

Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (codification)

CHAPTER 3

PROVISIONS APPLICABLE TO CIGARETTES

Article 7

1 Cigarettes manufactured in the Union and those imported from third countries shall be subject to an *ad valorem* excise duty calculated on the maximum retail selling price, including customs duties, and also to a specific excise duty calculated per unit of the product.

Notwithstanding the first subparagraph, Member States may exclude customs duties from the basis for calculating the *ad valorem* excise duty on cigarettes.

2 The rate of the *ad valorem* excise duty and the amount of the specific excise duty must be the same for all cigarettes.

3 At the final stage of harmonisation of structures, the same ratio shall be established for cigarettes in all Member States between the specific excise duty and the sum of the *ad valorem* excise duty and the turnover tax, in such a way that the range of retail selling prices reflects fairly the difference in the manufacturers' delivery prices.

4 Where necessary, the excise duty on cigarettes may include a minimum tax component, provided that the mixed structure of taxation and the band of the specific component of the excise duty as laid down in Article 8 is strictly respected.

Article 8

1 The percentage of the specific component of excise duty in the amount of the total tax burden on cigarettes shall be established by reference to the weighted average retail selling price.

2 The weighted average retail selling price shall be calculated by reference to the total value of all cigarettes released for consumption, based on the retail selling price including all taxes, divided by the total quantity of cigarettes released for consumption. It shall be determined by 1 March at the latest of each year on the basis of data relating to all such releases for consumption made in the preceding calendar year.

3 Until 31 December 2013, the specific component of the excise duty shall not be less than 5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

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

4 From 1 January 2014, the specific component of the excise duty on cigarettes shall not be less than 7,5 % and shall not be more than 76,5 % of the amount of the total tax burden resulting from the aggregation of the following:

- a specific excise duty;
- b the *ad valorem* excise duty and the VAT levied on the weighted average retail selling price.

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5 By way of derogation from paragraphs 3 and 4, 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 the percentage of 5 % or 7,5 %, whichever is applicable, or above the percentage of 76,5 % of the total tax burden, the Member State concerned may refrain from adjusting the amount of the specific excise duty until 1 January of the second year following that in which the change occurs.

6 Subject to paragraphs 3, 4 and 5 of this Article and the second subparagraph of Article 7(1), Member States may levy a minimum excise duty on cigarettes.

Article 9

1 Member States shall apply to cigarettes minimum consumption taxes in accordance with the rules provided for in this Chapter.

2 Paragraph 1 shall apply to the taxes which, pursuant to this Chapter, are levied on cigarettes and which comprise:

- a a specific excise duty per unit of the product;
- b an *ad valorem* excise duty calculated on the basis of the maximum retail selling price;
- c a VAT proportional to the retail selling price.

Article 10

1 The overall excise duty (specific duty and *ad valorem* duty excluding VAT) on cigarettes shall represent at least 57 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 64 per 1 000 cigarettes irrespective of the weighted average retail selling price.

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 to comply with the 57 % requirement set out in the first subparagraph.

2 From 1 January 2014, the overall excise duty on cigarettes shall represent at least 60 % of the weighted average retail selling price of cigarettes released for consumption. That excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.

However, Member States which levy an excise duty of at least EUR 115 per 1 000 cigarettes on the basis of the weighted average retail selling price need not to comply with the 60 % requirement set out in the first subparagraph.

Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland and Romania shall be allowed a transitional period until 31 December 2017 in order to reach the requirements laid down in the first and second subparagraphs.

3 Member States shall gradually increase excise duties in order to reach the requirements referred to in paragraph 2 on the dates set therein.

Article 11

1 Where a change in the weighted average retail selling price of cigarettes occurs in a Member State, thereby bringing the overall excise duty below the levels specified in the first sentence of paragraph 1 and in the first sentence of paragraph 2 of Article 10 respectively, the Member State concerned may refrain from adjusting that duty until 1 January of the second year following that in which the change occurs.

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2 Where a Member State increases the rate of VAT on cigarettes, it may reduce the overall 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 VAT, also expressed as a percentage of the weighted average retail selling price, even if such an adjustment has the effect of reducing the overall excise duty to below the levels, expressed as a percentage of the weighted average retail selling price, laid down in the first sentence of paragraph 1 and in the first sentence of paragraph 2 of Article 10 respectively.

However, the Member State shall raise that duty again so as to reach at least those levels by 1 January of the second year after that in which the reduction took place.

Article 12

1 Portugal may apply a reduced rate of up to 50 % less than that laid down in Article 10 to cigarettes consumed in the most remote regions of the Azores and Madeira, made by small-scale manufacturers each of whose annual production does not exceed 500 tonnes.

2 By way of derogation from Article 10, France may continue to apply for the period from 1 January 2010 to 31 December 2015 a reduced rate of excise duty to cigarettes released for consumption in the departments of Corsica up to an annual quota of 1 200 tonnes. The reduced rate shall be:

- a until 31 December 2012, at least 44 % of the price for cigarettes in the price category most in demand in those departments;
- b from 1 January 2013, at least 50 % of the weighted average retail selling price of cigarettes released for consumption; the excise duty shall not be less than EUR 88 per 1 000 cigarettes irrespective of the weighted average retail selling price;
- c from 1 January 2015, at least 57 % of the weighted average retail selling price of cigarettes released for consumption; the excise duty shall not be less than EUR 90 per 1 000 cigarettes irrespective of the weighted average retail selling price.