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### Courtesy translation

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### The Danish Parliament's opinion on the Commission's proposal for a revision of the Tobacco Products Directive - COM (2012) 788

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Dear Mr Barroso,

On 19 December 2012, the European Commission presented a 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. The proposal aims at a comprehensive revision of current EU legislation in the area and contains new and strengthened rules regarding tobacco products.

The proposal has been considered by the Health Committee of the Danish Parliament, which has had the opportunity to discuss the proposal at its meetings on 29 January, on 19 February and on 26 February as well as at a technical review on 7 February.

In these circumstances and in light of the fact that the discussions regarding the draft Directive are in an initial phase, the Health Committee made the following comments on 27 February, which the European Affairs Committee endorsed at its meeting on 1 March 2013:

### Reasoned opinion

A majority of the Health Committee comprising the Liberal Party, the Danish People's Party, the Red-Green Alliance, the Liberal Alliance and the Conservative Party are in fundamental agreement that the legislative framework regulating the internal market for tobacco products also in future is to be determined at EU level with respect for the principle of subsidiarity. However, the fact that the proposal makes pronounced use of delegated acts (a total of 16) means that it is in reality difficult to conduct a thorough subsidiarity check and assess the extent of this Directive. Furthermore, the comprehensive use of delegated acts makes it extremely complicated for

national Parliaments to constantly meet their obligations under the Treaty according to which national Parliaments must monitor compliance with the principle of subsidiarity. Consequently, these parties call on the Commission to minimise the number of delegated acts – both in the draft Tobacco Products Directive and in general.

A minority of the Health Committee comprising the Social Democratic Party, the Social Liberal Party and the Socialist People's Party agree that the legislative framework regulating the internal market for tobacco products should be established at EU level. Consequently, these parties consider the proposal to be in accordance with the principle of subsidiarity and they, therefore, see no need for the Danish Parliament to submit a reasoned opinion to the Commission.

Furthermore, on 27 February the Health Committee made the following comments on the content of the proposal, which the European Affairs Committee endorsed at its meeting on 1 March 2013:

#### **General comments**

A majority of the Health Committee comprising the Liberal Party, the Social Democratic Party, the Danish People's Party, the Social Liberal Party, the Socialist People's Party, the Liberal Alliance and the Conservative Party find that a revision of the current Tobacco Products Directive must endeavour to balance regard for the internal market on the one hand and the healthcare aspects related to the regulation of tobacco products on the other hand. In this connection, these parties agree that the regulation of the sale, manufacture and presentation of tobacco products should be determined in consideration of the need to curb the uptake of new users of tobacco products, including especially children and young people, and to give all citizens the opportunity to make informed choices regarding these products.

A minority of the Health Committee comprising the Social Democratic Party, the Social Liberal Party and the Socialist People's Party find, moreover, that on an overall assessment the Commission has presented a good and constructive proposal, which may contribute to improving the functioning of the internal market and ensuring a high level of health protection.

A minority of the Health Committee comprising the Red-Green Alliance find that on an overall assessment the Commission has presented a good proposal which may contribute to ensuring more health and transparency for the consumers. The Red-Green Alliance shares the view of the majority of the Health Committee that the regulation of the sale, manufacture and presentation of tobacco products should be determined in consideration of the need to curb the uptake of new users of tobacco products, including

especially children and young people, and to give all citizens the opportunity to make informed choices regarding these products.

### **Delegated acts**

The Health Committee finds that the Commission proposal contains very wide access for the Commission to adopt delegated acts. The Health Committee notes that the proposal makes it possible to adopt delegated acts in no fewer than 16 areas.

According to a majority of the Health Committee comprising the Liberal Party, the Danish People's Party, the Red-Green Alliance, the Liberal Alliance and the Conservative Party, the comprehensive use of delegated acts makes it extremely complicated for national Parliaments to constantly meet their obligations under the Treaty according to which national Parliaments must monitor compliance with the principle of subsidiarity. Therefore, these parties cannot support such wide access for the Commission to adopt delegated acts. Consequently, these parties call on the Commission to minimise the number of delegated acts – both in the draft Tobacco Products Directive and in general.

A minority of the Health Committee (the Social Democratic Party, the Social Liberal Party and the Socialist People's Party) find that the pronounced use of delegated acts in the Commission proposal makes it difficult to conduct a thorough assessment of the consequences of the Directive. These parties, therefore, call for a thorough assessment of the specific delegated powers with a view to ensuring a sensible delimitation of the Commission's opportunities to carry out subsequent adjustments of the provisions laid down in the Directive.

### **Ban on snus**

A majority of the Health Committee comprising the Liberal Party, the Danish People's Party, the Red-Green Alliance, the Liberal Alliance and the Conservative Party find that the current Tobacco Products Directive of 2001 does not contain a ban on the sale of all loose snus in Denmark. These parties find that the sale of loose snus is lawful under the current Directive, and they note that it is a matter of a traditional product. Against this background, the proposed change will be contrary to the Danish interpretation, applied until now, of the Tobacco Products Directive.

The majority cannot support a ban on the placing on the market of snus, irrespective of packaging. The majority note, furthermore, that snus is less harmful than conventional cigarettes, and that it does not cause passive smoking.

The majority refer, furthermore, to the opinion submitted by the Swedish *Riksdag* to the Commission regarding this issue.

### **Regulation of non-tobacco products**

A majority of the Health Committee comprising the Liberal Party, the Danish People's Party, the Red-Green Alliance, the Liberal Alliance and the Conservative Party find that the Directive must exclusively apply to products containing tobacco, which means that other nicotine-containing products are not to be regulated within the framework of the Tobacco Products Directive.

### **Measuring and reporting ingredients and emissions**

The Health Committee supports the establishment of a common European reporting system where the tobacco industry reports its use of additives, etc. directly to the Commission.

A minority comprising the Liberal Party, the Danish People's Party, the Liberal Alliance and the Conservative Party are, however, concerned at the prospect that Member States must exclusively inform the Commission of the methods they use for measuring other emissions than tar, nicotine and carbon monoxide and for measuring emissions from other tobacco products than cigarettes. These parties are concerned that this will lead to disharmonised requirements in terms of, for example, the measurement methods that are used in the 27 Member States, which will not improve the functioning of the internal market.

Lastly, the minority find that the measurement methods to be used for the measuring and reporting of ingredients and emissions must be harmonised and imbedded in the Commission rather than in the individual Member States.

### **Rules on additives**

A majority comprising the Social Democratic Party, the Social Liberal Party, the Socialist People's Party and the Red-Green Alliance find that it is sensible to ban a number of additives which give the impression that tobacco products have health benefits; which add a specific flavour; which facilitate the initiation of tobacco consumption or which appeal to children.

A minority comprising the Liberal Party, the Danish People's Party, the Liberal Alliance and the Conservative Party support the introduction of stricter common European rules on the use of additives in cigarettes, including that tobacco products that are presented as for example candy must be prohibited as they can be used with a view to attracting new and often young smokers.

Consequently, these parties support a ban on cigarettes containing additives of large amounts of sweeteners with a fruit flavour or the like. However, if the proposed ban on so-called characterising flavours in reality means that for example ordinary menthol cigarettes are to be prohibited altogether, these parties cannot support it.

Furthermore, this minority are concerned about the wording of Article 12 (1) and (2) of the proposal and find that the provisions should be specified in order not to cause obstacles to the functioning of the internal market against the background of diverging interpretations in the individual Member States.

The minority support the proposal exempting cigars, cigarillos and pipe tobacco from the prohibition of tobacco products with characterising flavours and from the prohibition of the use of flavourings in filters, papers, etc. However, these parties do not find that the Commission should be granted powers in this area either to adopt delegated acts with a view to lifting the exemption.

### **Labelling and packaging**

The Health Committee considers pictorial health warnings to be an effective instrument in the information effort vis-à-vis consumers, and the Health Committee supports the proposal making the use of combined text and picture warnings mandatory in the EU.

A minority comprising the Liberal Party, the Danish People's Party, the Liberal Alliance and the Conservative Party find that the current requirements that warnings must cover not less than 30 per cent of the front and 40 per cent of the back of packages already ensure a visible and conspicuous information effort vis-à-vis consumers, which means that the anticipated benefit from a strengthened effort must be considered limited.

The minority cannot support that the proposal opens up for the introduction of plain packaging requirements. The minority argue that there may be legal ties in terms of trademark and intellectual rights.

The minority cannot support the requirement that a unit packet of cigarettes, for example, must include at least 20 cigarettes, and that all roll-your-own tobacco must be sold in pouches weighing at least 40 g, which means that tobacco tins will be prohibited. These parties argue that it is not an internal market matter whether there are slim cigarettes or whether the shape of cigarette packets is cuboid.

Furthermore, the minority find that it must be possible also in future for the text health warnings for other products than manufactured cigarettes to be placed on the packaging in the form of non-removable adhesive labels

#### **Distance sales and traceability**

A majority comprising the Social Democratic Party, the Social Liberal Party, the Socialist People's Party and the Red-Green Alliance support greater control over distance sales of tobacco products as well as the proposal on traceability and security features.

Yours sincerely,

Eva Kjer Hansen  
Chair of the European Affairs Committee