



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DIRECTIVE

**amending Directives 92/79/EEC and 92/80/EEC,
authorising France to prolong the application of lower rates of excise duty to tobacco
products released for consumption in Corsica**

(presented by the Commission)

EXPLANATORY MEMORANDUM

1. INTRODUCTION

Article 2 of Directive 92/79/CEE¹ provides that each Member State shall apply an overall minimum excise duty (specific duty plus ad valorem duty excluding VAT) the incidence of which shall be set at 57 % of the retail selling price (inclusive of all taxes) and not less than EUR 60 per 1000 units for **cigarettes** of the price category most in demand (referred to in what follows as CPCD cigarettes). From 1 July 2006, "EUR 60" will go up to "EUR 64". For **manufactured tobacco other than cigarettes**, Directive 92/80/EEC² lays down the following minimum rates of excise duties:

- for cigars and cigarillos: 5% of the retail selling price inclusive of all taxes, or EUR 11 per 1 000 items or per kilogram;
- for fine-cut smoking tobacco intended for the rolling of cigarettes: 32% of the retail selling price inclusive of all taxes, or EUR 27 per kilogram (these rates must go up to 36% and EUR 32 respectively from 1 July 2004);
- other smoking tobaccos: 20% of the retail selling price inclusive of all taxes, or EUR 20 per kilogram.

At the time the two Directives were adopted the Council and the Commission recorded in Council minutes that they had authorised France to keep the excise duty charged on tobacco in the Corsican departments below the level applicable elsewhere in France, provided the excise duty applicable in Corsica was gradually raised to the national level by 31 December 1997 at the latest. The authorisation was prolonged to 31 December 2002 by Directive 1999/81/EC³ by which the above Directives were amended in response to a request submitted by France whilst the Directive was before the Council.

2. TAX RULES FOR TOBACCO PRODUCTS IN CORSICA

The special rules on the taxation of tobacco products in Corsica, based on the above authorisations, are laid down in Article 268a of the French customs code. This provides that excise duty on cigarettes, fine-cut hand-rolling tobacco and other smoking tobaccos shall be set at a rate that allows the products to be sold at retail in Corsica at two-thirds of the retail selling price in mainland France. For cigars and cigarillos, the Article provides that excise duty shall be set at a rate that allows them to be sold in Corsica at a retail selling price of 85% of that in mainland France.

In application of the said Article 268a, the French Ministerial Decree of 14 January 1993 laid down the amount of excise duty to be charged per 1 000 cigarettes, this being based on the selling price charged to consumers. The following Table compares the taxation of CPCD cigarettes in Corsica and mainland France:

¹ OJ L 316, 31.10.1992, p. 8, as last amended by Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26).

² OJ L 316, 31.10.1992, p. 10, as last amended by Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26).

³ OJ L 211, 11.8.1999, p. 47, as last amended by Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26).

	Mainland France	Corsica	Minimum Community rate
	Situation at the end of 2002		
Retail selling price for CPCD cigarettes	EUR 180	EUR 120	
Amount of excise duty	EUR 106.18	EUR 38.65	EUR 60
Excise duty as a proportion of the retail selling price	58.99%	32.21%	57%
VAT (19.6%)	EUR 29.50	EUR 19.67	
Price excluding taxes	EUR 44.32	EUR 61.68	

This means that under the special tax arrangements the price in Corsica before tax is higher than in mainland France and gives producers and distributors established in Corsica larger margins.

For manufactured tobaccos other than cigarettes the Ministerial Decree of 14 January 1993 laid down a single tax rate for each category of product expressed as a proportion of the retail selling price. The Table below compares tax levels on these products in Corsica and mainland France:

	Mainland France	Corsica	Minimum Community rate
Product category	Situation at the end of 2002		
Cigars and cigarillos	20%	10%	5%
Fine-cut smoking tobacco intended for the rolling of cigarettes	51.69%	25%	32%
Other smoking tobaccos	47.43%	22%	22%

3. REQUEST FOR THE "CORSICA" DEROGATION TO BE PROLONGED

In a Memorandum of 26 July 2000 pleading recognition of Corsica's special position as an island within the European Union, and in a subsequent letter dated 5 November 2002, France asked for the existing derogations to be prolonged to 31 December 2002. It made the request because it considered that more time was needed to bring the tax rules applicable to manufactured tobaccos in Corsica into line with those applicable on the mainland.

The extra time was considered necessary in order to protect island jobs in the production and distribution of manufactured tobaccos.

Cigarette production in Corsica provided jobs for 53 people. France stressed that the additional margin resulting from the application of the derogating tax provisions

counterbalanced the higher cost of producing cigarettes on the island. Some of these higher costs were due to the lower productivity rate of the factory which, because it was small, had higher production costs (in terms of quantities produced per factory employee) than factories elsewhere in the EU. But some of the additional costs were due to the isolation and topography of the island which meant extra expenditure on transport of the raw materials (tobacco) and other essential inputs, on services needed to run the factory and on distribution of the finished products.

The tobacco products were sold by some 350 retailers who employed approximately the same number of shop assistants, mainly in the four to five-month tourist season. A fair proportion of these businesses were in the sparsely populated mountain areas where they also represented a neighbourhood service and therefore helped indirectly to keep the population from moving away. The tax derogations for tobacco products in Corsica meant that Corsican distributors could earn a bigger margin (11% of the retail selling price as opposed to 8% in mainland France) and that they obtained a large part of their income from the sale of tobacco products.

In its request of 5 November 2002 France set out the tax measures for manufactured tobaccos sold in Corsica that were to be brought in during the further transitional period it was requesting. The measures it proposed were:

Cigarettes

- Replace the current tax structures with new structures fully compliant with Community requirements (specific ad valorem duty calculated on the basis of the retail selling price for cigarettes of the most popular price category in Corsica).
- Fix the specific duty at 5% of the amount of tax levied (Community minimum).
- By the end of the five-year derogation period, ensure that the total amount of excise duty levied is at least that laid down in Directive 2002/10/EEC (EUR 64).
- By the end of the five-year derogation period, ensure that the total amount of excise duty is 44% of the price of cigarettes of the most popular price category in Corsica.
- Grant a tax derogation for a quota based on the volume of tobacco sales on the island (1200 tonnes).
- Evaluate the situation at the end of the five-year derogation period.

Other tobacco products

- For cigars and cigarillos: keep the (10%) rate applicable in Corsica up to 31 December 2002; this is higher than the minimum Community rate (5%).
- For fine-cut tobacco intended for the rolling of cigarettes: keep the (25%) rate applicable up to 31 December 2002; this is lower than the minimum Community rate (30%), but during the five-year derogation period France will aim to bring it up to the minimum Community rate (36%).
- For other smoking tobaccos: keep the (22%) rate applicable up to 31 December 2002; this is higher than the minimum Community rate (20%).

Although these latest proposals are a major improvement on France's original proposals, they still do not fully comply with the conditions originally laid down by the Commission and Council, namely, that by the end of the derogation period France must have brought the excise duties applied to cigarettes and other tobacco products in Corsica fully into line with those applicable in mainland France.

With a view to resolving the problems of non-compliance with Community requirements, a meeting between the Commission and the French Government was held on 7 January 2003.

By the end of the meeting the Commission and the French Government had reached agreement. This fulfils the Commission's requirements, allowing the latter to accept that **immediate and complete alignment** with the tax rules for tobacco in mainland France could undermine Corsica's economic and social equilibrium and to propose legislation which, provided the conditions set out below are met, permits prolongation of the tax derogation for tobacco products consumed in Corsica.

Cigarettes

- from 1 January 2003 to 31 December 2007 the total rate of excise duty applicable to cigarettes released for consumption in Corsica must be at least 35% of the price charged for cigarettes of the most popular price category in Corsica.
- From 1 January 2008 to 31 December 2009 the rate of excise duty must be at least 44% of the price charged for cigarettes of the most popular price category in Corsica.
- By the end of the derogation period the taxes applicable in Corsica must have been brought fully into line with those applicable in mainland France.
- Reduced rates of excise duty may be applied only to an annual quota of 1200 tonnes. This quota is for all cigarettes released for consumption on the island, whether produced there or elsewhere.

Other tobacco products

- The reduced rate proposed by France in its application for a derogation in the letter dated 5 November 2002 will apply.
- The reduced rate of excise duty will apply for the period from 1 January 2003 to 31 December 2009.
- By the end of this period the taxes applied in Corsica must have been brought fully into line with those applicable in mainland France.

4. OBSERVATIONS ON THE PROPOSALS

Article 1 authorises France to continue applying a lower rate of excise duty until 31 December 2009 to cigarettes released for consumption in Corsica. It lays down the minimum rate of excise duty with which France has to comply and restricts application to an annual quota of 1200 tonnes.

Article 2 authorises France to continue applying a lower rate of excise duty until 31 December 2009 to manufactured tobaccos other than cigarettes released for consumption in Corsica. It lays down the minimum rate of excise duty with which France has to comply.

Articles 3, 4 and 5 are purely formal.

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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,⁴

Having regard to the opinion of the European Parliament,⁵

Having regard to the opinion of the European Economic and Social Committee,⁶

Having regard to the opinion of the Committee of the Regions,⁷

Whereas:

- (1) By the provisions of Council Directive 92/79/EEC of 19 October 1992 on the approximation of taxes on cigarettes⁸ and Council Directive 92/80/EEC of the same date on the approximation of taxes on manufactured tobacco other than cigarettes,⁹ France was authorised to continue applying up to 31 December 2002 the same rates for cigarettes and tobacco products sold in Corsica as those in force on 31 December 1997.
- (2) France considered that more time was needed to bring the taxes applied to manufactured tobaccos in Corsica into line with the taxes applicable in mainland France. Therefore, *inter alia* in a Memorandum dated 26 July 2000 pleading recognition of Corsica's special position as an island within the European Union, France requested authorisation to prolong until 31 December 2009 the application of certain tax rules derogating from the Community's requirements regarding the taxation of tobacco products.
- (3) The economic activity linked with manufactured tobaccos helps maintain economic and social equilibrium in Corsica. This is because the said activity provides a

⁴ OJ C , , p. .

⁵ OJ C , , p. .

⁶ OJ C , , p. .

⁷ OJ C , , p. .

⁸ OJ L 316, 31.10.1992, p. 8, as last amended by Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26).

⁹ OJ L 316, 31.10.1992, p. 10, as last amended by Directive 2002/10/EC (OJ L 46, 16.2.2002, p. 26).

livelihood for some 350 retailers who employ about the same number of wage earners. Quite a large proportion of the retail outlets are in the sparsely populated mountain areas where they provide a neighbourhood service and thereby helps indirectly to keep the population from moving away.

- (4) Immediate and complete alignment with the tax rules for tobacco in mainland France would depress economic activity linked to manufactured tobacco in Corsica which, at present, provides the abovementioned jobs.
- (5) Therefore, to prevent damage to the island's economic and social equilibrium, it is both essential and justifiable to grant a derogation with effect from 1 January 2003 to 31 December 2009, 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.
- (6) By the end of this derogation period the tax rules for manufactured tobaccos released for consumption in Corsica must have been brought fully into line with the rules for mainland France. Nevertheless, too abrupt a change should be avoided and there should therefore be an intermediate increase in the excise duty currently levied on cigarettes in Corsica.
- (7) To avoid undermining the smooth functioning of the internal market, the volume of cigarettes eligible for this derogating measure should be limited to an annual quota of 1200 tonnes.
- (8) Directives 92/79/EEC and 92/80/EEC therefore need to be amended.

HAS ADOPTED THIS DIRECTIVE:

Article 1

Article 3(4) of Directive 92/79/EEC is replaced by the following:

"4. By derogation from Article 2, from 1 January 2003 to 31 December 2009 France may continue to apply a reduced rate of excise duty to cigarettes released for consumption in Corsica. This rate shall apply solely to an annual quota of 1200 tonnes.

From 1 January 2003 to 31 December 2007 the reduced rate must equal at least 35% of the price for cigarettes in the price category most in demand in Corsica.

From 1 January 2008 to 31 December 2009 the reduced rate must equal at least 44% of the price for cigarettes in the price category most in demand in Corsica."

Article 2

Article 3(4) of Directive 92/80/EEC is replaced by the following:

"4. By derogation from Article 3(1), from 1 January 2003 to 31 December 2009 France may continue to apply a reduced rate of excise duty to manufactured tobaccos other than cigarettes released for consumption in Corsica. The reduced rate shall be:

- a) for cigars and cigarillos, at least 10% of the retail selling price, inclusive of all taxes, charged in Corsica;
- b) for fine-cut tobacco intended for the rolling of cigarettes, at least 25% of the retail selling price, inclusive of all taxes, charged in Corsica;
- c) for other smoking tobaccos, at least 22% of the retail selling price, inclusive of all taxes, charged in Corsica."

Article 3

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than [...]. They shall forthwith inform the Commission thereof.

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

Article 4

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

Article 5

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President