



THE SENATE
OF THE PARLIAMENT OF THE CZECH REPUBLIC
9TH TERM

162nd

RESOLUTION OF THE SENATE

Delivered on the 6th session held on 22nd March 2013

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 /Senate Press no. N 019/09/

The Senate

I.

1. Agrees

with scientifically and repeatedly proven claims about serious harmful effects of the use of tobacco products on human health, while reminding that tobacco products together with alcohol, electronic gambling, illegal or harmful internet content, certain medications and other intoxicants belong to very dangerous sources of addiction;

2. Warns

about negative consequences of the use of tobacco products, especially among vulnerable groups such as the young, pregnant women, people suffering from diseases of the respiratory tract, asthmatics, or victims of passive smoking;

3. supports, therefore,

the European Union's initiatives which aim to protect the public health of the population by measures that should lead to a reduction in consumption of tobacco products and to a fight against smoking especially among children and adolescents;

4. Recalls, however,

that according to Article 168 of the Treaty on the Functioning of the EU, the EU only has the power to complement Member States' action in reducing drugs-related health damage, including information and prevention, and therefore does not have the power to adopt legislative acts in this area;

5. Points out

that the legal basis for the directive chosen by the Commission, i.e. Article 114 of the Treaty on the Functioning of the EU, is primarily intended to ensure the

establishment and functioning of the internal market through the approximation of provisions laid down by law, regulation or administrative action, rather than to ensure the protection of public health;

6. Notes, in this context,

that the main obstacle to the functioning of the internal market in tobacco products consists in different regulations of excise duty in the member states and, therefore, the contribution of the proposal for a directive to the removal of barriers in the internal market can be considered to be very limited;

7. Is of the opinion

that measures against the use of tobacco products should be primarily taken at the Member State level;

8. States,

having regard to the aforementioned, that certain aspects of the proposal are based on a rather extensive interpretation of the EU competences in the field of public health and of the compliance with the principle of subsidiarity, bordering on its very limits;

II.

1. Does not support

a ban on flavoured tobacco products because it has not found any link between the consumption of these specific product varieties and the rate of consumption of tobacco products among the youth and does not see any benefits of a ban of this product category to the establishment and functioning of the internal market;

2. Does not believe

that it is appropriate to determine the smallest diameter of a cigarette, since under Article 3(1) of Council Directive 2011/64/EU on the structure and rates of excise duty on tobacco products, a cigarette (tobacco roll) is defined by its length and not by its diameter;

3. Disagrees

with the provision that increases the size of health warnings on the surface of cigarette packs, as this may impair the rights of owners of logos, trademarks and industrial designs, while noting that the effect of these warnings on the reduction in cigarette consumption has not been credibly established;

4. Recommends

to focus primarily on combating the sale and use among children and adolescents in the fight against the abuse of tobacco products, noting that such measures should be taken at the national level, where the authorities are best placed to assess their impact, adequacy and effectiveness in relation to the national regulation of retail sales of food and related products;

5. Suggests

that the competent national authorities the regulation of tobacco products and on combating the effects of smoking pay attention to a more stringent definition of places where smoking is allowed in order to ensure a complete protection of non-smokers from the effects of involuntary passive smoking, especially in the workplace, in restaurants and other public areas;

6. Recalls

that some of the measures aimed at tightening the regulation of tobacco products may result in a strong boost for the black market in cigarettes, especially in those regions of the EU that have lower purchasing power, and in the border states of the EU;

7. Stresses,

in this context, the risks of illegal cigarette trade for public budgets, such as a decrease in the collection of excise duty on cigarettes and tobacco products, which can have a significant impact on public finances;

8. Adds

that an increase in illegal production and trade in tobacco products may eventually weaken the protection of the public health of consumers because products of dubious origin, whose compliance with the goods safety requirements will not be ensured, may infiltrate the market;

9. Supports

the legislative regulation of innovative tobacco products, products containing nicotine and herbal products because their exclusion from the legislation could give the consumers a misleading impression that they are a less harmful alternative to conventional tobacco products;

10. Believes

that the proposal constitutes excessively extensive delegated powers for the Commission, because under Article 290 of the Treaty on the Functioning of the EU, the Commission may only adopt acts amending the non-essential elements of a legislative act, while the draft Directive allows the Commission to amend essential elements of the Directive as well (the maximum amount of harmful substances, methods of measurement, determining whether a particular product falls within the scope of the Directive), thereby exceeding the limits of the EU primary law;

III.

1. Requests

the Government to inform the Senate about the way this position was taken into account and to provide the Senate with further information on the proceeding of negotiations;

2. Authorises

the President of the Senate to forward this Resolution to the European Commission.

Milan Štěch
sign manual
President of the Senate

Miroslav Škaloud
sign manual
Senate Verifier