

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.

⁽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.

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.

Article 2

Not later than 1 January 1993, each Member State shall apply an overall minimum excise duty (specific duty plus *ad valorem* duty excluding VAT) the incidence of which shall be set at 57 % of the retail selling price (inclusive of all taxes) for cigarettes of the price category most in demand.

The overall minimum excise duty on cigarettes shall be determined on the basis of cigarettes of the price category most in demand according to data established as at 1 January of each year, beginning on 1 January 1993.

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.

Article 4

Every two years, and for the first time not later than 31 December 1994, the Council, acting on the basis of a report and, where appropriate, a proposal from the Commission, shall examine the overall minimum excise duty laid down in Article 2, the provisions of Article 3 (2) and the structure of excise duties as defined in Article 10b of Directive 72/464/EEC and, acting unanimously after consulting the European Parliament, shall adopt the necessary measures. The report by the Commission and the examination by the Council shall take into account the proper functioning of the internal market and the wider objectives of the Treaty.

Article 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.

Done at Luxembourg, 19 October 1992.

For the Council

The President

J. COPE