COUNCIL DIRECTIVE 92/78/EEC

of 19 October 1992

amending Directives 72/464/EEC and 79/32/EEC on taxes other than turnover taxes which are levied on the consumption of manufactured tobacco

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 99 thereof,

Having regard to the proposal from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

Whereas Directive 72/464/EEC (4) lays down general provisions concerning excise duties on manufactured tobacco and special provisions concerning the structure of excise duties applicable to cigarettes;

Whereas Directive 79/32/EEC (5) laid down the definitions of the various groups of manufactured tobacco;

Whereas the definition of manufactured tobacco should no longer extend to snuff and chewing tobacco;

Whereas in Article 3 (1) of Directive 72/464/EEC and in Article 1 (1) of Directive 79/32/EEC a distinction needs to be made between fine-cut tobacco for the rolling of cigarettes and other smoking tobacco;

Whereas in Article 4 (1) and 6 (2) of Directive 72/464/EEC the concept of import and release for consumption needs to be modified in connection with the abolition of fiscal frontiers;

Whereas in Article 5 (1) of Directive 72/464/EEC a manufacturer needs to be defined as a natural or legal person who actually prepares tobacco products and sets the maximum retail selling price for each of the Member States for which the products in question are to be released for consumption;

Whereas a majority of Member States grant exemptions from excise duty or make refunds of excise duty in respect of certain types of manufactured tobacco depending on the use which is made of them, and whereas the exemptions or refunds for particular uses need to be specified in this Directive;

Whereas the definitions of tobacco products are all-embracing and therefore the reference to subheading 24.02 E of the Common Customs Tariff should be deleted from Article 2 (3) and (4) of Directive 79/32/EEC;

Whereas rolls of tobacco capable of being smoked as they are after simple handling should also be deemed to be cigarettes for the purposes of uniform taxation of these products;

Whereas Germany should be authorized to tax rolls at least at the rate or amount applicable to fine-cut tobacco for the rolling of cigarettes until 31 December 1998 at the latest;

Whereas Articles 5, 6, 7 (3) and 8 of Directive 79/32/EEC have lapsed and should be deleted,

HAS ADOPTED THIS DIRECTIVE:

Article 1

Directive 72/464/EEC is hereby amended as follows:

1. Article 2 shall be deleted;

2. Article 3 shall be amended as follows:

   (a) point (c) of paragraph 1 shall be replaced by the following:

   '(c) smoking tobacco:

   — fine-cut tobacco for the rolling of cigarettes,

   — other smoking tobacco';

   (b) points (d) and (e) shall be deleted;

3. Article 4 (1) shall be amended as follows:

   the phrase 'national and imported cigarettes' shall be replaced by 'cigarettes manufactured in the Community and those imported from non-member countries';

4. Article 5 (1) shall be replaced by the following:

   '1. Manufacturers established in the Community, or, where appropriate, their representatives or authorized agents in the Community and importers of tobacco from non-member countries shall be free to determine the maximum retail selling price for each of their

(1) OJ No C 322, 21. 12. 1990, p. 16.
(2) OJ No C 94, 13. 9. 1992, p. 33.
(3) OJ No C 69, 18. 3. 1991, p. 25.
(4) OJ No L 303, 31. 12. 1972, p. 1. Last amended by Directive 86/246/EEC (OJ No L 164, 20. 6. 1986, p. 26).
(5) OJ No L 10, 16. 1. 1979, p. 8. Amended by Directive 80/369/EEC (OJ No L 90, 3. 4. 1980, p. 42) and by the Act of Accession of Spain and Portugal.