



EUROPEAN COMMISSION

Brussels, 30.5.2013
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Dear President,

The Commission would like to thank the Poslanecká Sněmovna for its Reasoned 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 Poslanecká Sněmovna.

Poslanecká Sněmovna considers that the proposed delegation of powers in the proposal would not meet the requirements laid down by Article 290 TFEU. However, the Commission is of the view that the power to adopt acts in accordance with Article 290 TFEU is necessary in order to make this Directive fully operational in view of technical, scientific and international developments in the manufacture, consumption and regulation of tobacco. The delegations of power in the proposal provide for clear and concise criteria, giving limited discretion to the Commission. The Commission would involve Member States at expert level in the preparation of such acts and would ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and Council.

In addition, Poslanecká Sněmovna considers that the aims of the proposed directive could be sufficiently achieved by Member States acting individually, and that measures in the field of health should respect the differences between Member States and should be taken as much as possible at Member State level. The Commission would like to recall that its proposal concerns the revision of the current Tobacco Products Directive 2001/37/EC, and that the current Directive largely pursues the same aims as foreseen under this proposal for its revision. The legality of the current Directive has been confirmed by the European Court of Justice (Case 491/01, BAT [2002] ECR I-11453, paras 177-185 on subsidiarity). Moreover, the Commission recalls that the legal base of the proposal is Article 114 TFEU, the choice of which has also been confirmed by the European Court of Justice with regard to the current Directive. This legal base is appropriate to update the existing level of harmonisation of the internal market for tobacco products, to remove obstacles to the internal market due to divergent regulatory developments in the Member States, and to prevent circumvention of internal market rules. It thus would either update or extend regulations to ensure the functioning of the

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internal market, or provide rules that could not be effectively adopted on national level, such as on tracking and tracing and distance sales.

The Commission hopes that these clarifications address the comments and concerns raised in the Reasoned Opinion adopted by the Poslanecká Sněmovna and looks forward to continuing our constructive political dialogue.

Yours faithfully,

*Maroš Šefčovič
Vice-President*