



EUROPEAN COMMISSION

Brussels, 28. 5. 2013
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Dear President,

The Commission would like to thank the Camera dei Deputati for its Reasoned Opinion 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 {COM(2012) 788 final}.

The Commission would like to make the following remarks. The Camera dei Deputati considers that the proposal would not be covered by its legal basis of Article 114 TFEU on the grounds that it would allow Member States to adopt stricter measures under Article 24 of the proposal and would encourage Member States to act autonomously in various areas, such as measuring emissions other than tar, nicotine and carbon monoxide, with regard to novel products, and to packaging. The Commission would like to underline that in areas not covered by a Directive, Member States remain free to take measures provided such measures comply with the Treaty. Also in areas covered by a Directive, stricter measures remain possible, even if subject to stringent conditions. Article 114 TFEU contains a legal basis for full, partial or minimum harmonization and can leave certain matters to the Member States to regulate. The already achieved level of harmonisation needs to be taken into account when assessing the compatibility of stricter national measures with the Treaty.

The Camera dei Deputati also considers that the prohibition of slim cigarettes and products with a characterising flavour, as well as the prohibition of packets of 10 cigarettes, were not intended to reduce distortions in the single market and could thus not be based on Article 114 TFEU. The Commission recalls that the choice of Article 114 TFEU as legal base of the proposal has been confirmed by the European Court of Justice with regard to the current Directive, which largely pursues the same aims as foreseen under the proposal for its revision. These aims include among others a prohibition of misleading elements with regard to the appearance of tobacco products. The Commission would like to remark that the standardisation of certain aspects of the pack, such as its shape, the number of cigarettes and the size of health warnings, is beneficial for the circulation of the products on the internal market. Packages containing slim cigarettes would not comply with these rules and would jeopardise the full visibility of the health warnings. Moreover, Member States have started to adopt measures to regulate flavours, and this is likely to cause distortions of the market unless harmonisation measures are adopted. Finally, Member States also have different rules in place as regards the minimum number of cigarettes per package, either specifying a

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minimum pack size of twenty cigarettes, of nineteen cigarettes, or of ten cigarettes. Article 114 TFEU therefore is the appropriate legal basis for the proposed measures mentioned.

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

Yours faithfully,

*Maroš Šefčovič
Vice-President*