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Committee on Economic and Monetary Affairs

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DRAFT REPORT

on 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
(COM(2008)0459 – C6-0311/2008 – 2008/0150(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Zsolt László Becsey

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on 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 (COM(2008)0459 – C6-0311/2008 – 2008/0150(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2008)0459),
 - having regard to Article 93 of the EC Treaty, pursuant to which the Council consulted Parliament (C6-0311/2008),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Economic and Monetary Affairs (A6-0000/2008),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its proposal accordingly, pursuant to Article 250(2) of the EC Treaty;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to amend the Commission proposal substantially;
 5. Instructs its President to forward its position to the Council and the Commission.

Amendment 1

Proposal for a directive – amending act

Recital 2

Text proposed by the Commission

(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 152 of the EC Treaty, bearing in mind that the Community is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), different changes should be made in the matter.

Amendment

(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 152 of the EC Treaty, bearing in mind that the Community is Party to the World Health Organization's Framework Convention on Tobacco Control (FCTC), different changes should be made in the matter.

These changes should take account of the situation prevailing for each of the various tobacco products.

These changes should, *where appropriate*, take account of *the smoking ban and the situation prevailing for each of the various tobacco products and should be complementary to the ban on 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 and the establishment and enlargement of the Schengen area.*

Or. en

Justification

It is exaggerated to state that taxation has a strong influence on the reduction of smoking. Other elements such as education, prohibition or change in social habits can also have important influence on it.

Low prices in neighbouring countries that border new Member States require moderation of price increases, which, above a minimum level, will have effects on the internal market. The proper functioning of the Schengen-zone should not be affected by police and customs controls in bordering regions only to protect the national at the expense of private consumption.

Amendment 2

Proposal for a directive – amending act Recital 3

Text proposed by the Commission

(3) As regards cigarettes, the arrangements should be simplified so as to create neutral conditions of competition for *manufactures*, 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 similar reasons, the weighted average retail selling price should also serve as a reference for measuring the importance of specific*

Amendment

(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, *to ensure equal treatment of all Member States, EU tobacco growers and tobacco industry*, to underscore health objectives, *and to comply with macroeconomic objectives, such as the low inflation target, in the light of the enlargement of the euro area and the convergence of prices.* To this end, the *minimum excise duty requirement for all tobacco products in all Member States should, by 1 January*

excise duty within the total tax burden.

2014, be expressed only as a specific component levied on each unit of tobacco.

Or. en

Justification

It is necessary to abolish the transitional period after the accession of the so called new Member States and accordingly the possibility of discriminative practice by the so called old Member States in case of cross-border transfer of tobacco products for private purposes. In case of dramatic increase of excise duty and accordingly the legal consumer prices in these Member States, the production and accordingly the supply of raw tobacco will leave the EU and is deployed in its neighbouring states.

Amendment 3

**Proposal for a directive – amending act
Recital 5**

Text proposed by the Commission

(5) As regards fine-cut tobacco intended for the rolling of cigarettes, the Community minima should be expressed in such a way as to obtain effects similar to those in the field of cigarettes. To this end, it should be provided that national levels of taxation have to comply both with a minimum expressed as *percentage of the retail price and one expressed as a fixed amount.*

Amendment

(5) As regards fine-cut tobacco intended for the rolling of cigarettes, the Community minima should be expressed in such a way as to obtain effects similar to those in the field of cigarettes. To this end, it should be provided that national levels of taxation have to comply with a minimum expressed as *a specific component levied on each unit of tobacco by 1 January 2014.*

Or. en

Justification

Both for cigarettes and fine cut tobaccos the change of the minimum excise duty level expressed in Euro makes it redundant to fix the ad-valorem minimum rate.

Amendment 4

**Proposal for a directive – amending act
Recital 7**

Text proposed by the Commission

(7) Greater convergence would also help to

Amendment

(7) Greater convergence would also help to

ensure a high level of human health protection. ***The level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits.*** Fraud and smuggling undermine tax induced price levels of cigarettes and fine-cut tobacco intended for the rolling of cigarettes and thus jeopardise the achievement of tobacco control objectives.

ensure a high level of human health protection. Fraud and smuggling undermine tax induced price levels of cigarettes and fine-cut tobacco intended for the rolling of cigarettes and thus jeopardise the achievement of tobacco control objectives.

Or. en

Justification

See amendment 1

Amendment 5

Proposal for a directive – amending act Recital 8

Text proposed by the Commission

(8) In order to achieve greater convergence and to reduce consumption, the Community minimum levels of taxation for ***cigarettes and*** fine-cut tobacco intended for the rolling of cigarettes should be increased.

Amendment

(8) In order to achieve greater convergence and to reduce consumption, the Community minimum levels of taxation for fine-cut tobacco intended for the rolling of cigarettes should be ***moderately*** increased.

Or. en

Justification

Due to the fact that the cigarette minimum taxation should be fixed at 64 EUR per 1000 pieces for all cigarettes, that of the fine cut tobacco should be more significantly increased and the reduction of consumption can be better achieved.

Amendment 6

Proposal for a directive – amending act Recital 10

Text proposed by the Commission

(10) 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***; and 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.

Amendment

(10) In the interests of uniform and fair taxation, the definition of cigarettes 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; and 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.

Or. en

Justification

The categorization should be established on the actual content of the tobacco product instead of its visible appearance or way of production.

Amendment 7

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/79/EEC

Article 2 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that excise duty (***specific duty and ad valorem duty***) ***on cigarettes represents at least 57 % of the weighted average retail selling price of cigarettes sold. That excise duty*** shall not be less than EUR 64 per 1 000 cigarettes ***irrespective of the weighted average retail selling price.***

Amendment

1. ***By 1 January 2014***, Member States shall ensure that excise duty shall not be less than EUR 64 per 1 000 cigarettes ***for all types of cigarettes.***

However, Member States which levy an excise duty of at least EUR 101 per 1 000 cigarettes on the basis of the weighted average retail selling price need not comply with the 57% requirement set out in the first subparagraph.

Where the lowest retail selling price applied on 1 January 2009 exceeds EUR 100, the price increase shall be no more than EUR 10 until 1 January 2014.

Member States that already have a minimum rate of excise duty shall not raise the level of that duty by more than 12 % between 1 January 2009 and 1 January 2014. In the event of the introduction of a minimum rate of excise duty, such duty shall be no more than 100 % of the weighted average retail selling price.

Or. en

Justification

In the internal market the minimum level should be specified only with specific rates (See amendment 3.) For the convergence of prices, the increase of high taxation level countries taxation should be moderated.

Amendment 8

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/79/EEC

Article 2 – paragraph 2

Text proposed by the Commission

Amendment

2. As from 1 January 2014, Member States shall ensure that excise duty (specific duty and ad valorem duty) on cigarettes represents at least 63 % of the weighted average retail selling price of cigarettes sold. That excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.

deleted

However, Member States which levy an excise duty of at least EUR 122 per 1 000 cigarettes on the basis of the weighted average retail selling price need not

comply with the 63% requirement set out in the first subparagraph.

Or. en

Justification

See amendments 3 and 7.

Amendment 9

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/79/EEC

Article 2 – paragraph 3

Text proposed by the Commission

3. The weighted average retail selling price shall be determined at 1 January of each year, by reference to the **year n-1**, on the basis of the total releases for consumption, and prices including all taxes.

Amendment

3. The weighted average retail selling price shall be determined at 1 January of each year, by reference to the **year n-2**, on the basis of the total releases for consumption, and prices including all taxes.

Or. en

Justification

As the weighted average retail selling price is necessary only in case of the probable introduction of minimum excise tax it is more feasible to determine it by reference to the year n-2, because by that time definitive statistics are already available.

Amendment 10

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/79/EEC

Article 2 – paragraph 4

Text proposed by the Commission

4. By way of derogation from paragraph 2 the second and third subparagraphs of this paragraph shall apply.

Poland, Hungary and Slovakia shall be

Amendment

deleted

authorised to bring into force the provisions necessary to comply with paragraph 2 by 31 December 2014 at the latest; they shall apply those provisions from 1 January 2015.

Romania, Bulgaria, Lithuania, Estonia and Latvia shall be authorised to bring into force the provisions necessary to comply with paragraph 2 by 31 December 2015 at the latest; they shall apply those provisions from 1 January 2016.

Or. en

Justification

With the lower speed to achieve the minimum rates no transitional period is required.

Amendment 11

Proposal for a directive – amending act

Article 1 – point 1

Directive 92/79/EEC

Article 2 – paragraph 5

Text proposed by the Commission

5. Member States shall gradually increase excise duties in order to reach the requirements referred to in *paragraph 2 on the dates set in paragraphs 2 and 4 respectively.*

Amendment

5. Member States shall gradually increase excise duties in order to reach the requirements referred to in *paragraph 1 by 1 January 2014.*

Member States where 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 the level of excise duty.

Or. en

Justification

To avoid any abuse with the abolishment of ad-valorem minimum and more moderate increase in the minimum excise duty rate and to avoid further increase in price differences between neighbouring Member States the introduction of these measures are indispensable.

Amendment 12

Proposal for a directive – amending act

Article 1 – point 2

Directive 92/79/EEC

Article 2a

Text proposed by the Commission

Amendment

Article 2a is replaced by the following:

deleted

“Article 2a

1. Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the excise duty below the levels specified in paragraphs 1 and 2 of Article 2 respectively, the Member State concerned may refrain from adjusting that duty until no later than 1 January of the second year following that in which the change occurs.

2. Where a Member State increases the rate of value-added tax on cigarettes, it may reduce the excise duty up to an amount which, expressed as a percentage of the weighted average retail selling price, is equal to the increase in the rate of value added tax, also expressed as a percentage of the weighted average retail selling price, even if such an adjustment has the effect of reducing the excise duty to below the levels, expressed as a percentage of the weighted average retail selling price, laid down in paragraphs 1 and 2 of Article 2 respectively.

However, the Member State shall raise that duty again so as to reach at least those levels no later than 1 January of the second year after that in which the reduction took place.”

Or. en

Justification

The timing for updating weighted average retail selling price see amendment 7.

Amendment 13

Proposal for a directive – amending act

Article 2 – point 1

Directive 92/80/EEC

Article 3(1)

Text proposed by the Commission

Amendment

As from 1 January 2010, Member States shall apply an excise duty on fine-cut smoking tobacco intended for the rolling of cigarettes of at least 38% of the retail selling price inclusive of all taxes, and at least EUR 43 per kilogram.

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 ***42% of the retail selling price inclusive of all taxes, and at least EUR 60*** per kilogram.

Member States shall gradually increase excise duties in order to reach ***the*** new minimum requirements ***referred to in the ninth subparagraph on*** 1 January 2014.

As from 1 January 2010, the excise duty expressed ***as a percentage***, as an amount per kilogram or for a given number of items shall be at least equivalent to the following:

(a) in the case of cigars or cigarillos, ***5% of the retail selling price inclusive of all taxes or*** EUR 12 per 1 000 items or per kilogram;

As from 1 January 2014, 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 12 % more than the level of 1 January 2010. Those Member States that already have minimum specific rate of excise duty shall not raise its level by more than 12 % between 1 January 2009 and 1 January 2014. In the event of the introduction of a minimum specific rate of excise duty in a Member State, it shall be no more on 1 January 2014 than 100 % of the weighted average retail selling price.***

Member States shall gradually increase excise duties in order to reach ***those*** new minimum requirements ***by*** 1 January 2014.

As from 1 January 2010, the excise duty expressed as an amount per kilogram or for a given number of items shall be at least equivalent to the following:

(a) in the case of cigars or cigarillos EUR 12 per 1 000 items or per kilogram. ***In the event that Member States decide to increase the specific rate on cigars and cigarillos, the increase by 1 January 2014 shall be no more than 130 % of the***

(b) in the case of smoking tobaccos, other than fine-cut smoking tobacco intended for the rolling of cigarettes, 20% of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

specific level of 1 January 2009;

(b) in the case of smoking tobaccos, other than fine-cut smoking tobacco intended for the rolling of cigarettes, 20% of the retail selling price inclusive of all taxes, or EUR 22 per kilogram.

Or. en

Justification

Moderate convergence is achieved by these amendments. If Member States authority considers cigar or cigarillos to have substitutive effect with cigarettes, its price increase should have a ceiling to avoid punishment in these industry.

Amendment 14

Proposal for a directive – amending act

Article 3 – point 1

Directive 95/59/EC

Article 3

Text proposed by the Commission

Amendment

(1) Article 3 is replaced by the following:

deleted

"Article 3

The following shall be deemed to be cigars or cigarillos if they can and, given their properties and normal consumer expectations, are intended to be smoked as they are:

(a) rolls of tobacco with an outer wrapper of natural tobacco;

(b) rolls of tobacco with a threshed blend filler and with an outer wrapper of the normal colour of a cigar, of reconstituted tobacco, covering the product in full, including where appropriate the filter but not, in the case of tipped cigars, the tip, where the unit weight, not including filter or mouth-piece, is not less than 2.3 g and the circumference over at least one third of the length is not less than 34 mm."

Justification

See amendment 6.

Amendment 15**Proposal for a directive – amending act****Article 3 – point 5**

Directive 95/59/EC

Article 16 – paragraph 1

Text proposed by the Commission

1. The specific component of the excise duty *may not be less than 10% and more than 75%* of the amount of the total tax burden resulting from the aggregation of the following:

- (a) specific excise duty;
- (b) the proportional excise duty and the value added tax levied on the weighted average retail selling price .

The average weighted retail selling price shall be determined at 1 January of each year, by reference to the year *n-1*, on the basis of the total releases for consumption, and prices including all taxes.

Amendment

(1) The specific component of the excise duty *shall be no more than 55 %* of the amount of the total tax burden resulting from the aggregation of the following:

- (a) specific excise duty;
- (b) the proportional excise duty and the value added tax levied on the weighted average retail selling price.

The average weighted retail selling price shall be determined at 1 January of each year, by reference to the year *n-2*, on the basis of the total releases for consumption, and prices including all taxes.

Or. en

Justification

By fixing the maximum rate of ad-valorem duty in 55 %, we can maintain the two component excise duty in all the Member States and avoid the change in the competitive situation between cigarette producers.

Amendment 16**Proposal for a directive – amending act****Article 3 – point 5**

Directive 95/59/EC

Article 16 – paragraph 2

Text proposed by the Commission

Amendment

2. By way of derogation from paragraph 1, where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the specific component of the excise duty, expressed as a percentage of the total tax burden, below 10% or above 75% of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until not later than 1 January of the second year following that in which the change occurs.

deleted

Or. en

Justification

See amendment 15.

EXPLANATORY STATEMENT

Summary of the Commission proposal

The Commission proposal is presented as an amendment to the current EU excise duty legislation on tobacco. The draft Directive foresees a gradual increase in the EU minimum taxation levels on cigarettes and fine cut tobacco up to 2014. It also updates the definitions of different types of tobacco products. According to the Commission, this proposal will narrow differences between Member States' tobacco taxation levels and will help tackle intra-EU tobacco smuggling. With its proposal, the Commission also expects to contribute to reducing tobacco consumption by 10% within the next 5 years.

In a nutshell, the Commission proposes:

- To abolish the MPPC benchmark ("most popular price category") 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. According to the Commission, the MPPC, as benchmark for minimum rates, is not in line with Internal Market objectives as it entails a partition of the tobacco markets of the Member States.
- To increase gradually the minimum tax levels for cigarettes in line with internal market objectives and health considerations.
- To allow Member States greater flexibility to apply specific duties and to levy minimum excise duties on cigarettes. In order to avoid a situation of purely specific taxation in one Member State and purely *ad valorem* taxation in a neighbouring Member State, which would result in cross border flow for premium brands from the first to the second Member State with bottom priced brands flowing in the opposite direction, some consistency of excise tax structures remains desirable, according to the Commission. Therefore it is proposed to widen the band from 5% - 55% to 10% - 75% of the total tax burden.
- To bring gradually the minimum rates for fine-cut tobacco intended for the rolling of cigarettes into line with the rate for cigarettes.
- 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 is estimated by the Commission 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 €12 for cigars and cigarillos and €22 for other smoking tobacco.
- To amend the existing definition of cigarettes, cigars and other smoking tobacco.

Assessment and recommendations by the draftsman

Whilst acknowledging the need to pursue legitimate health objectives in all areas of EU intervention, your draftsman wishes to underline the importance of taking into account, when legislating in the area of excise duties, other equally legitimate objectives of the Union. 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.

As regards cigarettes, your draftsman shares the Commission's views that the arrangements should be simplified. That is why your draftsman proposes a substantial simplification of the excise duties structure with the aim of reaching the following objectives:

- to create neutral conditions of competition for manufactures
- to reduce the partitioning of the tobacco markets
- to ensure equal treatment of all Member States
- to underscore health objectives, and
- last but not the least, to comply with macroeconomic objectives, and in particular with inflation targets.

Furthermore, when fixing the minimum excise duty requirements, account should be taken of the interest of the EU tobacco growers and tobacco industry.

To this end, the minimum excise duty requirement for all products and for all Member States should be only expressed as a specific component levied on each unit of the product by 1 January 2014. As from this date, minimum excise duty requirements expressed as a percentage of the retail selling price should therefore be abolished. Only one minimum excise duty will be applicable for all products and for all Member States.

As regards cigarettes, Member States, where the excise duty applied by 1 January 2009 on any retail selling price category is higher than EUR 64, shall not be allowed to reduce such excise duty. In order to moderate the price increase in high taxation countries and to promote convergence, your draftsman suggests that the excise duty should maintain its two component nature and the maximum level of the *ad valorem* part should thus not be higher than 55 % of the retail selling price. For the same reason, the minimum excise tariff (if it exists) cannot be higher than 100 % of weighted average retail selling price.

Here is a summary of your draftsman's proposal for minimum excise duties, applicable to all products falling within the same product category and for all member States, as from 1 January 2014:

Cigarettes
EUR 64 per 1000 cigarettes

Fine-cut smoking tobacco intended for the rolling of cigarettes
EUR 43 per kilogram or by 12 % more than the level of 1 January 2010.

As from 1 January 2010:

Cigars or cigarillos

EUR 12 per 1 000 items or per kilogram, but maximum 130 % of the national level on 1 January 2010 by 1 January 2014.

Smoking tobacco other than fine-cut smoking tobacco intended for the rolling of cigarettes

EUR 22 per kilogram

Moreover, your draftsman proposes not to accept the change of definition as regards cigars and cigarillos, since he is not convinced that the taxation of a product be based on the external, visible appearance of a tobacco product rather than on its actual composition.