



HELLENIC PARLIAMENT

The Special Standing Committee for European Affairs, the Standing Committee for Social Affairs and the Standing Committee for Production and Trade of the Hellenic Parliament

came to a joint sitting, chaired by the Vice-President of the Hellenic Parliament, Mr. Ioannis Tragakis, on Wednesday, February 20, 2013, in order to examine 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 (COM(2012) 788 final)

The Members of the aforementioned Committees, having taken into consideration:

- The content of the Proposal for a Directive
- The informational reports by the Ministries for Health and of Rural Development and Food
- The oral report by the Minister for Health mr. Andreas Lykourantzou
- The oral report by the Secretary General for public Health Mrs. Christina Papanikolaou
- The oral report by the Secretary General for Rural Development Mr. Dimitris Melas,

unanimously reached the following opinion:

Legal Basis

The Proposal's for a Directive general objective, as revising Directive 2001/37/ EC is to improve the functioning of the **internal market**; In particular, the proposal aims to:

- a) Update **already harmonised areas**, b) Address **product related measures not yet covered by the TPD and** c) Ensure that provisions of the Directive

are **not circumvented** by placing on the market of products not compliant with the TPD.

Therefore, the selection of article 114 TFEU as legal basis is deemed appropriate. However, health protection is only referred to incidentally by invocation of the article's (114) paragraph 3 and not as its main objective, in line with which the Commission should pursue the guarantee of a high level of **health protection** , in its proposals submitted in the article's paragraph 1.

Comments- Remarks

The following remarks are made on the merits of the Proposal's provisions:

- Prohibition of specific features and elements (article 12)

The Proposal envisages the prohibition of specific tobacco products as misleading, such as cigarettes with a diameter of less than 7.5 mm, or menthol cigarettes. Nevertheless, it is not justified by related reports that these provisions shall serve the Proposal's objective. On the contrary they constitute an intervention on internal market and free competition in the field of tobacco industry, as it is certain that smokers, in order to satisfy their smoking habit, will either choose tobacco products of a broadly-used diameter, in other words products of major tobacco industries, or they will resort to contraband products that have not undergone quality check procedures governing the function of European tobacco industries, and are possibly more hazardous for consumers' health. A ripple effect of smuggling is the reduction of inland revenues.

It is noteworthy that, initially, during the stage of Public Consultation, the aforementioned provision had not been included in the provisions of the Directive under revision, which is a fact contradicting the European Commission's envisaged smart legislation process. Practically, this fact deprives stakeholders from the possibility to present their arguments.

- Text warnings on packets or outside packaging- combined warnings- minimum dimensions-photo use (articles 8 and 9)

Provisions introduced by the proposal regarding specification of the area to be covered by health warnings as well as their minimum dimensions, leads towards the direction of a fully standardised packaging , and, therefore, the abolishment of certain

packet types, which does not contribute in any way to the proposed directive's objectives. On the contrary, uniformity in packets, dimensions, combined with coverage, at 75%, by photos, leads to further distortion in competition, as favouring multi-national corporations' trademarks. Abolishing differentiations and varieties in outside packaging and inability of promoting registered trademarks will result in limiting competition at the field of pricing, at the expense of tobacco quality, and, by extent, at the expense of public health. (According to Eurobarometer, factors influencing the selection of a given product are a. tobacco taste, b. specific brand, c. price, d. per-cent levels of nicotine, tar and carbon monoxide, e. outside packaging. It is noteworthy that neither the provision on health warnings' minimum dimensions was set to public consultation.

- **Traceability and security features**

Article 14 provisions go beyond respective provisions of the Protocol to Eliminate Illicit Trade in Tobacco Products, as adapted in November 2012 by the World Health Organisation, with the EU's decisive contribution.

- **Notification of novel tobacco products (Article 17)**

The Proposal for Directive allows the placement on the market of novel tobacco products, under certain conditions, yet, it forbids any further reference or notice, even if they are proven to be less hazardous to consumers' health. This prohibition opposes to the proposal's supplementary objective for achieving high levels of health protection, as preventing the development of innovations for producing less harmful products.

Proportionality Principle

Reservations are raised as to the proportionality principle, that is, as to if comparable results could be achieved by means of milder measures. For example, in the case of provision on abolishing menthol-flavoured cigarettes or cigarettes of a diameter less than 7,5 mm, there is no documentation as to whether it would be possible to lift reservations on misleading products by means of a label on the packet, similar to warning labels.

Subsidiarity Principle

In what concerns the subsidiarity principle, it would be useful to examine:

- a) whether there are substantial differences in national tobacco policies in the 27 EU member-states calling for harmonization
- b) whether measures introduced by the revised proposal promote the pursued objective, that is, to improve the functioning of the internal market.

Data contained both in the Explanatory Memorandum and the Impact Assessment Report do not illustrate substantial disparities in national policies that would justify a threat of internal market functioning, and, therefore calling for union legislator's intervention. That would be the case if, for instance, specific tobacco products were banned in certain countries and not banned in others, or if tobacco products packages were very different from country to country, so as to justify a threat of internal market functioning, due to the absence of restrictions, something that is not supported either in the Explanatory Memorandum or the Impact assessment Report.

The Explanatory Memorandum indicates that in shaping public consultation quantitative data, the citizens' campaigns played a crucial role, opposing to the envisaged reforms; the explanatory memorandum invokes May 21012 Eurobarometer data, according to which a large number of EU citizens sides for adopting tobacco control measures. However, in the same survey and for the question whether warnings on cigarette packs affect consumers' smoking attitude, 65% reply negatively, whereas for the question whether the same warnings discourage young people from smoking, 70% reply negatively again. These data indicate that the citizens think that tobacco control measures are necessary, yet, the Commission's proposed measures- via the revised proposal- are not considered successful regarding its objective for achieving high levels of health protection.

Moreover, with regard to the proposal's major objective, that is, improving internal market functioning, many of the proposal's provisions mentioned above in detail, not only do they not form equal terms for competition in the market, but, on the contrary, they distort competition and disrupt the common market.

In addition, article 24, par.2 leaves room to the national legislator to impose stricter provisions than those envisaged in the proposal, something that clearly opposes to the basic objective of harmonizing national policies.

Closing, the proposal contains a large number (16) delegation acts to the European Commission, certain of which regard substantial elements of the legislative proposal, such as, for instance, the adaptation of maximum nicotine, tar and carbon monoxide yields . Commission's indefinite empowerment to adopt delegated acts on substantial provisions of a statute opposes to article 290 TFEU.

As a conclusion, the proposal for directive, in its present form, is not congruent with the subsidiarity principle, as neither the Explanatory memorandum nor the Impact assessment Report contain data supporting that the pursued objectives shall be achieved more effectively at the EU level.