COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 355 final

Brussels, 03.10.1994

94/0204 (CNS)

Proposal for a
COUNCIL DIRECTIVE
on taxes other than turnover taxes which affect the consumption of manufactured tobacco

- consolidated text -

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. In the context of a people's Europe, the Commission attaches great importance to simplifying and clarifying Community law so as to make it clearer and more accessible to the ordinary citizen, thus giving him new opportunities and the chance to make use of the specific rights it gives him.

   This aim cannot be achieved so long as numerous provisions which have been amended several times, often quite substantially, remain scattered; so that they must be sought partly in the original instrument and partly in later amending ones. Considerable research work, comparing many different instruments, is thus needed to identify the current rules.

   For this reason a consolidation of rules that have frequently been amended is essential if Community law is to be clear and transparent.

2. By its decision of 1 April 1987 the Commission instructed its departments to produce a formal consolidated version of legislative instruments no later than after their tenth amendment, but made it clear that this was a minimum requirement, and that in the interests of clarity and of the ready comprehension of Community law, an effort should be made by each department to consolidate the instruments for which it is responsible at more frequent intervals.

3. The attached **proposal of the Commission of Council Directive on taxes other than turnover taxes which affect the consumption of manufactured tobacco,** combining the following directives into a single text:

   - **Council Directive 72/464/EEC** of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco (as amended 13 times)

     and

   - **Second Council Directive 79/32/EEC** of 18 December 1978 on taxes other than turnover taxes which affect the consumption of manufactured tobacco,

   has been drafted in accordance with the fundamental principles agreed by Council, Parliament and the Commission in 1974; it aims at legislative consolidation: the existing Directives would be replaced by one new one, which would leave their substance untouched but would assemble them into a single text, with only the formal amendments required by the operation itself.

4. As in the past the text supplied here is collated from the original Directives as published in the Official Journal; the use of photocopies means that any improvements to the wording are immediately identifiable. The old numbering of the Articles has been retained in the margin for ease of reference, the new numbering being entered above the Articles: Annex II contains a concordance table relating the old system of numbering to the new. In order to preserve the dates for transposal of all the Directives concerned, an Annex (Annex I, Part B) lists the deadline for implementation of each of the Directives now being repealed.

LIST OF DIRECTIVES

1. Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco.
(OJ No L 303, 31.12.1972, p. 1)

modified by Directives:

74/318/EEC (OJ No L 180, 3.7.1974, p. 30)
75/786/EEC (OJ No L 330, 24.12.1975, p. 51)
76/911/EEC (OJ No L 354, 24.12.1976, p. 33)
77/805/EEC (OJ No L 338, 28.12.1977, p. 22)
80/369/EEC (OJ No L 90, 3.4.1980, p. 42)
80/1275/EEC (OJ No L 375, 31.12.1980, p. 76)
81/463/EEC (OJ No L 183, 4.7.1981, p. 32)
82/2/EEC (OJ No L 5, 9.1.1982, p. 11)
82/877/EEC (OJ No L 369, 29.12.1982, p. 36)
84/217/EEC (OJ No L 104, 17.4.1984, p. 18)
86/246/EEC (OJ No L 164, 20.6.1986, p. 26)
92/78/EEC (OJ No L 316, 31.10.1992, p. 5)

modified by:

Acts of Accession of Spain and Portugal (OJ No L 302, 15.11.1985, p. 167 and 168)

2. Council Directive 79/32/EEC: Second Council Directive of 18 December 1978 on taxes other than turnover taxes which affect the consumption of manufactured tobacco.
(OJ No L 10, 16.1.1979, p. 8)

modified by Directives:

80/369/EEC (OJ No L 90, 3.4.1980, p. 42)
92/78/EEC (OJ No L 316, 31.10.1992, p. 5)

modified by:

Acts of Accession of Spain and Portugal (OJ No L 302, 15.11.1985, p. 168).

Proposal for a

COUNCIL DIRECTIVE

on taxes other than turnover taxes which affect the consumption of manufactured tobacco

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament (1),

Having regard to the opinion of the Economic and Social Committee (2),

1) Whereas Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco(3) and Council Directive 79/32/EEC, Second Council Directive of 18 December 1978 on taxes other than turnover taxes which affect the consumption of manufactured tobacco(4) have been amended substantially and on a number of occasions; whereas for reasons of clarity and rationality the said Directives should be consolidated in a single text;

(1)

(2)

(3) OJ No L 303, 31.12.1972, p. 1. Directive as last amended by Directive 92/78/EEC (OJ No L 316, 31.10.1992, p. 5).

(4) OJ No L 10, 16.1.1979, p. 8. Directive as last amended by Directive 92/78/EEC.

2)	Whereas the objective of the Treaty is to establish an economic union within which there is healthy competition and whose characteristics are similar to those of a domestic market; and, 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 Community;	1.	72/464/EEC
3)	Whereas, as far as excise duties are concerned, harmonization 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;	5.	72/464/EEC
4)	Whereas 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 ; whereas 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 ;	4.	77/805/EEC
5)	Whereas, as regards cigarettes, the abovementioned objective is best achieved by a system which provides for a degression in the incidence of the tax and whereas for this purpose, the tax imposed on these products should consist of a proportional excise duty combined with a specific excise duty, the amount of which is fixed by each Member State in accordance with Community criteria;	6.	72/464/EEC
6)	Whereas the structures for excise duties on manufactured tobacco should be harmonized by stages;	7.	72/464/EEC
7)	Whereas the imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco;	8.	72/464/EEC
8)	Whereas there are several types of manufactured tobacco, distinguished by their characteristics and by the way in which they are used ;	1.	79/32/EEC

9)	Whereas these different types of manufactured tobacco should be defined ;	2.	79/32/EEC
10)	Whereas, for economic reasons, temporary derogations should be provided for certain Member States;	3.	79/32/EEC
11)	Whereas ——— a distinction needs to be made between fine-cut tobacco for the rolling of cigarettes and other smoking tobacco ;	4.	92/78/EEC (adapted)
12)	Whereas ——— 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 ;	6.	92/78/EEC (adapted)
13)	Whereas 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 whereas the exemptions or refunds for particular uses need to be specified in this Directive ;	7.	92/78/EEC
14)	Whereas 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 ;	9.	92/78/EEC
15)	Whereas Germany should be authorized to tax rolls at least at the rate or amount applicable to fine-cut tobacco for the rolling of cigarettes until 31 December 1998 at the latest ;	10.	92/78/EEC
16)	Whereas this Directive must not affect the obligations of Member States concerning the deadlines for implementation of the Directives set out in Annex I, Part B,		

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General principles

72/464/EEC

Article 1

1. The structure of the excise duty to which the Member States subject manufactured tobacco shall be harmonized in several stages.

2. This Directive lays down general principles for this harmonization, as well as the special criteria applicable during the stages of harmonization.

3. The transition from one stage of harmonization to the next shall be decided on by the Council on a proposal from the Commission, taking into account the effects produced during the stage in progress by the measures introduced by the Member States into their system of excise duties in order to comply with the provisions applicable during that stage. The transition from one stage to the next may be deferred especially if it is likely to involve disproportionate losses of revenue for a Member State.

Article 2

Article 3

1. The following shall be considered to be manufactured tobacco:

(a) cigarettes;

(b) cigars and cigarillos;

(c) smoking tobacco

92/78/EEC

— fine-cut tobacco for the rolling of cigarettes,

— other smoking tobacco ;

as defined in Articles 3 to 7.

79/32/EEC (adapted)
Article 1, (1)

2. The Council shall, on a proposal from the Commission, adopt the provisions necessary to determine the way in which manufactured tobacco should be defined and classified in groups.

72/464/EEC

3. Notwithstanding existing Community provisions, the definitions referred to in Articles 3 to 7 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.

79/32/EEC
(adapted)

Article 1

Article 2

79/32/EEC

Article 3

The following shall be deemed to be cigars or cigarillos if they can be smoked as they are :

1. rolls of tobacco made entirely of natural tobacco ;

2. rolls of tobacco with an outer wrapper of natural tobacco ;

3. rolls of tobacco with an outer wrapper of the normal colour of a cigar, and a binder, of reconstituted tobacco, ——— where at least 60 % by weight of the tobacco particles are both wider and longer than 1·75 mm and where the wrapper is fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar ;

4. rolls of tobacco with an outer wrapper, of the normal colour of a cigar, of reconstituted tobacco, ——— where the unit weight, not including filter or mouth-piece, is not less than 2·3 g and if at least 60 % by weight of the tobacco particles are both wider and longer than 1·75 mm and the circumference over at least one third of the length is not less than 34 mm.

Article 3

92/78/EEC

(adapted)

Article 4

1. The following shall be deemed to be cigarettes :

(a) rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos within the meaning of Article 3 ;

(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.

Until 31 December 1998, ——— Germany shall be authorized to tax the rolls of tobacco referred to in (b) at least at the rate or amount applicable to fine-cut tobacco for the rolling of cigarettes.

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 9 cm but not longer than 18 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 18 cm but not longer than 27 cm, and so on.

79/32/EEC

Article 5

Article 4

The following shall be deemed to be smoking tobacco :

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

2. tobacco refuse put up for retail sale which does not fall under Articles 3 and 4 and which can be smoked.

(adapted)

Article 6

Article 4 (a)

92/78/EEC

Smoking tobacco as defined in Article 5 in which more than 25 % by weight of the tobacco particles have a cut width of less than 1 millimetre shall be deemed to be fine-cut tobacco for the rolling of cigarettes. Member States which do not apply this cut width of 1 millimetre on 1 January 1993 shall have until 31 December 1997 to comply with this provision.

Member States may also deem smoking tobacco in which more than 25 % by weight of the tobacco particles have a cut width of more than 1 millimetre 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 7

Article 7

79/32/EEC
(adapted)

1. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in Article 3 shall be treated as cigars and cigarillos provided they have respectively:

— a wrapper of natural tobacco,

— a wrapper and binder of tobacco, both of reconstituted tobacco,

— a wrapper of reconstituted tobacco.

2. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria set out in Article 4 or 5 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.

79/32/EEC

(adapted)

Article 4

Article 8

72/464/EEC

92/78/EEC

Cigarettes manufactured in the Community and those imported from non-member 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.

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 harmonization 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.

77/805/EEC

4. Where necessary, the excise duty on cigarettes may include a minimum tax component, the ceiling for which shall be determined for each stage by the Council on a proposal from the Commission.

72/464/EEC

Article 9

Article 5

92/78/EEC

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

Manufacturers, or, where appropriate, their representatives or authorized agents in the Community and importers of tobacco from non-member 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 second paragraph 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 Community legislation.

72/464/EEC

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 Community products. 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 10

Article 6

1. At the final stage at the latest the rules for collecting the excise duty shall be harmonized.

During the preceding stages 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 national manufacturers of manufactured tobacco shall be subject to the system set out in paragraph 1 as regards the detailed rules for levying and paying the excise duty.

Article 6 (a)

92/78/EEC

Article 11

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 re-worked by the producer.

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

TITLE II

Special provisions applicable during the first stage of harmonization

72/464/EEC

Article 12

Article 7

1. Subject to Article 1 (4), the first stage of harmonization of the structures of the excise duty on manufactured tobacco shall cover a period of 60 months from 1 July 1973.

77/805/EEC

2. During the first stage of harmonization Articles 13 and 14 shall be applicable.

(adapted)

Article 13

Article 8

1. The amount of the specific excise duty levied on cigarettes shall be established for the first time by reference to cigarettes in the most popular price category according to the data available on 1 January 1973.

2. Without prejudice to the solution to be finally adopted regarding the ratio between the specific component and the proportional component, the amount referred to in paragraph 1 may not be lower than 5% or higher than 75% of the aggregate amount of the proportional excise duty and the specific excise duty levied on these cigarettes.

3. If the excise duty on the price category referred to in paragraph 1 is amended after 1 January 1973, the amount of the specific excise duty shall be established by reference to the new tax burden on the cigarettes referred to in paragraph 1.

Article 9

(adapted)

Article 14

Notwithstanding Article 8(1), each Member State may exclude customs duties from the basis for calculating the proportional excise duty on cigarettes.

TITLE III

Special provisions applicable during the second stage of harmonization

77/805/EEC
(adapted)

Article 15

Article 10 (a)

1. The second stage of harmonization of the structures of the excise duty on manufactured tobacco shall run from 1 July 1978.

86/246/EEC

2. During the second stage of harmonization Article 16 shall apply.

77/805/EEC
(adapted)

Article 16

Article 10 (b)

1. The amount of the specific excise duty on cigarettes shall be established by reference to cigarettes in the most popular price category according to the information available at 1 January each year, beginning 1 January 1978.

77/805/EEC

2. The specific component of the excise duty may not be less than 5 % or more than 55 % of the amount of the total tax burden resulting from the aggregation of the proportional excise duty, the specific excise duty and the turnover tax levied on these cigarettes.

3. If the excise duty or the turnover tax levied on the price category referred to in paragraph 1 is amended after 1 January 1978, the amount of the specific excise duty shall be established by reference to the new total tax burden on the cigarettes referred to in paragraph 1.

4. Notwithstanding Article 8 (1), each Member State may exclude customs duties from the basis for calculating the proportional excise duty on cigarettes.

(adapted)

5. Member States may levy a minimum excise duty on cigarettes and on fine-cut tobacco for the rolling of cigarettes, provided that this does not have the effect of raising the total tax to more than 90 % of the total tax on the most popular price category of cigarettes or the most popular price category of fine-cut tobacco for the rolling of cigarettes respectively.

92/78/EEC

TITLE IV

Final provisions

72/464/EEC
(adapted)

Article 17

Where necessary, the Council shall, on a proposal from the Commission, adopt provisions for the application of this Directive.

Article 18

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 19

1. The Directives listed in Annex I, Part A are repealed, without prejudice to the obligations of the Member States concerning the time-limits for implementation set out in Annex I, Part B.

2. 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 20

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Communities.

Article 21

This Directive is addressed to the Member States.

Done at Brussels,

For the Council

The President

ANNEX I

PART A

REPEALED DIRECTIVES
(referred to in Article 19)

1. Directive 72/464/EEC
2. Directive 79/32/EEC

and their successive amendments:

- Directive 74/318/EEC
- Directive 75/786/EEC
- Directive 76/911/EEC
- Directive 77/805/EEC
- Directive 80/369/EEC
- Directive 80/1275/EEC
- Directive 81/463/EEC
- Directive 82/2/EEC
- Directive 82/877/EEC
- Directive 84/217/EEC
- Directive 86/246/EEC
- Directive 92/78/EEC

PART B

Directive	Time-limits for implementation
- 72/464/EEC	1.7.1973[1]
- 79/32/EEC	1.1.1980
- 74/318/EEC	
- 75/786/EEC	
- 76/911/EEC	
- 77/805/EEC	
- 80/369/EEC	
- 80/1275/EEC	
- 81/463/EEC	
- 82/2/EEC	
- 82/877/EEC	
- 84/217/EEC	
- 86/246/EEC	1.1.1986
- 92/78/EEC	31.12.1992

[1] The United Kingdom and Ireland were allowed to postpone this time-limit until 31.12.1977.

ANNEX II

CORRELATION TABLE

This Directive	Directive 72/464/EEC	Directive 79/32/EEC
Title I	Title I	
Article 1, (1) and (2)	Article 1, (1) and (2)	
Article 1, (3)	Article 1, (4)	
Article 2, (1) and (2)	Article 3, (1) and (2)	Article 1, (1)
Article 2, (3)		Article 1, (2)
Article 3		Article 2
Article 4		Article 3
Article 5		Article 4
Article 6		Article 4 (a)
Article 7		Article 7
Article 8	Article 4	
Article 9	Article 5	
Article 10	Article 6	
Article 11	Article 6 (a)	
Title II	Title II	
Article 12	Article 7	
Article 13	Article 8	
Article 14	Article 9	
Title III	Title II (a)	
Article 15	Article 10 (a)	
Article 16	Article 10 (b)	
Title IV	Title III	
Article 17	Article 11	
Article 18	Article 12, (2)	
Article 19	———	———
Article 20	———	———
Article 21	Article 13	Article 10

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