



EUROPEAN COMMISSION

Brussels, 26.6.2013
C(2013) 3874 final

Ms Maria da Assunção ESTEVES
President of the
Assembleia da República
Palácio de S. Bento
P – 1249-068 LISBOA

Dear President,

The European Commission would like to thank the Assembleia da República 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 on the comments provided by the Assembleia da República.

The Assembleia da República considers that the proposal would violate the principle of subsidiarity by banning "regular size" cigarettes because of the provisions on the absolute size of health warnings in the proposal. The Commission would like to point out that the proposal does not ban regular cigarettes. It only foresees the ban of cigarettes with a diameter of less than 7.5 mm (so called slim cigarettes). Moreover, the proposal foresees a minimum size for the dimension of health warnings to ensure their effectiveness. As well as to improving the functioning of the Internal Market, the proposed rules would contribute to improving citizens' awareness about the health risks stemming from tobacco consumption. This is particularly important to discourage young people from starting to use tobacco products.

The Assembleia da República also considers that the prohibition of slim cigarettes and products with a characterising flavour such as menthol would not contribute to the functioning of the internal market and would not be based on evidence. The Commission would like to point out that it has provided scientific evidence with regard to all of the mentioned issues, showing the misleading nature of slim cigarettes and the attractiveness of products with a characterising flavour especially for young people. Several studies have found that slim cigarettes can mislead consumers by creating the impression that they are less harmful¹. With respect to characterising flavours, scientific studies and market data have shown that flavours influence and enhance smoking initiation et alia. Moreover, as Member States have started to adopt measures to regulate flavours, the Commission proposes harmonisation to prevent distortions of the market. The Framework Convention for Tobacco Control guidelines also recommends its Parties, including the EU and Portugal, to take action in this area.

¹ see 24th recital of the proposal

Maroš Šefčovič
Vice-President

Yours faithfully,

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

The Assembleia da República finally considers that certain measures proposed would exceed the competencies of the EU under the legal basis pertaining to public health. The Commission would like to point out that the current Directive largely pursues the same aims as foreseen under the proposal for its revision. The legality of the choice of Article 114 as the legal basis of the current Directive has been confirmed by the European Court of Justice (ECJ) (see Case C-491/01, BAT [2002] ECR I-11453). This legal base is appropriate to update the existing level of harmonisation, to remove obstacles to the internal market because of divergent regulatory developments in the Member States, and to prevent circumvention of internal market rules.

The Assembleia da República furthermore considers that the proposal would impose negative and disproportionate socio-economic impacts on Portugal. The Commission would like to stress that the proposal to revise the Tobacco Products Directive is underpinned by a thorough analysis of the scientific evidence base for the measures proposed as well as economic, internal market, social and health impacts. The Commission has carried out extensive stakeholder consultations, including with tobacco growers and manufacturers and has carefully considered the concerns expressed. Based on a possible drop in tobacco consumption of 2% in five years after the entry into force of the Directive, it is estimated that 5700 jobs would be lost in the tobacco sector. However, scientific evidence indicates that this would be compensated by the creation of approximately 8 000 new jobs in other sectors as a result of ex-smokers' increased expenditure in other goods or services that require more workers than the automated production of cigarettes.

The Assembleia da República moreover considers that the proposal would prohibit certain low-risk products without consideration of the evidence, thus interfering with the ability of Member States to define their own health policies. The Commission would like to underline that the proposal does not impose restrictions on the placing on the market of novel products (including low risk products) and does not discourage investment in research, innovation and development into such or other products. The regulatory framework for novel products is not modified in substance compared to the regime under the current Tobacco Products Directive. Any claims that certain products were less harmful than others could mislead consumers and are banned already under the current Tobacco Products Directive. The proposal only provides that novel tobacco products would need to be notified to the national authorities before they can be brought on the market, which is a very limited burden on the stakeholders concerned when taking into account that the industry would in any case be obliged to report about ingredients before placing the respective product on the market.