

Council Directive 2010/12/EU of 16 February 2010 amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco and Directive 2008/118/EC

COUNCIL DIRECTIVE 2010/12/EU
of 16 February 2010

amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco and Directive 2008/118/EC

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 Commission,

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

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

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In accordance with Article 4 of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes⁽³⁾ and Article 4 of Council Directive 92/80/EEC of 19 October 1992 on the approximation of taxes on manufactured tobacco other than cigarettes⁽⁴⁾, an in-depth review has been carried out of the rates and structure of excise duties on tobacco products. That review included provisions of Council Directive 95/59/EC of 27 November 1995 on taxes other than turnover taxes which affect the consumption of manufactured tobacco⁽⁵⁾.
- (2) In order 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, bearing in mind that serious harm to health can be caused by tobacco products and that the Union is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), various changes should be made to the Union's fiscal legislation on tobacco products. These changes should take account of the situation prevailing for each of the various tobacco products.
- (3) As regards cigarettes, the arrangements should be simplified so as to create neutral conditions of competition for manufacturers, to reduce the partitioning of the tobacco markets and to underscore health objectives. To this end, the concept of the most popular price category should be replaced; the price related minimum requirement should refer to the weighted average retail selling price, whereas the 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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- (4) Without prejudice to the mixed tax structure and the maximum percentage of the specific component on the total tax burden, Member States should be given more 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.
- (5) As regards fine-cut tobacco intended for the rolling of cigarettes, the 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.
- (6) The changes of prices and excise levels have been analysed, 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. The analysis shows that there are still considerable differences between Member States which may disturb the operation of the internal market. Greater convergence between the tax levels applied in the Member States would help reduce fraud and smuggling within the Union.
- (7) Greater convergence would also help to ensure a high level of human health protection. The level of taxation is indeed 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.
- (8) In order to achieve greater convergence and to reduce consumption, the minimum levels of taxation in the Union for cigarettes and fine-cut tobacco intended for the rolling of cigarettes should therefore be increased.
- (9) 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.
- (10) Transitional periods should allow Member States to adapt smoothly to the new levels of the overall excise duty, thus limiting possible side effects.
- (11) In order to prevent damage to Corsica's economic and social equilibrium it is both essential and justifiable to extend until 31 December 2015 the derogation 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.
- (12) In order to avoid distortion of competition and unacceptable diversions of trade and the resulting revenue loss for those Member States which apply high excise duties, both as an important source of revenue and for health reasons, it appears necessary to

allow the latter to apply quantitative limits as regards cigarettes which may be brought into their territory without further payment of excise duties where those cigarettes are brought into their territory from Member States benefiting from transitional periods. It is appropriate to modulate such authorisation of restrictions taking into account the level which the general mandatory minimum level of taxation will have reached and the difficulties which Member States benefiting from a derogation may encounter from lower taxation in other Member States on their way to gradually aligning on the general mandatory minimum level.

- (13) In order to avoid a fall in the value of the Union minimum levels of duty on cigars, cigarillos and smoking tobaccos other than fine-cut tobacco intended for the rolling of cigarettes, it is necessary to increase the minimum levels expressed as a specific amount.
- (14) In the interests of uniform and fair taxation, the definition of cigarettes, cigars and cigarillos and of other smoking tobacco should be adapted 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, the Federal Republic of Germany and the Republic of Hungary should be authorised to postpone the implementation of the new definition of cigars and cigarillos until 1 January 2015.
- (15) In accordance with point 34 of the Interinstitutional Agreement on better law-making⁽⁶⁾, Member States are encouraged to draw up, for themselves and in the interests of the Union, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public.
- (16) Directives 92/79/EEC, 92/80/EEC, 95/59/EC and Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty⁽⁷⁾ should therefore be amended accordingly,

HAS ADOPTED THIS DIRECTIVE:

F^I Article 1

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Textual Amendments

- F1** Deleted by [Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco \(codification\)](#).

F^I Article 2

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Textual Amendments

- F1** Deleted by [Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco \(codification\)](#).

^{F1}Article 3

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Textual Amendments

- F1** Deleted by [Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco \(codification\)](#).

Article 4

Directive 2008/118/EC is hereby amended as follows:

in Article 46, the following paragraph is added:

3. Without prejudice to Article 32, Member States not referred to in the third subparagraph of Article 2(2) of Directive 92/79/EEC may, as regards cigarettes which may be brought into their territory without further payment of excise duties, apply from 1 January 2014 a quantitative limit of not less than 300 items with respect to cigarettes brought in from a Member State which applies, in accordance with the third subparagraph of Article 2(2) of that Directive, lower excise duties than those resulting from the provisions of the first subparagraph of Article 2(2) thereof.

Member States referred to in the third subparagraph of Article 2(2) of Directive 92/79/EEC which levy an excise duty of at least EUR 77 per 1 000 cigarettes irrespective of the weighted average retail selling price, may, from 1 January 2014, apply a quantitative limit of not less than 300 items as regards cigarettes brought into their territory without further payment of excise duties from a Member State which applies a lower excise duty in accordance with the third subparagraph of Article 2(2) of that Directive.

Member States which apply a quantitative limit in accordance with the first and the second subparagraphs of this paragraph shall inform the Commission thereof. They may carry out the necessary checks provided that these checks do not affect the proper functioning of the internal market.

Article 5

1 Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive with effect from 1 January 2011 except where otherwise provided for in this Directive. They shall forthwith inform the Commission thereof.

When they are adopted by Member States, those provisions shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2 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 6

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 7

This Directive is addressed to the Member States.

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- (1) Opinion of 24 March 2009 (not yet published in the Official Journal).
- (2) [OJ C 228, 22.9.2009, p. 130.](#)
- (3) [OJ L 316, 31.10.1992, p. 8.](#)
- (4) [OJ L 316, 31.10.1992, p. 10.](#)
- (5) [OJ L 291, 6.12.1995, p. 40.](#)
- (6) [OJ C 321, 31.12.2003, p. 1.](#)
- (7) [OJ L 9, 14.1.2009, p. 12.](#)