

Courtesy Translation

**TO**  
**MR JOSÉ MANUEL BARROSO**  
**PRESIDENT OF THE**  
**EUROPEAN COMMISSION**

**SUBJECT:** Reasoned opinion of the National Assembly of the Republic of Bulgaria on the Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products 2012/0366 (COD)

**DEAR MR BARROSO,**

On a joint session held on 27 February 2012, the Committee on European Affairs and Oversight of the European Funds and the Agriculture and Forests Committee within the National Assembly of the Republic of Bulgaria examined the Proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products 2012/0366 (COD) with regards to the principles of subsidiarity and proportionality.

Members of the two committees welcomed the initiative of the European Commission for a revision of the Tobacco Products Directive (Directive 2001/37/EC) and expressed their principal support for the aims of the proposal. Nevertheless, after examining the proposal for a directive closely, after taking under consideration the framework position of the Republic of Bulgaria, after hearing the position of the stakeholders from the industry and after a discussion within the joint session of the Committees, the Members of parliament united in the necessity to exercise the rights granted to the National Assembly by Article 6 of Protocol 2 of the Treaty on Functioning of the European Union by expressing a reasoned opinion in which are set forth the motives why the draft act in question is considered not in compliance with the principle of subsidiarity.

In the light of the above-mentioned, please find enclosed the approved report and reasoned opinion, which also reflects the Bulgarian Parliament's position on the issue.

**ENCLOSURE:** as per text.

**YOURS SINCERELY,**

**PRESIDENT OF**  
**THE NATIONAL ASSEMBLY OF**  
**THE REPUBLIC OF BULGARIA**  
**TSETSKA TSACHEVA**

**REASONED OPINION**  
**OF THE**  
**NATIONAL ASSEMBLY OF THE REPUBLIC OF BULGARIA**  
**on the Proposal for a Directive of the European Parliament and of the Council on the**  
**approximation of the laws, regulations and administrative provisions of the Member**  
**States concerning the manufacture, presentation and sale of tobacco and related**  
**products 2012/0366 (COD)**

The National Assembly of the Republic of Bulgaria (the Parliament) welcomes the European Commission's commitment to limit the use of tobacco and related products.

The Parliament is of the opinion that there is indeed justification for revising the existing regulatory regime on tobacco and related products, set forth by Directive 2001/37/EC, in view of the approximately ten-year period which has elapsed since its entry into force.

The Parliament agrees with the European Commission that, in view of improving the functioning of the internal market of the EU, it is necessary to adopt unified rules on the presentation and sale of tobacco and related products.

The Parliament finds the approach of keeping the existing regime on establishing maximum limits for yields a good one and welcomes the approach of standardizing measuring the tar, nicotine and carbon monoxide yields of cigarettes and related products, for similar products as well as across Member States.

At the same time, the Parliament deems that the proposal does not take into account to a sufficient extent the principles of subsidiarity and proportionality as laid down in Article 5 of Protocol 2 of the Treaty on the Functioning of the European Union (TFEU). In this regard, the Parliament expresses a **reasoned opinion** on the draft directive, deeming that the stipulated objectives can be better achieved at national level. In particular, we find that the proposal is in breach of the principles of subsidiarity and proportionality, since:

**(1) There is no sufficiently solid reasoning that the proposed strengthening of regulation at EU level is the best possible approach and would contribute to greatest extent to the stipulated objectives.**

We are of the opinion that there are a range of national specificities across Member States which are not taken into account to a sufficient extent and some of the proposed provisions may have a controversial or opposite effect.

Furthermore, as laid down in art. 288 of TFUE, "A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods." We find that, with the inclusion of a number of imperative norms, the draft texts put a considerable constraint on the right of the Member States to choose the best form and methods for achieving the aims.

For example, there are justified expectations that in Bulgaria the envisaged limitations regarding the use of trade marks would lead to their easier and therefore broader "falsifying". The result would be the opposite of the effect we aim at, namely – protection of public health, since there will be no guarantee for the quality of the product, one of the purposes of a trade mark being precisely to guarantee for that quality.

Furthermore, if the justification that consumers are misled by elements of the labelling or packaging of the tobacco products is a well-reasoned one, an appropriate EU measure could be to improve information on the unit packet, for example by adding a warning that “all cigarettes are equally dangerous”. Instead, the Commission picks certain elements which it deems misleading and prohibits them.

**(2) There is no sufficiently strong argumentation that the proposed measures are the best to achieve the aims of the proposal.**

There is no impact assessment on the benefits of the proposed changes for the citizens as well as on the economic effects on producers, wholesalers and retailers of tobacco and related products.

Currently, many Member States have undertaken measures on limiting the demand for tobacco products (bans on smoking in public places, bans on distance selling of tobacco products and vending machine sales) which have proved their efficiency, whereas the EC proposals, mostly regarding regulation of the products supplied (e.g. the de facto ban on slim cigarettes as well as making labeling provisions more restrictive) have a substantially more controversial effect. For example, we doubt that expanding the space allocated for warning messages shall lead to further decrease of the number of smokers in many Member States, including Bulgaria. We are of the opinion that this will rather contribute to the risk of creating competition based only on price which will result in easier smuggling and decrease of the quality of tobacco products.

**(3) The elements of the proposal, on which the Commission keeps the right to adopt delegated acts, cannot be deemed non-essential.**

The Parliament disagrees with the broad powers of the European Commission to adopt delegated acts (in some cases, for indefinite time periods) on further regulation on tobacco and tobacco products because we are of the opinion that the big number of delegated powers provided for in the draft text shall lead to circumvention of powers and competencies of national Parliaments (in view of TFEU) which raises questions as to the democratic legitimacy of these decisions and to the approach to have decision-making as close as possible to the citizens of the EU.

According to article 290 of TFEU, the European Commission may “adopt non-legislative acts of general application to supplement or amend certain non-essential elements of the legislative act.” The essential elements of a sphere must be included in the legislative acts and cannot therefore be subject to delegation of power.

A concerning example of such application of delegated acts are Art. 3 - Maximum tar, nicotine, carbon monoxide and other yields, Art.6 - Regulation of ingredients, Art. 8 and 9 – on health warnings, Art. 13 - Appearance and content of unit packets.

We deem that such an approach takes away from Member States the opportunity to implement a policy tuned to their national specificities and societal and cultural differences, in accordance with national health policies.

**(4) There is doubt regarding the legal basis**

Although article 114 of the TFEU has been adopted as legal basis, with the main aim of the directive stated as “to improve the functioning of the internal market”, we find that the greater

part of the proposed changes do not target improvement of the functioning of the internal market but rather, regulating public health which is under the scope of article 168 and thus – within the scope of competencies of the Member States.

**(5) The proposal creates disproportionate burden on economic operators, in view of the stipulated objectives**

The Parliament deems that implementing a system of traceability also needs further justification since the effects of implementing such a system do not seem visible or necessary enough, at least at first glance, whereas such a system puts further administrative and financial burden on economic operators in the sphere of manufacturing and sale of tobacco and related products.