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COUNCIL DIRECTIVE

of 19 December 1972

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

(72/464/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Articles 99 and 100 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 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;

Whereas the taxes which at present affect the consumption of manufactured tobacco do not meet these requirements since these taxes are not neutral from the point of view of competition and often constitute serious obstacles to the interpenetration of markets;

Whereas it is therefore in the interest of the Common Market that the rules for taxes affecting the consumption of manufactured tobacco should be harmonized, in order progressively to eliminate from the present systems those factors which are likely to hinder free movement and distort the conditions of competition, whether at national level or at Community level;

Whereas the Council Directives of 11 April 1967¹ concern the harmonization of turnover taxes;

Whereas, as far as excise duties are concerned, harmonization of structures must, among other things, 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;

Whereas, as regards cigarettes, the above-mentioned 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;

Whereas the structures for excise duties on manufactured tobacco should be harmonized by stages;

Whereas the imperative needs of competition imply a system of freely formed prices for all groups of manufactured tobacco;

HAS ADOPTED THIS DIRECTIVE:

TITLE I

General principles

Article 1

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

¹ OJ No 71, 14.4.1967, pp. 1301/67 and 1303/67.

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

3. On the basis of Articles 99 and 100 of the Treaty, the Council shall, at least one year before the expiry of the period provided for in Article 7 (1), adopt a Directive laying down the special criteria applicable during the following stage or stages.

4. 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

The Member States shall refrain from subjecting manufactured tobacco to any tax other than the excise duty referred to in Article 1 and the value added tax provided for in the Council Directive of 11 April 1967.¹

Article 3

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

- (a) cigarettes
- (b) cigars and cigarillos
- (c) smoking tobacco
- (d) snuff
- (e) chewing tobacco.

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.

Article 4

1. In each Member State national and imported cigarettes shall be subjected to a proportional excise duty calculated on the

maximum retail selling price, including Custom 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 proportional excise duty and the specific excise duty, in such a way that the range of retail selling prices reflects fairly the difference in the manufacturers' delivery prices.

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.

Article 5

1. Manufacturers and importers shall be free to determine the maximum retail selling price for each of their products. This provision may not, however, hinder implementation of the national systems of legislation regarding the control of price levels or the observance of imposed prices.

2. However, in order to facilitate the levying of the excise duty, the 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 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, the Member States shall be obliged to make these stamps available to manufacturers and dealers in the other Member States. If they collect the excise duty by other means, the Member States shall ensure that no obstacle, either administrative or technical, affects trade between the Member States on that account.

¹ OJ No 71, 14.4.1967, p. 1301/67.

2. Importers and national manufacturers of manufactured tobacco shall be subject to the same system as regards the detailed rules for levying and paying the excise duty.

TITLE II

Special provisions applicable during the first stage of harmonization

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 24 months from 1 July 1973.

2. During this first stage of harmonization Articles 8 to 10 shall be applicable.

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, this amount 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 class referred to above 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

In derogation from Article 4 (1), each Member State may exclude Customs duties from the basis of calculation of the proportional excise duty on cigarettes.

Article 10

The Member States may levy on cigarettes a minimum excise duty the amount of which may not, however, be higher than 90% of the aggregate amount of the proportional excise duty and the specific excise duty which they levy on the cigarettes referred to at Article 8 (1).

TITLE III

Final provisions

Article 11

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

Article 12

1. The Member States shall bring into force the provisions laid down by law, regulation or administrative action necessary to comply with the provisions of this Directive not later than 1 July 1973, and shall inform the Commission immediately that they have done so.

2. The 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 13

This Directive is addressed to the Member States.

Done at Brussels, 19 December 1972.

For the Council
The President
T. WESTERTERP