14) As regards ☒ a price related minimum requirement for ☒ cigarettes, neutral conditions of competition for manufacturers ☒ should be assured ☒, the partitioning of the tobacco markets ☒ should be reduced ☒ and health objectives ☒ should be underscored ☒ . ☒ This ☒ requirement should ☒ thus ☒ refer to the weighted average retail selling price, whereas ☒ a ☒ monetary minimum should be applicable to all cigarettes. For the same reasons, the weighted average retail selling price should also serve as a reference for measuring the importance of specific excise duty within the total tax burden.
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↓ 2010/12/EU recital 6 (adapted)

- (15) ☒ As regards ☒ prices and excise levels , in particular for cigarettes — by far the most important category of tobacco products — as well as for fine cut-tobacco intended for the rolling of cigarettes, there are still considerable differences between Member States which may disturb the operation of the internal market. ☒ A certain degree of ☒ convergence between the tax levels applied in the Member States would help reduce fraud and smuggling within the Union.
-

↓ 2010/12/EU recital 7 (adapted)

- (16) ☒ Such ☒ convergence would also help to ensure a high level of ☒ protection for ☒ human health . The level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. Fraud and smuggling undermine tax induced price levels, in particular of cigarettes and fine-cut tobacco intended for the rolling of cigarettes, and thus jeopardise the achievement of tobacco control and health protection objectives.
-

↓ 92/80/EEC recitals 4 and 5
(adapted)

- (17) ☒ As regards products other than cigarettes, ☒ a harmonised incidence of tax should be established for all products belonging to the same group of manufactured tobacco. 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 ☒ the functioning of ☒ the internal market.

↓ 2010/12/EU recital 5 (adapted)

- (18) As regards fine-cut tobacco intended for the rolling of cigarettes, ☒ a ☒ Union price related minimum requirement should be expressed in such a way as to obtain effects similar to those in the field of cigarettes and should take the weighted average retail selling price as the point of reference.

↓ 2010/12/EU recital 9

- (19) It is necessary to bring the minimum levels for fine-cut tobacco intended for the rolling of cigarettes closer to the minimum levels applicable to cigarettes, so as to better take account of the degree of competition existing between the two products, reflected in consumption patterns observed, as well as their equally harmful character.

↓ 92/79/EEC recital 5 (adapted)

- (20) ☒ Portugal ☒ 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.

↓ 2010/12/EU recital 10
(adapted)

- (21) Transitional periods should allow Member States to adapt smoothly to the levels of the overall excise duty, thus limiting possible side effects.

↓ 2010/12/EU recital 11
(adapted)

- (22) In order to prevent damage to Corsica's economic and social equilibrium it is both essential and justifiable to ☒ provide for a ☒ derogation ☒ , until 31 December 2015, ☒ by which France may apply a rate of excise duty that is lower than the national rate to cigarettes and other manufactured tobaccos released for consumption in Corsica. By that date the tax rules for manufactured tobaccos released for consumption there should be brought fully into line with the rules for mainland France. Nevertheless, too abrupt a change should be avoided and there should therefore be a stepwise increase in the excise duty currently levied on cigarettes and fine-cut tobacco intended for the rolling of cigarettes in Corsica.

↓ 95/59/EC recital 13

- (23) A majority of Member States grant exemptions from excise duty or make refunds of excise duty in respect of certain types of manufactured tobacco depending on the use

which is made of them, and the exemptions or refunds for particular uses need to be specified in this Directive.

↓ 92/80/EEC recital 7 (adapted)

- (24) A procedure should be ☒ provided for ☒ 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.

↓

- (25) This Directive should be without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B,

↓ 95/59/EC (adapted)

HAS ADOPTED THIS DIRECTIVE:

Chapter 1

Subject matter

Article 1

This Directive lays down general principles for ☒ the ☒ harmonisation ☒ of ☒ the structure ☒ and rates ☒ of the excise duty to which the Member States subject manufactured tobacco.

Chapter 2

Definitions

Article 2

1. ☒ For the purposes of this Directive ☒ manufactured tobacco ☒ shall mean ☒.

- (a) cigarettes;
- (b) cigars and cigarillos;
- (c) smoking tobacco;

- (i) fine-cut tobacco for the rolling of cigarettes,
- (ii) other smoking tobacco.

↓ 95/59/EC

2. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in Article 3 or Article 5(1) shall be treated as cigarettes and smoking tobacco.

Notwithstanding the first subparagraph, products containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco.

↓ 95/59/EC (adapted)

3. Notwithstanding existing ☒ Union ☒ provisions, the definitions referred to in paragraph 2 of this Article and Articles 3, 4 and 5 shall be without prejudice to the choice of system or the level of taxation which shall apply to the different groups of products referred to in these Articles.

Article 3

1. ☒ For the purposes of this Directive ☒ cigarettes ☒ shall mean ☒:

- (a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos within the meaning of Article 4(1);
- (b) rolls of tobacco which, by simple non-industrial handling, are inserted into cigarette-paper tubes;
- (c) rolls of tobacco which, by simple non-industrial handling, are wrapped in cigarette paper.

↓ 2010/12/EU Art. 3 pt. 2

2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 8 cm but not longer than 11 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 11 cm but not longer than 14 cm, and so on.

↓ 2010/12/EU Art. 3 pt. 1 (adapted)
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Article 4

1. ☒ For the purposes of this Directive ☒ the following shall be deemed to be cigars or cigarillos if they can be and, given their properties and normal consumer expectations, are exclusively intended to be smoked as they are:

- (a) rolls of tobacco with an outer wrapper of natural tobacco;
- (b) 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 mouthpiece, is not less than 2,3 g and not more than 10 g, and the circumference over at least one third of the length is not less than 34 mm.

2. By way of derogation from paragraph 1, Germany and Hungary may continue to apply until 31 December 2014 Article 3 of Directive 95/59/EC as amended by Directive 2002/10/EC.

↓ 2010/12/EU Art. 3 pt. 5

3. Products which consist in part of substances other than tobacco but otherwise fulfil the criteria set out in paragraph 1 shall be treated as cigars and cigarillos.

↓ 95/59/EC (adapted)

Article 5

1. ☒ For the purposes of this Directive ☒ smoking tobacco ☒ shall mean ☒:

- (a) tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing;

↓ 2010/12/EU Art. 3 pt. 3

- (b) tobacco refuse put up for retail sale which does not fall under Articles 3 and 4 and which can be smoked. For the purpose of this Article, tobacco refuse shall be deemed to be remnants of tobacco leaves and by-products obtained from tobacco processing or the manufacture of tobacco products.

↓ 95/59/EC (adapted) → ₁ 2010/12/EU Art. 3 pt. 4(a) → ₂ 2010/12/EU Art. 3 pt. 4(b)
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2. Smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of less than →₁ 1,5 millimetre ← shall be deemed to be fine-cut tobacco for the rolling of cigarettes.

Member States may also deem smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of →₂ 1,5 millimetre or more ← and which was sold or intended to be sold for the rolling of cigarettes to be fine-cut tobacco for the rolling of cigarettes.

Article 6

A natural or legal person established in the ☒ Union ☒ who converts tobacco into manufactured products prepared for retail sale shall be deemed to be a manufacturer.

Chapter 3

Provisions applicable to Cigarettes

↓ 95/59/EC (adapted)

Article 7

1. Cigarettes manufactured in the ☒ Union ☒ and those imported from third countries shall be subject to a proportional excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty calculated per unit of the product.

↓ 95/59/EC

Notwithstanding the first subparagraph, Member States may exclude customs duties from the basis for calculating the proportional excise duty on cigarettes.

2. The rate of the proportional excise duty and the amount of the specific excise duty must be the same for all cigarettes.

3. At the final stage of harmonisation of structures, the same ratio shall be established for cigarettes in all Member States between the specific excise duty and the sum of the proportional excise duty and the turnover tax, in such a way that the range of retail selling prices reflects fairly the difference in the manufacturers' delivery prices.

↓ 2010/12/EU Art. 3 pt. 6

4. Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty as laid down in Article 8 is strictly respected.

↓ 2010/12/EU Art. 3 pt. 7
(adapted)

Article 8

1. The percentage of the specific component of excise duty in the amount of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price.

2. 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.

3. Until 31 December 2013, the specific component of the excise duty ☒ shall ☐ not be less than 5 % and ☒ shall ☐ not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

- (a) specific excise duty;
- (b) the proportional excise duty and the value added tax ☒ (VAT) ☐ levied on the weighted average retail selling price.

4. From 1 January 2014, the specific component of the excise duty on cigarettes ☒ shall ☐ not be less than 7,5 % and ☒ shall ☐ not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

- (a) specific excise duty;
- (b) the proportional excise duty and the ☒ VAT ☐ levied on the weighted average retail selling price.

5. By way of derogation from paragraphs 3 and 4, where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the specific component of the excise duty, expressed as a percentage of the total tax burden, below the percentage of 5 % or 7,5 %, whichever is applicable, or above the percentage of 76,5 % of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until 1 January of the second year following that in which the change occurs.

6. Subject to paragraphs 3, 4 and 5 , Member States may levy a minimum excise duty on cigarettes.

Article 9

1. Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Chapter.
2. Paragraph 1 shall apply to the taxes which, pursuant to this Chapter, 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.

Article 10

1. The overall excise duty (specific duty and *ad valorem* duty excluding VAT) on cigarettes shall represent at least 57 % of the 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, ☒ the 57% requirement set out in the first subparagraph shall not apply to ☒ 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 .

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, ☒ the 60 % requirement set out in the first subparagraph shall not apply to ☒ 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 .

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

↓ 2010/12/EU Art. 1 pt. 2 (adapted)
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Article 11

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 10 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 $\boxtimes$ VAT $\boxtimes$ 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 $\boxtimes$ VAT $\boxtimes$, 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 10 respectively.

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.

↓ 92/79/EEC (adapted)

Article 12

1. $\boxtimes$ Portugal $\boxtimes$ may apply a reduced rate of up to 50 % less than that laid down in Article 10 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.

↓ 2010/12/EU Art. 1 pt. 3

2. By way of derogation from Article 10, 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:

- (a) until 31 December 2012, at least 44 % of the price for cigarettes in the price category most in demand in those departments;
- (b) 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;

- (c) 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.

↓ 92/80/EEC

Chapter 4

Provisions applicable to manufactured tobacco other than cigarettes

↓ 92/80/EEC (adapted)

Article 13

The following groups of manufactured tobacco produced in the ☒ Union ☒ and imported from third countries shall be subject, in each Member State, to a minimum excise duty as laid down in Article 14:

- (a) cigars and cigarillos;
- (b) fine-cut tobacco intended for the rolling of cigarettes;
- (c) other smoking tobaccos.

Article 14

↓ 1999/81/EC Art. 2(1)(a)
(adapted)

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 ☒ Union ☒ and by importers from third countries in accordance with Article 15;
- (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.

2. 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:

↓ 2002/10/EC Art. 2.1 (adapted)

- (a) cigars or cigarillos: 5 % of the retail selling price inclusive of all taxes or EUR ~~12~~ ~~per 1 000 items or per kilogram~~;
- (b) fine-cut smoking tobacco intended for the rolling of cigarettes: ~~40~~ % of the weighted average retail selling price of fine-cut smoking tobacco intended for the rolling of cigarettes released for consumption ~~,~~ or EUR ~~40~~ ~~per kilogram~~;
- (c) other smoking tobaccos: 20 % of the retail selling price inclusive of all taxes, or EUR ~~22~~ ~~per kilogram~~.

↓ 2010/12/EU Art. 2 pt. 1
(adapted)

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.

↓ 92/80/EEC (adapted)

3. The rates or amounts referred to in paragraphs 1 and 2 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.

↓ 2010/12/EU Art. 2 pt. 2

4. By way of derogation from paragraphs 1 and 2, 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:
 - (i) until 31 December 2012, at least 27 % of the retail selling price, inclusive of all taxes;
 - (ii) from 1 January 2013, at least 30 % of the retail selling price, inclusive of all taxes,
 - (iii) 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.

↓ 95/59/EC (adapted)

Chapter 5

⊠ Determination of the maximum retail selling price of manufactured tobacco, collection of excise duty, exemptions and refunds ⊠

Article 15

1. Manufacturers, or, where appropriate, their representatives or authorised agents in the ⊠ Union ⊠ and importers of tobacco from third countries 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 first subparagraph may not, however, hinder implementation of national systems of legislation regarding the control of price levels or the observance of imposed prices, provided that they are compatible with legislation ⁽¹⁾ of the Union ⁽²⁾.

2. In order to facilitate the levying of the excise duty, Member States may, for each group of manufactured tobacco, fix a scale of retail selling prices on condition that each scale has sufficient scope and variety to correspond in fact with the variety of products ⁽¹⁾ originating in the Union ⁽²⁾.

Each scale shall be valid for all the products belonging to the group of manufactured tobacco which it concerns, without distinction on the basis of quality, presentation, the origin of the products or of the materials used, the characteristics of the undertakings or of any other criterion.

Article 16

1. At the final stage ⁽¹⁾ of harmonisation of the excise duty ⁽²⁾ at the latest the rules for collecting the excise duty shall be harmonised. During the preceding stage the excise duty shall, in principle, be collected by means of tax stamps. If they collect the excise duty by means of tax stamps, Member States shall be obliged to make these stamps available to manufacturers and dealers in other Member States. If they collect the excise duty by other means, Member States shall ensure that no obstacle, either administrative or technical, affects trade between Member States on that account.

2. Importers and manufacturers of manufactured tobacco ⁽¹⁾ established in the Union ⁽²⁾ shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.

↓ 95/59/EC

Article 17

The following may be exempted from excise duty or excise duty already paid on them may be refunded:

- (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 and for tests connected with product quality;
- (d) manufactured tobacco which is reworked by the producer.

Member States shall determine the conditions and formalities to which the abovementioned exemptions or refunds are subject.

Chapter 6

Final provisions

Article 18

↓ 2010/12/EU Art. 2 pt. 4

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.

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.

↓ 2010/12/EU Art. 1 pt. 1

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 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.

↓ 2010/12/EU Art. 2 pt. 3
(adapted)

Article 19

1. Every four 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/EC¹¹, 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

¹¹ OJ L 9, 14.1.2009, p. 12.

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

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

↓ 95/59/EC

Article 20

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 21

Directive 92/79/EEC, Directive 92/80/EEC and Directive 95/59/EC, as amended by the Directives listed in Annex I, Part A, are repealed, without prejudice to the obligations of the Member States relating to the time-limits for transposition into national law and application of the Directives set out in Annex I, Part B.

References to the repealed Directives shall be construed as references to this Directive and shall be read in accordance with the correlation table set out in Annex II.

Article 22

This Directive shall enter into force on 1 January 2011.

↓ 92/79/EEC

Article 23

This Directive is addressed to the Member States.

Done at [...]

For the Council
The President



ANNEX I

Part A

Repealed Directives with list of their successive amendments (referred to in Article 21)

Council Directive 92/79/EEC
(OJ L 316, 31.10.1992, p. 8)

Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)	only Article 1
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Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)	only Article 1
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Council Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49)	only Article 1
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Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)	only Article 1
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Council Directive 92/80/EEC
(OJ L 316, 31.10.1992, p. 10)

Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)	only Article 2
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Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)	only Article 2
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Council Directive 2003/117/EC (OJ L 333, 20.12.2003, p. 49)	only Article 2
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Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)	only Article 2
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Council Directive 95/59/EC
(OJ L 291, 6.12.1995, p. 40)

Council Directive 1999/81/EC (OJ L 211, 11.8.1999, p. 47)	only Article 3
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Council Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26)	only Article 3
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Council Directive 2010/12/EU (OJ L 50, 27.2.2010, p. 1)	only Article 3
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Part B

List of time-limits for transposition into national law and application (referred to in Article 21)

Directive	Time-limit for transposition	Date of application
92/79/EEC	31 December 1992	-
92/80/EEC	31 December 1992	-
95/59/EC	-	-
1999/81/EC	1 January 1999	1 January 1999
2002/10/EC	1 July 2002 ¹²	-
2003/117/EC	1 January 2004	-
2010/12/EU	31 December 2010	1 January 2011

¹² By way of derogation from the date set in Article 4(1) of Directive 2002/10/EC:

- (a) the Federal Republic of Germany shall be authorised to bring into force the provisions necessary to comply with Article 3(1) of Directive 2002/10/EC by 1 January 2008 at the latest;
- (b) the Kingdom of Spain and the Hellenic Republic shall be authorised to bring into force the provisions necessary to comply with Article 1(1) of Directive 2002/10/EC (with regard to Article 2(1), second sentence, of Directive 92/79/EEC) by 1 January 2008 at the latest.

ANNEX II

CORRELATION TABLE

Directive 92/79/EEC	Directive 92/80/EEC	Directive 95/59/EC	This Directive
-	-	Article 1(1) and (2)	Article 1
-	-	Article 1(3)	-
-	-	Article 2(1), introductory phrase	Article 2(1), introductory phrase
-	-	Article 2(1)(a) and (b)	Article 2(1)(a) and (b)
-	-	Article 2(1)(c), first indent	Article 2(1)(c)(i)
-	-	Article 2(1)(c), second indent	Article 2(1)(c)(ii)
-	-	Article 2(1), final words	-
-	-	Article 2(2)	-
-	-	Article 7(2)	Article 2(2)
-	-	Article 2(3)	Article 2(3)
-	-	Article 4(1), first subparagraph	Article 3(1)
-	-	Article 4(1), second subparagraph	-
-	-	Article 4(2)	Article 3(2)
-	-	Article 3(1)	Article 4(1)
-	-	Article 3(2)	Article 4(2)
-	-	Article 7(1)	Article 4(3)
-	-	Article 5, introductory phrase	Article 5(1), introductory phrase
-	-	Article 5(1)	Article 5(1)(a)
-	-	Article 5(2)	Article 5(1)(b)

-	-	Article 6, first paragraph	Article 5(2), first subparagraph
-	-	Article 6, second paragraph	Article 5(2), second subparagraph
-	-	Article 9(1), first subparagraph	Article 6
-	-	Article 8(1)	Article 7(1), first subparagraph
-	-	Article 16(6)	Article 7(1), second subparagraph
-	-	Article 8(2), (3) and (4)	Article 7(2), (3) and (4)
Article 1	-	-	Article 9
Article 2(1) and (2)	-	-	Article 10(1) and (2)
Article 2(3)	-	-	-
Article 2(4)	-	-	Article 10(3)
Article 2a	-	-	Article 11
-	-	Article 16(1) to (5)	Article 8 (1) to (5)
-	-	Article 16(7)	Article 8(6)
Article 3(1)	-	-	-
Article 3(2)	-	-	Article 12(1)
Article 3(3)	-	-	-
Article 3(4)	-	-	Article 12(2)
-	Article 1	-	Article 13
-	Article 2	-	-
-	Article 3(1), first and second subparagraph	-	Article 14(1)
-	Article 3(1), third subparagraph, introductory sentence	-	Article 14(2), first subparagraph, introductory sentence

-	Article 3(1), third subparagraph, first, second and third indent	-	-
-	Article 3(1), fourth and fifth subparagraph	-	-
-	Article 3(1), sixth subparagraph, introductory sentence	-	-
-	Article 3(1), sixth subparagraph, points (a), (b) and (c)	-	Article 14(2), first subparagraph, points (a), (b) and (c)
-	Article 3(1), seventh subparagraph	-	-
-	Article 3(1), eighth subparagraph	-	-
-	Article 3(1), ninth subparagraph	-	Article 14(2), second subparagraph
-	Article 3(1), tenth subparagraph	-	Article 14(2), third subparagraph
-	Article 3(1), eleventh subparagraph	-	Article 14(2), fourth subparagraph
-	Article 3(1), twelfth subparagraph	-	Article 14(2), fifth subparagraph
-	Article 3(1), thirteenth subparagraph	-	Article 14(2), sixth subparagraph
-	Article 3(1), fourteenth subparagraph	-	-
-	Article 3(2)	-	Article 14(3)
-	Article 3(3)	-	-
-	Article 3(4)	-	Article 14(4)
-	-	Article 9(1), second subparagraph	Article 15(1), first subparagraph
-	-	Article 9(1), third subparagraph	Article 15(1), second subparagraph

-	-	Article 9(2), first sentence	Article 15(2), first subparagraph
-	-	Article 9(2), second sentence	Article 15(2), second subparagraph
-	-	Article 10	Article 16
-	-	Article 11	Article 17
-	-	Article 12	-
-	-	Article 13	-
-	-	Article 14	-
-	-	Article 15	-
Article 2(5)	Article 5(1)	-	Article 18(1)
Article 2(6)	Article 5(2)	-	Article 18(2)
Article 4	Article 4	-	Article 19
Article 5(1)	Article 6(1)	-	-
Article 5(2)	Article 6(2)	Article 18	Article 20
-	-	Article 19(1)	Article 21, first paragraph
-	-	Article 19(2)	Article 21, second paragraph
-	-	Article 20	Article 22
Article 6	Article 7	Article 21	Article 23
-	-	Annex I	-
-	-	Annex II	-
-	-	-	Annex I
-	-	-	Annex II