

Opinion of the Committee of the Regions on ‘Manufacture, presentation and sale of tobacco and related products’

(2013/C 280/11)

THE COMMITTEE OF THE REGIONS

- believes that revision of the directive is necessary and should therefore be carried out without further delay to protect the health of the European public, particularly its youngest members, from the risks of smoking;
- urges the Commission and the Member States to adopt a balanced directive that leads to a better health protection for consumers whilst taking into account the production and economic value of tobacco crop;
- considers that the Member States should ban the free distribution of tobacco products (online or in public areas) given its strong potential to recruit new (and young) smokers;
- calls on the European Commission together with Member States to look into a scheme that would compensate for the loss of jobs in the tobacco sector and packaging industry;
- argues that the Member States should be able to ban the cross-border sales of tobacco products to better protect their young citizens from harm;
- is convinced that regular public education and awareness-raising campaigns should be promoted, providing advice in primary and secondary schools on harmfulness of tobacco and its detrimental effects on health and wellbeing;
- calls on the Commission and the Member States to envisage support for the regions where tobacco is currently grown or manufactured, to enable them to replace tobacco with more sustainable crops;
- draws attention to the fact that non-standard packs are currently at the market and their removal will adversely affect regions where these are produced.

Rapporteur	Mr Dimitrios KALOGEROPOULOS (EL/EPP), Municipal Councillor of Aigaleo
Reference document	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

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

Introduction

1. notes that twelve years on after the adoption by the EU of the current Tobacco Products Directive (which includes several control measures), smoking remains the leading cause of preventable death in the EU and kills almost 700 000 people every year, and that over 70% of smokers start before the age of 18 and therefore strongly supports the need to urgently revise the current Directive by considering stricter measures for its implementation;

2. welcomes the Commission's determination to support and complement efforts by Member States and local and regional authorities to tackle the problem of smoking. The Committee notes that tobacco is a legal crop, however it is essential to carefully monitor its impact on citizens health;

3. endorses the use of Article 114 TFEU as the legal basis for the proposal, given the European Commission's goal of harmonising the various laws and administrative provisions in the area covered by the proposal where differences still exist in order to ensure the functioning of the internal market. It points out that this approach is supported by the judgement of the European Court of Justice in case C-380/03 (Federal Republic of Germany v European Parliament and Council of the European Union). The proposal also allows the Member States to adopt stricter measures than those set out in its provisions;

Contributions from EU policy to ensuring health

4. acknowledges the contribution that can be made by EU flanking policies generally in accordance with the objective set in Article 114(3) TFEU, as well as in Article 35 of the EU Charter on Fundamental Rights, that "a high level of human health protection (...) be ensured in the definition and implementation of all Union policies and activities";

5. believes that revision of the directive is necessary and should therefore be carried out without further delay to protect the health of the European public, particularly its youngest members, from the risks of smoking;

6. emphasises that, the EU together with national, regional and local authorities should increase efforts in public health terms, education, awareness-raising and health promotion campaigns providing information on the consequences of smoking which were so far rather effective in reducing tobacco consumption and also restrictive measures which have altered levels of consumption;

7. calls for the revised Tobacco Products Directive to be in line with the "Health for Growth: 3rd Multi-Annual Programme of EU Action for the period 2014-2020" whose objective is to promote synergies while avoiding duplication with related Union programmes and actions;

Combining health protection with economic development

8. agrees with the European Commission to consider, in line with Article 114, 168 and 169 TFEU, a high level of health protection as a basis when choosing between different policy options identified in the review of the TPD; underlines that protecting health is a key objective which must take into account health-promotion and disease-prevention factors, such as socio-economic conditions, lifestyle, culture, education, environmental factors in all socially relevant fields in order identify risk factors and mitigate their negative effects at as early stage as possible;

9. urges the Commission and the Member States to think about amending the provisions so as to ensure the adoption of a balanced directive which, as well as safeguarding the necessary health warnings protecting consumers, also takes into account the production and economic value of this crop;

10. the Committee supports measures aimed at reducing the addictiveness or toxicity of tobacco on the basis of scientific evidence, together with objective measures to prevent consumers being misled by things such as the inclusion of additives which might persuade them that certain tobacco products had healthy or therapeutic effects;

Protection of employment and production

11. believes that, in many EU regions, tobacco is grown on soils with low fertility where tobacco production requires the use of large quantities of fertiliser and pesticides;

12. points out, in line with the CoR's opinion on the common agricultural policy, that it is vital for European agriculture to move towards sustainable production methods and adapt to climate change. In view of its environmental impact, therefore, tobacco cultivation should be replaced by more sustainable crops;

13. calls on the Commission and the Member States to envisage support for the regions where tobacco is currently grown or manufactured, in order to enable them to restructure their production to other agricultural products;

14. calls on the European Commission together with Member States to look into a scheme that would compensate for the loss of jobs in the tobacco sector and packaging industry;

Tax revenues, traceability and security features and contraband

15. points out that almost EUR 100 billion are collected in the European Union every year in taxes on tobacco products and that illicit trade currently accounts for around 10%, which results in EUR 10 000 million in lost tax revenue every year. This shows that the European market needs to be better protected against the threats of illicit trade and for citizens to be better informed as regards the danger of consuming tobacco products of unknown or unauthorised origin, which have not been subject to any quality control, thus endangering consumer safety;

16. believes that the specific features included in the proposal for a directive for monitoring traceability and combating contraband will represent a huge economic and administrative burden for businesses (particularly the smallest) and for Member States. This will compromise its effectiveness and breach the relevant provisions of the WHO Framework Convention on Tobacco Control;

17. draws attention to the fact that non-standard packs are currently present at the national or regional markets across Europe and their removal may have negative consequences on the revenue of the regions where these packs are produced. This negative economic impact may be particularly strong in the areas already suffering from the current economic crisis;

18. on the other hand, warns that these control measures will be of little use if the rest of the directive's provisions could lead to an increase in contraband, particularly in the outermost regions and municipalities as well as contraband from third countries, and therefore asks the European Commission and the Member States to step up the fight against contraband;

Improved consistency between EU policies

19. considers the new definition of "cigarillo" proposed in the directive to be inconsistent and unnecessary since it is contrary to Council Directive 2011/64/EU of 21 June 2011, on the structure and rates of excise duty applied to manufactured tobacco;

Subsidiarity and delegated acts

20. warns that the delegated and implementing acts give the European Commission wide powers to amend or supplement, unilaterally and *a posteriori*, essential aspects of the directive such as the maximum levels of additives, flavours and tastes which may be prohibited, and the wording, location and size of health warnings;

21. believes that recourse to delegated acts, as set out in the proposal, gives the European Commission excessive discretionary powers of action which might contravene the Lisbon Treaty, which stipulates that delegated acts may only be used to amend or supplement "non-essential elements" of a legislative act, which is not the case in this instance;

22. in relation to cigars, cigarillos and pipe tobacco, the proposal also provides for the power to automatically withdraw certain exemptions set out in the text if there is a "substantial change of circumstances" which is linked to an increase in sales volume of at least 10% in at least 10 Member States, or of 5% among smokers under the age of 25. In 10 of the 27 current Member States, the market for these products is extremely small and a 10% change could easily occur, meaning that this provision makes no sense and creates major legal uncertainty in this sub-sector. The Committee of the Regions feels that this provision is too general and too broad and that this could lead to discretionary use on the part of the Commission.

II. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 8

Text proposed by the Commission	CoR amendment
In accordance with Article 114(3) of the Treaty of the Functioning of the European Union (hereinafter: "Treaty"), a high level of health protection should be taken as a basis, regard being had, in particular, to any new developments based on scientific facts. Tobacco products are not ordinary commodities and in view of the particularly harmful effects of tobacco, health protection should be given high importance, in particular to reduce smoking prevalence among young people.	In accordance with Article 114(3) of the Treaty of the Functioning of the European Union (hereinafter: "Treaty"), a high level of health protection should be taken as a basis, regard being had, in particular, to any new developments based on scientific facts. Tobacco products are not ordinary commodities and in view of the particularly harmful effects of tobacco, health protection should be given high importance, in particular to reduce smoking prevalence among young people. <u>Regular public education and awareness-raising campaigns should be promoted, providing advice in primary and secondary schools.</u>

Reason

Public education and awareness-raising campaigns will have a greater impact on public health than simple interventionist or prohibitionist measures based on arbitrary bans.

Amendment 2

Recital 13

Text proposed by the Commission	CoR amendment
The current use of different reporting formats makes it difficult for manufacturers and importers to fulfil their reporting obligations and burdensome for the Member States and the Commission to compare, analyse and draw conclusions from the information received. In this light there should be a common mandatory format for the reporting of ingredients and emissions. The greatest possible transparency of product information should be ensured for the general public, while ensuring that appropriate account is taken of the commercial and intellectual property rights of the manufacturers of tobacco products.	The current use of different reporting formats makes it difficult for manufacturers and importers to fulfil their reporting obligations and burdensome for the Member States and the Commission to compare, analyse and draw conclusions from the information received. In this light there should be a common mandatory format for the reporting of ingredients and emissions. The greatest possible transparency of product information should be ensured for the general public, while ensuring that appropriate account is taken of the commercial and intellectual property rights of the manufacturers of tobacco products <u>and that WTO (World Trade Organization) agreements are complied with.</u>

Reason

At the international level, the European Commission should have officially notified the proposal for a directive to the Technical Barriers to Trade Committee (TBT), because some of its proposals could breach International trade rules.

Amendment 3

Recital 18

Text proposed by the Commission	CoR amendment
Considering the Directive's focus on young people, tobacco products other than cigarettes, roll-your-own tobacco and smokeless tobacco which are mainly consumed by older	Considering the Directive's focus on young people, tobacco products other than cigarettes <u>and</u> roll-your-own tobacco and smokeless tobacco which are mainly consumed by

Text proposed by the Commission	CoR amendment
consumers, should be granted an exemption from certain ingredients requirements as long as there is no substantial change of circumstances in terms of sales volumes or consumption patterns in relation to young people.	older consumers, should be granted an exemption from certain ingredients requirements as long as there is no substantial change of circumstances in terms of sales volumes or consumption patterns in relation to young people.

Reason

This amendment takes into consideration the general approach agreed on the Directive by the Employment, Social Policy, Health and Consumer Affairs Council at its meeting on 21 June 2013 according to which the ban of characterising flavours should extend to cigarettes and roll-your-own tobacco, leaving other types of tobacco products aside.

Amendment 4

Recital 24

Text proposed by the Commission	CoR amendment
Tobacco products for smoking, other than cigarettes and roll-your-own tobacco products, which are mainly consumed by older consumers, should be granted an exemption from certain labelling requirements as long as there is no substantial change of circumstances in terms of sales volumes or consumption patterns in relation to young people. The labelling of these other tobacco products should follow specific rules. The visibility of the health warnings on smokeless tobacco products needs to be ensured. Warnings should therefore be placed on the two main surfaces of smokeless tobacco product packaging.	Tobacco products for smoking, other than cigarettes and roll-your-own tobacco products, which are mainly consumed by older consumers, <u>except in specific local communities</u> , should be granted an exemption from certain labelling requirements as long as there is no substantial change of circumstances in terms of sales volumes or consumption patterns in relation to young people. The labelling of these other tobacco products should follow specific rules. The visibility of the health warnings on smokeless tobacco products needs to be ensured. Warnings should therefore be placed on the two main surfaces of smokeless tobacco product packaging. <u>Specific consideration will be given to monitoring the consumption patterns of niche tobacco products, such as water pipe products, amongst minority ethnic communities within Member States.</u>

Amendment 5

Recital 30

Text proposed by the Commission	CoR amendment
Cross-border distance sales of tobacco facilitate access to tobacco products of young people and risk to undermine compliance with the requirements provided for by tobacco control legislation and in particular by this Directive. Common rules on a notification system are necessary to ensure that this Directive achieves its full potential. The provision on notification of cross-border distance sales of tobacco in this Directive should apply notwithstanding the notification procedure set out in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services ⁽¹⁾ . Business to consumer distance sale of tobacco products is further regulated by Directive 97/7/EC	Cross-border distance sales of tobacco <u>could be prohibited by the Member States as they</u> facilitate access to tobacco products of young people and risk to undermine compliance with the requirements provided for by tobacco control legislation and in particular by of this Directive. Common rules on a notification system are necessary to ensure that this Directive achieves its full potential. The provision on notification of cross-border distance sales of tobacco in this Directive should apply notwithstanding the notification procedure set out in Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services ⁽¹⁾ . Business to consumer

Text proposed by the Commission	CoR amendment
of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, which will be replaced by Directive 2011/83/EU of the European Parliament and the Council of 25 October 2011 on consumer rights, as of 13 June 2014 ⁽²⁾ .	distance sale of tobacco products is further regulated by Directive 97/7/EC of the European Parliament and the Council of 20 May 1997 on the protection of consumers in respect of distance contracts, which will be replaced by Directive 2011/83/EU of the European Parliament and the Council of 25 October 2011 on consumer rights, as of 13 June 2014 ⁽²⁾ .
⁽¹⁾ OJ L 178, 17.7.2000, p. 1-16. ⁽²⁾ OJ L 144, 4.6.1997, p. 19-27 and OJ L 304, 22.11.2011, p. 64-88.	⁽¹⁾ OJ L 178, 17.7.2000, p. 1-16. ⁽²⁾ OJ L 144, 4.6.1997, p. 19-27 and OJ L 304, 22.11.2011, p. 64-88.

Reason

Cross-border distance sales constitute a small portion of tobacco trade. They may facilitate access to tobacco products to young people therefore the Member States should be able to ban these business-to-consumer sales should there be regional or national concerns raised. In the absence of such a ban, common rules of notification will be nonetheless needed to ensure the full compliance with the rules laid out by the directive.

Amendment 6

Recital 30

Add new recital after recital 30

Text proposed by the Commission	CoR amendment
	<u>Considering the strong potential of recruiting new (and young) smokers, the Member States should prohibit the principle of free distribution of tobacco products (via online retail outlets or in public areas).</u>

Reason

The proposed amendment is related to point 1 of the draft opinion: need to limit tobacco consumption to those 70% of smokers who start smoking before the age of 18.

Amendment 7

Recital 31

Text proposed by the Commission	CoR amendment
All tobacco products have the potential to cause mortality, morbidity and disability and their consumption should be contained. It is therefore important to monitor developments as regards novel tobacco products. A notification obligation for novel tobacco products should be put on manufacturers and importers, without prejudice to the power of the Member States to ban or to authorise them. The Commission should monitor the development and submit a report 5 years after the transposition deadline of this Directive, in order to assess whether amendments to this Directive are necessary.	All tobacco products have the potential to cause mortality, morbidity and disability and their consumption should be contained. <u>Public education and awareness-raising plans and campaigns concerning the serious health effects of smoking should therefore be promoted and</u> developments as regards novel tobacco products <u>monitored</u> . A notification obligation for novel tobacco products should be put on manufacturers and importers, without prejudice to the power of the Member States to ban or to authorise them. The Commission should monitor the development and submit a report 5 years after the transposition deadline of this Directive, in order to assess whether amendments to this Directive are necessary.

Reason

Public education and awareness-raising campaigns will have a greater impact on public health than simple interventionist or prohibitionist measures based on arbitrary bans.

Amendment 8

Article 2.20

Add new point within the article 2, after point 20

Text proposed by the Commission	CoR amendment
	<u>"niche tobacco" covers tobacco products , most commonly smokeless and pipe tobacco products such as Gutkha, Zarda, Nasal snuff, Sishaand Beedi, which are traditionally consumed by South Asian and other specific communities .</u>

Reason

Definition is currently missing from the Directive.

Amendment 9

Article 5.4

Add new point within the article 5 after point 4

Text proposed by the Commission	CoR amendment
	<u>Member States shall require manufacturers and importers to disclose their expenditure on advertising, promotion and sponsorship per Member State, on a yearly basis starting from the full calendar year following that of the entry into force of this Directive.</u>

Reason

This amendment stems from the requirements of Article 13 of the WHO Framework Convention on Tobacco Control. This figure is currently not available for the EU.

Amendment 10

Article 6.4

Text proposed by the Commission	CoR amendment
4. Member States shall prohibit the use of the following additives in tobacco products:	4. Member States shall prohibit the use of the following additives in tobacco products:
(a) vitamins and other additives that create the impression that a tobacco product has a health benefit or presents reduced health hazards, or	(a) vitamins and other additives that create the impression that a tobacco product has a health benefit or presents reduced health hazards, or
(b) caffeine and taurine and other additives and stimulant compounds that are associated with energy and vitality, or	(b) caffeine and taurine and other additives and stimulant compounds that are associated with energy and vitality, or
(c) additives having colouring properties for emissions.	(c) additives having colouring properties for emissions, <u>or</u>
	<u>(d) additives that increase the addictiveness of nicotine.</u>

Reason

Self-explanatory. Also called for in the German Bundesrat's decision of 22 March 2013. See <http://dipbt.bundestag.de/dip21/brd/2012/0820-12B.pdf> (in German).

Amendment 11

Article 6.10

Text proposed by the Commission	CoR amendment
Tobacco products other than cigarettes, roll-your-own tobacco and smokeless tobacco products shall be exempted from the prohibitions laid down in paragraphs 1 and 5. The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to withdraw this exemption if there is a substantial change of circumstances as established in a Commission report.	Tobacco products other than cigarettes <u>and</u> roll-your-own tobacco and smokeless tobacco shall be exempted from the prohibitions laid down in paragraphs 1 and 5. The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to withdraw this exemption if there is a substantial change of circumstances as established in a Commission report.

Reason

This amendment takes into consideration the general approach agreed on the Directive by the Employment, Social Policy, Health and Consumer Affairs Council at its meeting on 21 June 2013.

Amendment 12

Article 9.1 (c)

Text proposed by the Commission	CoR amendment
(c) cover 75% of the external area of both the front and the back surface of the unit packet and any outside packaging;	(c) cover 75-65 % of the external area of both the front and the back surface of the unit packet and any outside packaging;

Reason

In line with the general approach agreed on the Directive by the Employment, Social Policy, Health and Consumer Affairs Council at its meeting on 21 June 2013.

Amendment 13

Article 9.1 (e)

Text proposed by the Commission	CoR amendment
(e) be positioned at the top edge of the unit packet and any outside packaging, and in the same direction as any other information appearing on the packaging;	(e) be positioned at the top <u>or bottom</u> edge of the unit packet and any outside packaging, and in the same direction as any other information appearing on the packaging;

Reason

Normal size tobacco packets with soft packaging do not have flip-top lids, and attached to the upper edge is the tax seal which also serves to keep the packet closed. Specifying that the combined health warning should be positioned on the upper edge of the packet would mean that this type of product would be rendered unviable. We are therefore suggesting introducing some flexibility into where these warnings should be placed, while retaining the necessary visibility of the warnings, by allowing them also to be positioned on the bottom edge of the packaging as an alternative.

Amendment 14

Article 9.1 (g)

Text proposed by the Commission	CoR amendment
(g) for unit packets of cigarettes, respect the following dimensions: (i) height: not less than 64 mm; (ii) width: not less than 55 mm	(g) for unit packets of cigarettes, respect the following dimensions: (i) height: not less than 64 44 mm; (ii) width: not less than 55 52 mm

Amendment 15

Article 13.1

Text proposed by the Commission	CoR amendment
A unit packet of cigarettes shall have a cuboid shape. A unit packet of roll-your-own tobacco shall have the form of a pouch, i.e. a rectangular pocket with a flap that covers the opening. The flap of the pouch shall cover at least 70% of the front of the packet. A unit packet of cigarettes shall include at least 20 cigarettes. A unit packet of roll-your-own tobacco shall contain tobacco weighing at least 40 g.	A unit packet of cigarettes shall have a cuboid shape. A unit packet of roll-your-own tobacco shall have the form of a pouch, i.e. a rectangular pocket with a flap that covers the opening. The flap of the pouch shall cover at least 70% of the front of the packet. A unit packet of cigarettes shall include at least 20 cigarettes. A unit packet of roll-your-own tobacco shall contain tobacco weighing at least 40 g.

Reason

Article 13(1) of the draft directive stipulates that a unit packet of roll-your-own tobacco must have the form of a pouch. In general, the stricter rules associated with the draft directive, such as the expanded health warnings on cigarettes and roll-your-own tobacco, are to be welcomed from a public health point of view. However, the proposed ban on, for example, composite cans by limiting the permitted packaging for this product group to pouches does not lead to a significant improvement in public health protection, particularly as the purpose of protecting consumers through a packaging-based health warning can be fulfilled in accordance with the Guidelines for Implementation of Article 11 of the WHO Framework Convention on Tobacco Control.

Brussels, 3 July 2013.

*The President
of the Committee of the Regions*
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