

Procedure file

Basic information	
CNS - Consultation procedure Directive	2008/0150(CNS) Procedure completed
Excise duty: structure and rates applied on manufactured tobacco	
Amending Directive 95/59/EC 1994/0204(CNS) Amending Directive 2008/118/EC 2008/0051(CNS) Repealed by 2018/0176(CNS)	
Subject 2.70.02 Indirect taxation, VAT, excise duties 3.40.12 Luxury products industry, cosmetics	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		24/09/2008
		PPE-DE BECSEY Zsolt László	
	Committee for opinion	Rapporteur for opinion	Appointed
	ENVI Environment, Public Health and Food Safety	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	2994	16/02/2010
	Economic and Financial Affairs ECOFIN	2972	10/11/2009
	Economic and Financial Affairs ECOFIN	2940	05/05/2009
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events			
15/07/2008	Legislative proposal published	COM(2008)0459	Summary
23/09/2008	Committee referral announced in Parliament		
02/03/2009	Vote in committee		Summary
06/03/2009	Committee report tabled for plenary, 1st reading/single reading	A6-0121/2009	
24/03/2009	Results of vote in Parliament		
24/03/2009	Decision by Parliament	T6-0160/2009	Summary
05/05/2009	Debate in Council	2940	Summary
16/02/2010	Act adopted by Council after consultation of Parliament		
16/02/2010	End of procedure in Parliament		
27/02/2010	Final act published in Official Journal		

Technical information	
Procedure reference	2008/0150(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 95/59/EC 1994/0204(CNS) Amending Directive 2008/118/EC 2008/0051(CNS) Repealed by 2018/0176(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Stage reached in procedure	Procedure completed
Committee dossier	ECON/6/66008

Documentation gateway					
Legislative proposal		COM(2008)0459	16/07/2008	EC	Summary
Document attached to the procedure		COM(2008)0460	16/07/2008	EC	Summary
Document attached to the procedure		SEC(2008)2266	16/07/2008	EC	
Document attached to the procedure		SEC(2008)2267	16/07/2008	EC	
Committee draft report		PE415.319	14/11/2008	EP	
Amendments tabled in committee		PE416.671	15/12/2008	EP	
Committee report tabled for plenary, 1st reading/single reading		A6-0121/2009	06/03/2009	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0160/2009	24/03/2009	EP	Summary
Economic and Social Committee: opinion, report		CES0635/2009	24/03/2009	ESC	
Commission response to text adopted in plenary		SP(2009)3060	04/06/2009	EC	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

Final act
Directive 2010/12 OJ L 050 27.02.2010, p. 0001 Summary

Excise duty: structure and rates applied on manufactured tobacco

The Commission is obliged to examine every four years, under terms set out in Council Directive 92/79/EEC on the approximation of taxes on cigarettes, the smooth operation of the single market for tobacco as well as the real value of excise-duty rates. In preparing this report particular attention has been given to the health aspects associated with tobacco use.

More specifically, the report examines a number of possible changes to the current structure of excise duties on cigarettes and examines whether the concept of the most popular price category (MPPC) could be abolished as a benchmark for minimum requirements. In addition it

scrutinises whether greater flexibility could be developed, as well as the set level of minimum excise duties on cigarettes. The report also covers the issue of the structure and minimum rates of excise duties on other manufactured tobacco than cigarettes and fine-cut tobacco (cigars, cigarillos and other smoking tobacco (mainly pipe-tobacco)).

The review of the structure and rates of excise duty on manufactured tobacco products states that a number of important amendments to the existing legislation are necessary:

- with a view to more transparency of the arrangements and in order to create a level playing field across the tobacco sector, the MPPC (the most popular price category) should be replaced as a reference point for EU minimum requirements by weighted average prices (WAP). In order to underscore health objectives it should be combined with a monetary minimum applicable to all cigarettes. WAP should also be the reference for measuring the importance of specific excise duty within the total tax burden (Article 16(2) of Directive 95/59/EC);
- Member States should be allowed greater flexibility as concerns the structure of excise duties on cigarettes;
- the introduction of a combination of a proportional minimum and a monetary minimum for fine-cut would be an appropriate way to align taxation on cigarettes and fine-cut tobacco;
- as far as cigarettes are concerned, from a health perspective an increase in the minimum duties over the next five years to EUR 90 on all and 63% on WAP would trigger a probable decrease of demand of 10%. Furthermore, it would reduce the gap in taxes and prices within the Internal market;
- the minimum rates on fine-cut tobacco should be adjusted to two thirds of the rate for cigarettes and should be increased in parallel with the excise duties on cigarettes;
- measures to approximate the excise duties on cigarettes in the Internal Market should be combined with a reinforcement of the fight against illicit trade, in particular from third countries;
- lastly, the existing definitions of cigars and pipe tobacco should be amended in order to eliminate tax distortions and the minimum rates adjusted for inflation.

Excise duty: structure and rates applied on manufactured tobacco

PURPOSE: to amend provisions relating to the structure and rates of excise duty applied to manufactured tobacco.

PROPOSED ACT: Council Directive.

BACKGROUND: smoking remains the biggest single form of avoidable death in the Community and one of the leading causes of morbidity and mortality in the EU. The Community records around 650 000 smoking-related deaths every year. Taxation forms part of an overall strategy of prevention and dissuasion. According to the World Bank price increases of tobacco products are the single most effective intervention preventing smoking. A price increase of 10% decreases consumption, on average, by about 4% in high income countries among adults.

A number of EU tax provisions, dating back to 1993, exist that seek to reduce the amount of smoking. In accordance with these provisions the Commission has held a four-yearly review of existing legislation. In July the Commission presented a fourth such report suggesting a number of significant amendments to existing Community legislation in order to modernise the existing rules and to ensure a level playing field for tobacco manufacturers and operators.

In accordance with the current system established by Council Directive 92/79/EEC on the approximation of taxes on cigarettes and Council Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes, the European Commission is required to examine every four years the smooth operation of the single market, the real value of excise-duty rates and the wider objectives of the Treaty.

CONTENT: this proposal for a Directive suggests a number of important amendments to existing Community legislation in order to modernise and simplify the existing rules, make them more transparent and better integrate public health concerns. In addition, it also deals with the alignment of excise duties for fine-cut smoking tobacco ("roll-your-own") with excise duties for cigarettes.

The proposed amendments are the result of an in-depth examination conducted by the Commission. The conclusions of this examination are set out in the attached Commission report.

Based on the above, the Commission makes the following proposals:

- to abolish the "most popular price category" (MPPC) as a reference point for EU minimum requirements on excise duties and for measuring the importance of specific excise duty within the total tax burden: currently, excise duties levied on cigarettes must account for at least 57% of price, and must be at least EUR 64 per 1000 cigarettes, for products falling under the "most popular price category" in that country. The Commission proposes replacing the most popular price category with a weighted average price of all cigarettes for determining the tax base. In order to underscore health objectives it will be combined with a monetary minimum tax applicable to all cigarettes;
- to increase gradually the minimum requirement for cigarettes in line with internal market objectives and health considerations: the current percentage of 57% will be increased to 63% of the weighted average price and the rate of 64 will rise to EUR 90 for all cigarettes by 2014, under the new proposal. It is estimated that this will contribute to a 10% decrease in tobacco consumption in most Member States within the next 5 years;
- to allow Member States greater flexibility to apply specific duties and to levy minimum excise duties on cigarettes: the Commission proposes to abolish the existing rule which forbid Member States to levy a minimum excise tax higher than 100% of the total excise on the most popular price category. Furthermore, the Commission proposes to widen the band of the specific component of the excise duty from 5% - 55% to 10% - 75%;
- to bring gradually the minimum rates for fine-cut tobacco intended for the rolling of cigarettes into line with the rate for cigarettes: it is proposed to introduce a compulsory monetary and ad-valorem minimum requirement for fine-cut tobacco. In order to respect a two thirds relationship between fine-cut and cigarettes, the monetary minimum requirement should be fixed at EUR 43 per kilogram and the proportional minimum requirement at 38%;
- to adjust for inflation the minimum requirements for tobacco products other than cigarettes and fine-cut tobacco intended for the rolling of cigarettes: the rate of inflation between 2003 and 2007 can be estimated at around 2% a year or at 8% over the period as a whole.

Applying this percentage to the minimum specific amounts and rounding up to the nearest unit gives EUR 12 for cigars and cigarillos and EUR 22 for other smoking tobacco;

- to amend the definition of cigarettes, cigars and other tobacco products and monitoring the arrangements for tobacco taxation: for cigars and cigarillos, the proposal amends the definition of these products, so as to ensure that the lower minimum rate is restricted to "traditional cigars and cigarillos". The definition of pipe tobacco will also be adapted to better differentiate between pipe tobacco and fine-cut tobacco, as a number of Member States have reported tobacco being sold as pipe tobacco when its primary purpose is for hand-rolling or tubing of cigarettes.

Excise duty: structure and rates applied on manufactured tobacco

The Committee on Economic and Monetary Affairs adopted the report drawn up by Zsolt László BECSEY (EPP-ED, HU) amending the proposal for a Council directive amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco.

The main amendments are as follows:

Cigarettes: MEPs consider that, in the internal market, the minimum level should be specified only as a fixed amount per each unit of tobacco. Therefore, by 1 January 2012, Member States shall ensure that excise duty shall not be less than EUR 64 per 1 000 cigarettes for all types of cigarettes. As from 1 January 2014, all the Member States shall ensure that excise duty on all categories of cigarettes shall not be less than EUR 75 per 1 000 cigarettes or EUR 8 more than the level of 1 January 2010.

To avoid any abuse with the abolishment of the minimum excise incidence expressed as a percentage of the retail price, and a more moderate increase in the minimum excise duty rate, and also to avoid further increase in price differences between neighbouring Member States, Member States in which the excise duty applied on 1 January 2009 for any retail selling price category is higher than EUR 64 per 1 000 cigarettes shall not reduce their level of excise duty.

Transparency: according to MEPs, transparency and the interests of the public, the operators and the Member States require that the minimum European taxation level on cigarettes be officially published by the Commission in a clear and simple form.

Fine-cut smoking tobacco: the amended text provides that, as from 1 January 2014, Member States shall apply an excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes of at least EUR 50 per kilogram or 6% more than the level of 1 January 2012. As from 1 January 2012, Member States shall apply an excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes of either at least EUR 43 per kilogram or 20% more than the level of 1 January 2010.

Specific component of the excise duty: according to MEPs, by fixing the minimum and the maximum share of the specific component of the excise duty at 10% and 55% of the amount of the total tax burden, respectively, they can fulfil two objectives: (1) to achieve a moderate convergence of the excise structure; and (2) to maintain the two component excise duty in all the Member States and avoid the change in the competitive situation between cigarette producers.

Legitimate objectives to be taken into account: whilst acknowledging the need to pursue legitimate health objectives in all areas of EU intervention, the report underlines the importance of taking into account, when legislating in the area of excise duties, other equally legitimate objectives of the Union. Therefore, any change in this area of EU legislation must take into account the situation prevailing for each of the various tobacco products and should be complementary to the ban of tobacco advertising and to the launching of education campaigns. Account should also be taken of the need to fight against smuggling from third countries and organised crime, the enlargement of the Schengen-zone and the need to enlarge the Euro-zone.

Excise duty: structure and rates applied on manufactured tobacco

The European Parliament adopted by 525 votes to 103, with 45 abstentions, a legislative resolution amending, under the consultation procedure, the proposal for a Council directive amending Directives 92/79/EEC, 92/80/EEC and 95/59/EC on the structure and rates of excise duty applied on manufactured tobacco.

The main amendments are as follows:

Cigarettes: MEPs consider that, in the internal market, the minimum level should be specified only as a fixed amount per each unit of tobacco. Therefore, by 1 January 2012, Member States shall ensure that excise duty shall not be less than EUR 64 per 1 000 cigarettes for all types of cigarettes. As from 1 January 2014, all the Member States shall ensure that excise duty on all categories of cigarettes shall not be less than EUR 75 per 1 000 cigarettes or EUR 8 more than the level of 1 January 2010.

Member States in which the excise duty applied on 1 January 2009 for any retail selling price category is higher than EUR 64 per 1 000 cigarettes shall not reduce their level of excise duty.

Transparency: the Commission shall calculate and publish, for purposes of information, the EU floor price for cigarettes, expressed in euros or another national currency, adding the excise duty and VAT levied on a nominal packet of cigarettes of a value of EUR 0 pre-tax.

Fine-cut smoking tobacco: the amended text provides that, as from 1 January 2014, Member States shall apply an excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes of at least EUR 50 per kilogram or 6% more than the level of 1 January 2012. As from 1 January 2012, Member States shall apply an excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes of either at least EUR 43 per kilogram or 20% more than the level of 1 January 2010.

Tobacco prevention: an amendment aims to align tobacco prevention policies as outlined in Council Recommendation 2003/54/EC with Directive 95/59 in order to improve tobacco control. It provides that the directive may not hinder implementation of national systems regarding the implementation by a Member State's competent authority of appropriate threshold price measures applicable to all tobacco products, in the context of that Member State's public health policy, in order to discourage tobacco consumption, especially by the young, provided that they are compatible with Community legislation.

Specific component of the excise duty: according to MEPs, by fixing the minimum and the maximum share of the specific component of the excise duty at 10% and 55% of the amount of the total tax burden, respectively, they can fulfil two objectives: (1) to achieve a moderate convergence of the excise structure; and (2) to maintain the two component excise duty in all the Member States and avoid the change in the competitive situation between cigarette producers.

MEPs added that the specific component of the excise duty shall not be less than 10% as from 1 January 2014 and shall not be more than 60% of the amount of the total tax burden resulting from the aggregation of the specific excise duty and the proportional excise duty and the value added tax levied on the weighted average retail selling price.

Excise duty: structure and rates applied on manufactured tobacco

The Council examined a draft directive aimed at updating EU rules on the structure and rates of excise duties on tobacco products.

The draft directive is intended to modernise and simplify the existing rules, whilst making them more transparent. In particular, it is aimed at bringing minimum excise duties for fine-cut tobacco gradually closer to those for cigarettes.

The text is also aimed at ensuring a higher level of public health protection by raising minimum rates for tobacco products.

The Council requested the Permanent Representative Committee to examine further the draft directive, on the basis of progress made by ministers, so as to enable it to reach an agreement at one of its forthcoming sessions.

Excise duty: structure and rates applied on manufactured tobacco

PURPOSE: to amend Community legislation regarding excise duty on tobacco.

LEGISLATIVE ACT: Council Directive 2010/12/EU 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.

CONTENT: the Council adopted a directive updating EU rules on the structure and rates of excise duties on cigarettes and other tobacco products. The Directive is intended to ensure a higher level of public health protection by raising minimum excise duties on cigarettes, whilst bringing the minimum rates for fine-cut tobacco gradually into line with those for cigarettes.

The outcome of a fourth four-yearly review of tobacco taxation under directives 92/79, 92/80 and 95/59, the Directive is aimed at modernising and simplifying the rules and making them more transparent.

The new Directive includes the following provisions:

Cigarettes: the Council decided to increase, by 1 January 2014, the monetary minimum excise rate to EUR 90 per 1000 cigarettes and the proportional minimum to 60% of the weighted average sales price, from EUR 64 per 1000 and 57% at present. However, Member States which levy an excise duty of at least EUR 115 per 1 000 cigarettes on the basis of the weighted average retail selling price need not comply with the 60 % requirement. France may continue to apply for the period from 1 January 2010 to 31 December 2015, a reduced rate of excise duty to cigarettes released for consumption in the departments of Corsica up to an annual quota of 1 200 tonnes.

Transitional period for cigarettes: the new rules allow for transitional arrangements until 1 January 2018 for Member States that have not yet achieved, or have only recently achieved, the current minimum rates, namely Bulgaria, Greece, Estonia, Latvia, Lithuania, Hungary, Poland and Romania.

Quantitative restrictions for cigarettes: the Directive allows Member States not benefiting from the transition to impose a quantitative limit of at least 300 cigarettes on the number of cigarettes that may be brought into their territory from Member States applying transitional arrangements. It also allows Member States applying those arrangements, once their rates have reached EUR 77 per 1000 cigarettes, to apply quantitative limits with regard to Member States whose rates have not yet reached an equal monetary level.

Fine-cut tobacco: the Council decided to increase the minimum excise duty requirements for fine-cut tobacco as follows: Member States will comply with either a proportional minimum or a monetary minimum, amounting to 40% of the weighted average sales price and EUR 40 per kg on 1 January 2011, 43% and EUR 47/kg on 1 January 2013, 46% and EUR 54/kg on 1 January 2015, 48% and EUR 60/kg on 1 January 2018 and 50% and EUR 60/kg on 1 January 2020.

Report: every 4 years, the Commission shall submit to the Council a report and, where appropriate, a proposal concerning the rates and the structure of excise duty laid down in the Directive. The report by the Commission shall take into account the proper functioning of the internal market, the real value of the rates of excise duty and the wider objectives of the Treaty.

ENTRY INTO FORCE: 27/02/2010.

TRANSPOSITION: 01/01/2011.