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

COM(90) 433 final

(Submitted by the Commission on 27 September 1990)

(90/C 322/03)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

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

Whereas Council Directive 72/464/EEC (1), as last amended by Directive ... (2), lays down general provisions relating to excise duties on manufactured tobacco and special provisions relating to the structure of excise duties applicable to cigarettes;

Whereas Council Directive 79/32/EEC (3), as amended by Directive 80/369/EEC (4), and by the Act of Accession of Portugal and Spain, laid down the definitions of the different types of manufactured tobacco;

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

Whereas, in Article 5 (1) of Council Directive 72/464/EEC, the concept of manufacturer should be defined as the natural or legal person who actually prepares the tobacco products and who sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption;

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

(1) OJ No L 303, 31. 12. 1972, p. 1.
(2) OJ No C 12, 18. 1. 1990, p. 4 [COM(89) 525 final].
(3) OJ No L 10, 16. 1. 1979, p. 8.
(4) OJ No L 90, 3. 4. 1980, p. 42.

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

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

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

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

1. Article 4 is amended as follows;

   (a) in paragraph 1, the phrase 'national and imported cigarettes' is replaced by 'cigarettes manufactured in the Community and those imported from non-member countries';

   (b) in paragraph 2, after 'cigarettes', the following phrase is added: 'in accordance with the provisions of Directive ...'.

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

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

3. Article 6 is amended as follows:

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

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

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

4. The following Article 6a is inserted:

'*Article 6a*

The following may be exempted from excise duty:

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

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

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

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

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

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

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

Article 2

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

1. Article 1 is amended as follows:

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

(b) paragraph 2 is repealed.

2. Article 2 is amended as follows:

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

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

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

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

Article 3

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

Article 4

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

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

Article 5

This Directive is addressed to the Member States.

(1) See page 1 of this Official Journal [COM(90) 431 final].