



## EUROPEAN COMMISSION

Brussels, 27.6.2013  
C(2013) 3745 final

*Dear President,*

*The European Commission would like to thank the Bundesrat for its opinion on the Commission proposal for a Directive of the European Parliament and the Council on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products {COM(2012) 788 final}.*

*The Commission would like to make the following remarks on the comments provided by the Bundesrat.*

*The Commission welcomes the support by the Bundesrat for the proposed directive and its aim to protect the health of the citizens of the European Union.*

*The Bundesrat considers that it would be necessary to provide empirical evidence for a reduction of consumption caused by the combined health warnings introduced by the proposal. The Commission would like to underline that various studies have shown the effectiveness of (large) pictorial health warnings in raising awareness of the health risks of tobacco, in motivating smokers to reduce consumption or to quit, in increasing the likelihood of people not going back to smoking following an attempt to quit smoking, and in deterring young people from starting to smoke. The Framework Convention for Tobacco Control guidelines also encourages its Parties, including the EU and the Member States including Austria, "to cover as much of the principle display areas as possible", to include quit-lines on the package, and to ban promotional elements. The Commission would furthermore like to point out that there are currently disparities in national regulations on packaging and labelling which are creating market distortions and an unequal level of protection of EU consumers. The proposal would empower the Commission to adapt the text warnings to bring them in line with scientific and technical developments and to establish and adapt the picture library taking into account scientific and market developments.*

*The Bundesrat considers that measures against counterfeiting should take account of, and should build on, established technical standards. The Commission would like to stress that the proposal would confer the right to the Commission to define the technical standards for the security feature and their possible rotation and to adapt them to scientific, market and technical developments. The Commission would involve Member States in the preparation of these acts, as well as in the measures mentioned above, and*

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would ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

Finally, the Bundesrat considers that the repercussions of the proposal on intellectual property rights should be re-evaluated. The Commission would like to point out that requirements in the current Directive already restrict the use of trademarks, which was confirmed as legal by the European Court of Justice. The Court pointed out that notwithstanding the removal of a certain description from the packaging, the manufacturer may continue to distinguish its products by using other distinctive signs. This means that there is no absolute right to use trademarks and that even a prohibition of trademarks in certain circumstances can be justified provided that the measure is proportionate. Under the proposal, manufacturers of tobacco products could continue to use their trademarks on the non-regulated surface of the package, which corresponds to approximately 30% of the total surface area of the package. This will allow one tobacco company to distinguish its goods from other companies. Consumers will also be able to differentiate between different brands.

The Commission hopes that these clarifications address the comments and concerns raised in the Opinion submitted by the Bundesrat and looks forward to continuing our constructive political dialogue in the future.

Yours faithfully,

Maroš Šefčovič  
Vice-President