

II

(Acts whose publication is not obligatory)

COUNCIL

SECOND COUNCIL DIRECTIVE

of 18 December 1978

on taxes other than turnover taxes which affect the consumption of manufactured tobacco

(79/32/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 99 and 100 thereof,

Having regard to Council Directive 72/464/EEC of 19 December 1972 on taxes other than turnover taxes which affect the consumption of manufactured tobacco⁽¹⁾, as amended by Directives 74/318/EEC⁽²⁾, 75/786/EEC⁽³⁾, 76/911/EEC⁽⁴⁾, and 77/805/EEC⁽⁵⁾,

Having regard to the proposal from the Commission⁽⁶⁾,

Having regard to the opinion of the European Parliament⁽⁷⁾,

Having regard to the opinion of the Economic and Social Committee⁽⁸⁾,

Whereas there are several types of manufactured tobacco, distinguished by their characteristics and by the way in which they are used;

Whereas these different types of manufactured tobacco should be defined;

Whereas for economic reasons temporary derogations should be provided for certain Member States,

HAS ADOPTED THIS DIRECTIVE:

Article 1

1. For the purpose of applying Article 3 (2) of Directive 72/464/EEC:

- (a) cigars and cigarillos,
- (b) cigarettes,
- (c) smoking tobacco,
- (d) snuff,
- (e) chewing tobacco,

as defined in Articles 2 to 6, shall be deemed to be manufactured tobacco.

2. Notwithstanding existing Community provisions, the definitions referred to in Articles 2 to 6 shall be without prejudice to the choice of system or the level of taxation which shall apply to the different groups of products referred to in these Articles.

Article 2

The following shall be deemed to be cigars or cigarillos if they can be smoked as they are:

1. rolls of tobacco made entirely of natural tobacco;
2. rolls of tobacco with an outer wrapper of natural tobacco;
3. rolls of tobacco with an outer wrapper of the normal colour of a cigar, and a binder, of reconstituted tobacco, falling within subheading 24.02 E of the Common Customs Tariff, where at least 60 % by weight of the tobacco particles are both wider

⁽¹⁾ OJ No L 303, 31. 12. 1972, p. 1.

⁽²⁾ OJ No L 180, 3. 7. 1974, p. 30.

⁽³⁾ OJ No L 330, 24. 12. 1975, p. 51.

⁽⁴⁾ OJ No L 354, 24. 12. 1976, p. 33.

⁽⁵⁾ OJ No L 338, 28. 12. 1977, p. 22.

⁽⁶⁾ OJ No C 72, 27. 6. 1974, p. 15.

⁽⁷⁾ OJ No C 155, 9. 12. 1974, p. 73.

⁽⁸⁾ OJ No C 125, 16. 10. 1974, p. 38.

and longer than 1.75 mm and where the wrapper is fitted in spiral form with an acute angle of at least 30° to the longitudinal axis of the cigar;

4. rolls of tobacco with an outer wrapper, of the normal colour of a cigar, of reconstituted tobacco, falling within subheading 24.02 E of the Common Customs Tariff, where the unit weight, not including filter or mouth-piece, is not less than 2.3 g and if at least 60 % by weight of the tobacco particles are both wider and longer than 1.75 mm and the circumference over at least one third of the length is not less than 34 mm.

Article 3

1. Rolls of tobacco capable of being smoked as they are and which are not cigars or cigarillos as defined in Article 2 shall be deemed to be cigarettes.

2. A roll of tobacco referred to in paragraph 1 shall, for excise duty purposes, be considered as two cigarettes where, excluding filter or mouthpiece, it is longer than 9 cm but not longer than 18 cm, as three cigarettes where, excluding filter or mouthpiece, it is longer than 18 cm but not longer than 27 cm, and so on.

Article 4

The following shall be deemed to be smoking tobacco:

1. tobacco which has been cut or otherwise split, twisted or pressed into blocks and is capable of being smoked without further industrial processing;
2. tobacco refuse put up for retail sale which does not fall under Articles 2 and 3 and which can be smoked.

Article 5

Tobacco in the form of rolls, sticks, strips, cubes or blocks, which is put up for retail sale and specially prepared to be chewed but not smoked, shall be deemed to be chewing tobacco.

Article 6

Tobacco in powder or grain form which is specially prepared to be taken as snuff but not smoked, shall be deemed to be snuff.

Article 7

1. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria in Article 2 shall be treated as cigars and cigarillos provided they have respectively:

- a wrapper of natural tobacco,
- a wrapper and binder of tobacco, both of reconstituted tobacco,

— a wrapper of reconstituted tobacco.

2. Products consisting in whole or in part of substances other than tobacco but otherwise conforming to the criteria of Article 3 or 4 shall be treated as cigarettes and smoking tobacco.

Notwithstanding the first subparagraph, products containing no tobacco and used exclusively for medical purposes shall not be treated as manufactured tobacco.

3. Products consisting in part of substances other than tobacco but otherwise conforming to the criteria of Articles 5 or 6 shall be treated as chewing tobacco or snuff as the case may be.

Article 8

1. Notwithstanding Article 2, the Federal Republic of Germany shall be authorized to treat in the same way as cigars, rolls of tobacco without a binder, the outer wrapping of which is fitted in spiral form at an angle of less than 30° to the longitudinal axis, but which otherwise meet the requirements referred to in Article 2 (3) and rolls of tobacco the circumference of which is not less than 34 mm over at least one third of their length but which otherwise meet the requirements referred to in Article 2 (4).

2. Notwithstanding Article 2 (3), Denmark shall be authorized to treat rolls of tobacco as cigars if at least 60 % by weight of the tobacco particles are both wider and longer than 1.19 mm but not wider and longer than 1.75 mm, but which otherwise meet the requirements of Article 2 (3).

3. Notwithstanding Article 3 (2), Denmark shall be authorized to treat a cigarette not longer than 10 cm, excluding filter or mouthpiece, as a single cigarette.

4. On expiry of the second stage of the harmonization of the structures of excise duty on manufactured tobacco defined by Directive 77/805/EEC, and at the latest by 31 December 1981, the Member States referred to in paragraphs 1, 2 and 3 shall abolish the derogations provided for in these paragraphs.

Article 9

1. The Member States shall bring into force the laws, regulations or administrative provisions necessary to comply with this Directive not later than 1 January 1980. They shall forthwith inform the Commission thereof.

2. Denmark shall not be obliged to apply the provisions of this Directive to Greenland.

3. Member States shall communicate to the Commission the texts of the main provisions of

national law which they adopt in the field governed
by this Directive.

Done at Brussels, 18 December 1978.

Article 10

This Directive is addressed to the Member States.

For the Council

The President

H.-D. GENSCHER
