



26.2.2013

NOTICE TO MEMBERS

(0025/2013)

Subject: Reasoned opinion by the Swedish Parliament 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)0788 – C7-0420/2012 – 2012/0366(COD))

Under Article 6 of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, any national parliament may, within eight weeks from the date of transmission of a draft legislative act, send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion stating why it considers that the draft in question does not comply with the principle of subsidiarity.

Under Parliament's Rules of Procedure the Committee on Legal Affairs is responsible for compliance with the subsidiarity principle.

Please find attached, for information, a reasoned opinion by the Swedish Parliament (Riksdag) on the above-mentioned proposal.

Reasoned opinion by the Riksdag of the Kingdom of Sweden

The Commission proposal 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)0788), which is the subject of the Social Committee's Report 2012/13: SoUJ 7, was examined by the Riksdag in the light of the subsidiarity principle.

The ban on the distribution and sale of tobacco for oral use (snus) on the common European market in Member States other than Sweden still features in the Commission's revised proposal for a directive (Article 15).

The Tobacco Products Directive (TPD) should cover those tobacco products which are traded freely on the common European market. That being so, the Riksdag considers that the regulation of snus should be a national matter and that the directive should not cover snus.

The Riksdag therefore considers that the relevant portions of the Commission proposal in its present form do not comply with the subsidiarity principle.

As for the rest of the proposal, the Riksdag does not consider these sections to be contrary to the principle of subsidiarity.

Social Committee report 2012/13:SoU17

Assessment of the Commission's proposal for a revised Tobacco Products Directive in the light of the subsidiarity principle

Summary

In this report the Social Committee assesses the Commission's proposal for a directive on the approximation of 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 is a revision of the EU's current Tobacco Products Directive (2001/37/EC).

In the committee's opinion the Tobacco Products Directive should cover those tobacco products which are traded freely on the common European market. However, the committee notes that the prohibition on the distribution and sale of tobacco for oral use (snus) in Member States other than Sweden still features in the Commission's proposal for a directive. That being so, the committee considers that the regulation of snus should be regarded as a national matter and that the directive should not cover snus.

The committee considers that the relevant portions of the Commission proposal in its present form do not comply with the subsidiarity principle. The committee therefore proposes that the Riksdag send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission in accordance with Rule 10(6) of the Riksdag's Rules of Procedure.

In the committee's opinion the other sections of the Commission's proposal do not conflict with the subsidiarity principle. The committee proposes that the matter be tabled only once before a final decision is taken.

Committee's proposal for a decision of the Riksdag

Assessment in the light of the subsidiarity principle of the Commission's proposal for a revised Tobacco Products Directive

The Riksdag decides to send the Presidents of the European Parliament, the Council and the Commission a reasoned opinion as set out in Annex 2. The committee proposes that the matter be tabled only once before a final decision is taken.

Stockholm, 19 February 2013

For the Social Committee

Anders W Jonsson

The following Members took part in the decision:

Anders W Jonsson (Centre Party (C)), Lena Hallengren (Social Democratic Party (S)), Saila Quicklund (Moderate Party (M)), Margareta B Kjellin (M), Christer Engelhardt (S), Ann Arleklo (S), Isabella Jernbeck (M), Lennart Axelsson (S), Maria Lundqvist-Brömster (Liberal Party (FP)), Catharina Bråkenhielm (S), Gunnar Sandberg (S), Agneta Luttröpp (Green Party (MP)), Anders Andersson (Christian Democrats (KD)), Per

Ramhorn (Sweden Democrats (SD)), Eva Olofsson (Left Party (V)), Metin Ataseven (M) and Solveig Zander (C).

Presentation

Subject-matter and preliminary procedure

The Riksdag has been authorised to issue a reasoned opinion on the Commission's proposal for a directive on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products (COM(2012) 788).

The plenary referred the Commission's proposal to the Social Committee on 7 January 2013. The time limit for sending a reasoned opinion expires on 4 March 2013.

In response to COM(2012) 788, the Government sent the Riksdag an explanatory memorandum on 24 January 2013 (2012/13:FPM51).

On 12 February 2013, State Secretary Ragnwi Marcelind sent the committee information on the Government's opinion of the Tobacco Products Directive and on the progress of its work.

Substance of the proposal

Background

The current EU Tobacco Products Directive (2001/37/EC) was adopted in 2001 with a view to reducing the use of tobacco.

On 19 December 2012 the Commission submitted a proposal for a revised Tobacco Products Directive. The overall objective of the revision is to improve the functioning of the EU internal market. The Commission has taken as a basis the aim of achieving a high level of human health protection. The proposal focuses on ensuring that fewer young people start using tobacco products and on enhancing consumer protection. For example, people should be given correct information on the health consequences of using tobacco.

In a number of areas (e.g. permitted tar levels in tobacco products) no new rules are proposed. However, in many other areas very substantial changes are proposed to the existing provisions, e.g. on permitted taste additives to tobacco products. In addition it is proposed that the directive should also cover areas not covered by the existing directive, e.g. herbal products for smoking.

The revision of the Directive 2001/37/EC focuses on five areas: 1) Smokeless tobacco products and extension of the product scope (i.e. nicotine containing products and herbal products for smoking), (2) packaging & labelling, (3) ingredients/additives, (4) cross-border distance sales and (5) traceability and security features.

Sale of tobacco for oral use (Article 15).

Article 15 of the proposal lays down that Member States shall prohibit the placing on the market of tobacco for oral use, without prejudice to Article 151 of the Act of Accession of Austria, Finland and Sweden. Under that Act, Sweden has a derogation from this prohibition.

The Commission states that it is not considered justified to lift the current ban which was introduced already in 1992 and which was justified from an internal market point of view since three Member States had already banned or announced a ban of oral tobacco due to the harmful and addictive effects of the product. At that point in time oral tobacco had also started to be distributed on the market of certain Member States in such a way as to attract young people. The harmful effect of oral tobacco has been confirmed by the Commission's Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR) and other studies. Given the continuous development of oral tobacco, in particular oral tobacco flavoured in a significant manner and presented in attractive packages in the Swedish market, the Commission considers there is a risk of uptake (also of other tobacco products) in new users, including young people.

The current ban was seen as proportionate by the Court of Justice of the European Union in 2004 due to the harmful effects, the uncertainty of oral tobacco as a substitute for cigarettes, the addictive and toxic properties of nicotine, oral tobacco's risk potential for young people and the novelty of the product. [Case C-434/02, *Arnold André GmbH & Co. KG v. Landrat des Kreises Herford*, ECR 2004, p. I-11825.]. The Commission takes the view that this reasoning is still valid today.

Preliminary Government opinion

In its explanatory memorandum 2012/13:FPM51 the Government welcomes the fact that the Commission, as promised, has submitted its proposal for a revised Tobacco Products Directive before the end of 2012. The Government considers that a revision of the directive has the potential to enhance consumer protection and lead to greater clarity on product development; it should also result in clearer regulation, since industry's responsibility is more precisely outlined and the authorities' supervisory function brought into sharper focus.

The Government wishes to achieve a uniform and responsible system of rules covering all tobacco products. Uniform and responsible rules on tobacco mean that it should be possible to regulate tobacco more strictly, focusing on a high level of human health protection and enhanced consumer protection, and also that no separate rules are required to ban any specific tobacco product. In particular the Government welcomes the fact that the proposal seeks to curb tobacco use among young people and to ensure that consumers are given correct information on the health risks tobacco use can entail. The Government is also pleased to note that the Commission is now proposing compulsory pictorial health warnings on some tobacco products. Overall, the Government takes the view that many of the proposals will promote a reduction in the harm caused by tobacco and improve consumer protection for EU citizens.

However, the Government considers that parts of the proposal could be made clearer, for example the rules governing ingredients and additives.

The Government regrets that the Commission still proposes separate rules for certain tobacco products, including a continued ban on the distribution and sale on the common European market of tobacco for oral use (snus) in Member States other than Sweden. The Government

would have preferred the Commission proposal to formulate a uniform and responsible system of rules covering all tobacco products. Uniform rules would enable all tobacco products to be judged on the same criteria, and the Government thinks that this is a desirable objective. The Government notes that Sweden has a permanent (not temporary) exemption in the Accession Treaty (Act of Accession) allowing Swedes to use snus.

The explanatory memorandum makes it clear that the Government will analyse the Commission proposal in detail, including the new rules on additives in tobacco products, the ban on distributing and selling snus on the common European market in Member States other than Sweden, and the new rules on written and pictorial warnings.

Assessment by the Committee.

Introduction

The subsidiarity principle is laid down by Article 5 of the Treaty on European Union. According to this Article, the Union, in areas which do not fall within its exclusive competence, shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level.

Under the Protocol on the application of the principles of subsidiarity and proportionality annexed to the Lisbon Treaty, the Commission, the European Parliament and the Council shall forward their draft legislative acts to national Parliaments to enable them to issue an opinion on the proposal's compliance with the subsidiarity principle. In accordance with Rule 10(6) of its Rules of Procedure, the Riksdag must assess whether the legislative act conflicts with that principle.

If the national parliament considers that the draft does not comply with this principle, it may send a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission. This opinion must be sent within eight weeks from the date on which the proposal was available in all official languages of the EU. The Committee shall also send a report to the plenary if at least five members of the Committee request it.

Application of the subsidiarity principle on this matter

Assessment by the Commission

The Commission takes the view that some of the areas included in this proposal are already harmonised, but need to be updated in accordance with market, scientific and international developments. Other relevant areas are subject to different legal approaches in Member States which have led to obstacles to the functioning of the internal market. For example, for labelling and ingredients, the heterogeneous situations in Member States have resulted in a situation where the industry has to produce different product lines for different markets. Only a harmonised approach at EU-level in such areas can remove obstacles to cross-border trade and avoid fragmentation, while ensuring a comparable high level of health protection. Finally, the Commission considers it is very difficult for a Member State to act unilaterally in some areas due to the difficulties of enforcing such an action when other Member States have

different rules. A legally binding and EU wide measure therefore produces clear benefits. The same holds true for the EU tracking and tracing system, when tobacco products regularly move across borders. In the Commission's view this proposal also contributes to greater consistency, both between and within Member States, and a higher level of legal certainty, for example in the area of nicotine containing products where the current legal situation is complex and unclear, which undermines the level playing field. The Commission states that the objectives of the proposed action cannot be sufficiently achieved by the Member States, but can rather be best achieved at Union level.

Under the principle of proportionality, the content and form of the Union action shall not exceed what is necessary to achieve the objectives of the Treaty (Article 5(4) TEU). The Commission considers that that proposal complies with the proportionality principle.

Assessment by the Government

The Government shares the Commission's view and considers that the proposal complies with both the subsidiarity and proportionality principles.

Committee's opinion

The Committee welcomes the fact that the Commission has submitted a revised Tobacco Products Directive. Many of the proposals have the potential to promote a reduction in the damage caused by tobacco and improve consumer protection for EU citizens. It is positive that the proposal focuses on ensuring that fewer young people start using tobacco.

In the committee's opinion the Tobacco Products Directive should cover those tobacco products which are traded freely on the common European market. However, the committee notes that the ban on the distribution and sale of tobacco for oral use (snus) in Member States other than Sweden still features in the Commission's proposal for a directive. That being so, the committee considers that the regulation of snus should be regarded as a national matter and that the directive should therefore not cover snus.

The committee considers that the relevant portions of the Commission proposal in its present form, do not comply with the subsidiarity principle. The committee therefore proposes that the Riksdag issue a reasoned opinion to the Presidents of the European Parliament, the Council and the Commission in accordance with Rule 10(6) of its Rules of Procedure.

In the committee's opinion the other sections of the Commission's proposal do not conflict with the subsidiarity principle.

The committee proposes that the matter be tabled only once before a final decision is taken.

Annex 1

Summary of documents assessed

Commission proposal 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)

Annex 2

Reasoned opinion by the Parliament (Riksdag) of the Kingdom of Sweden

The Commission proposal 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)0788), which is the subject of the Social Committee's Report 2012/13: SoU 17, was examined by the Riksdag in the light of the subsidiarity principle.

The ban on the distribution and sale of tobacco for oral use (snus) on the common European market in Member States other than Sweden still features in the Commission's revised proposal for a directive (Article 15).

The Tobacco Directive should cover those tobacco products which are traded freely on the common European market. That being so, the Riksdag considers that the regulation of snus should be a national matter and that the directive should therefore not cover snus.

The Riksdag therefore considers that the relevant portions of the Commission proposal in its present form do not comply with the subsidiarity principle.

As for the rest of the proposal, the Riksdag does not consider these sections to be contrary to the principle of subsidiarity.