

## COUNCIL DIRECTIVE 1999/81/EC

of 29 July 1999

**amending Directive 92/79/EEC on the approximation of taxes on cigarettes, Directive 92/80/EEC on the approximation of taxes on manufactured tobacco other than cigarettes and Directive 95/59/EC 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 93 thereof,

Having regard to the proposal from the Commission <sup>(1)</sup>,

Having regard to the opinion of the European Parliament <sup>(2)</sup>,

Having regard to the opinion of the Economic and Social Committee <sup>(3)</sup>,

Whereas:

- (1) in its first report on the structure and rates of excise duties, drawn up in accordance with the provisions of Directive 92/79/EEC <sup>(4)</sup> and Directive 92/80/EEC <sup>(5)</sup>, the Commission merely drew attention to certain difficulties encountered in implementing the Directives, without proposing any precise solutions;
- (2) a consultation process involving national authorities, business representatives and interest groups has since taken place;
- (3) the first stage in this consultation process was the Lisbon Conference, the purpose of which was to assess the performance of the present Community arrangements and to assist the Commission in its task of planning future excise-duty policy;
- (4) the consultation process has led to a second Commission report;
- (5) the consultation process revealed difficulties in applying the 57 % minimum incidence rule;
- (6) the rules should be interpreted and implemented more uniformly in the Member States if the internal market is to operate smoothly;
- (7) moreover, rules which can be implemented more easily in practice should be established if the internal market is to operate smoothly;

- (8) Member States should nonetheless be allowed sufficient flexibility to identify and implement policies tailored to national circumstances;
- (9) for practical reasons, Member States should be afforded some flexibility to adjust the incidence of the overall minimum excise duty in line with certain changes, including those in VAT rates;
- (10) Member States should be given the option of neutralising the impact of changes in the VAT rate on the overall minimum excise duty;
- (11) the existence of this option should not lead to distortions of competition or to malfunctioning of the internal market;
- (12) the options open to the Member States regarding the application of the Directives should be limited in time;
- (13) the situation which justified the derogation from the overall minimum excise rate of 57 % that was granted to the Kingdom of Sweden by the 1994 Act of Accession still subsists; whereas it is therefore necessary to grant the Kingdom of Sweden an extension of the derogation up to and including 31 December 2002;
- (14) it is appropriate to give France an additional period up to and including 31 December 2002 for cigarettes and tobacco products sold on the island of Corsica;
- (15) it is appropriate to give Germany an additional period to adjust its national rates for fine-cut tobacco rolls in line with Community legislation;
- (16) there is nothing to prevent Member States from being authorised to apply a minimum excise duty to cigars, cigarillos and smoking tobacco where such an option already exists for cigarettes and hand-rolling tobacco;
- (17) there is a need to establish a regular review procedure;
- (18) the present period of two years is too short for changes in the legislation of the Member States to be properly evaluated;
- (19) for this reason reviews must take place not less frequently than every three years, and for the first time not later than 31 December 2000;

<sup>(1)</sup> OJ C 203, 30.6.1998, p. 16.

<sup>(2)</sup> OJ C 153, 1.6.1999.

<sup>(3)</sup> OJ C 410, 31.12.1998, p. 1.

<sup>(4)</sup> OJ L 316, 31.10.1992, p. 8.

<sup>(5)</sup> OJ L 316, 31.10.1992, p. 10.