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NOTE

from: Polish and Czech Delegations
to: COUNCIL
Subject: COUNCIL OF THE EUROPEAN UNION (Competitiveness (**Internal Market**, Industry, Research and Space)) on 29/30 May 2013

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 (**First reading**)

– *Information from Polish and Czech delegations*
(Other business item)

Delegations will find attached an information note by the Polish Delegation in ANNEX I and by the Czech Delegation in ANNEX II on the above mentioned subject.

Information note from the Polish delegation 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 (doc. 18068/12)

Recalling the Note doc 6562/13 from the Polish delegation from 18 February, 2013, Poland would like to draw attention of Competitiveness Council Members to 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

Background

The overall objective of the proposal is to improve the functioning of the internal market while ensuring a high level of health. In the opinion of Poland the competitiveness side of the proposal requires the attention of the Competitiveness Council Members.

Objective

Taking into account the overall objective as well as the competitiveness aspects of the proposal and its potential consequences for the economy (i.e new obligations for manufactures and economic operators, restrictions in the forms of ban, deviation from new legislative framework) Poland believes **it is important to present to Competitiveness Council Members the regular update and information on the state of play on the proposal from the Presidency.** Poland reiterates the need to take into account all aspects of the proposal and the impact assessment of the proposed solutions on tobacco cultivation and production of tobacco products in the individual Member States, the impact on specific regions where tobacco is grown and/or manufactured, as well as the competitiveness of the European industry (all the chains) in international markets.

Poland wishes to highlight its support for any actions aiming at improving high level of health. However, **the instruments relating to well functioning of the internal market must be given the thorough consideration.**

Information note from the Czech delegation on certain economic impacts of 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 (hereinafter referred to as “Proposal”)

While the Czech Republic does not question the anticipated positive impacts of the Proposal on the protection of public health, it wishes to draw attention also to some of its possible socio-economic impacts.

In this context, the Czech Republic appreciates the extensive Impact Assessment provided by the European Commission in order to assess the impact of the Proposal on public health protection and its economic and social implications.

As the scope and concentration of the tobacco industry differs greatly among the individual Member States, the Czech Republic in response to the publication of the Proposal carried out its own evaluation of the anticipated impact of the Proposal as regards tobacco products on the Czech economy and economic stakeholders including SMEs.

Although the overall conclusions of the Commission’s Impact Assessment are supposed to be valid, some parts related to the economic impact may be viewed as inaccurate or even misleading due to the availability and quality of used data (the problem is admitted by the Commission itself in relation to the Eurostat data). With respect to the Czech Republic, the study for instance does not take into account more than 1700 employees working in the industry (the study operates with zero). Other economic aspects related to employment, tax revenue and an impact on SMEs are neither exhaustively evaluated.

The Czech Republic wishes to reiterate that it does not question the positive objectives of reduced consumption of tobacco products on public health and on the economics of healthcare and social systems. However, it is difficult to ignore the significant implications of the Proposal on the right to conduct business granted by the Charter of Fundamental Rights of the EU and freedom of consumers as regards the choice within an adequate range of products.

Impact on competitiveness

In this respect, the Czech Republic would like to raise concerns regarding the impact of some of the proposed measures (for example the ban on cigarettes with a diameter of less than 7.5 mm and on tobacco products with characterising flavour). The Impact Assessment failed to prove the relationship between those restrictive measures and the decreasing number of smokers which renders the ban disproportionate. Even more worryingly, besides the negative impact on the competitiveness of the legal operators and significant negative tax-revenue impact, the proposed measures could bring a risk of promoting an increase of illegal trade.

In the context of competitiveness it is also necessary to take into account the financial costs for the operators regarding the introduction of the new measures against counterfeiting. In order to limit the counterfeiting, the Proposal foresees new safety features in order to facilitate the verification of products' origin. A unique identifier should enable the identification of all distributors from the production site to the retailer. The increased costs stemming from the traceability and safety features will be borne by all relevant segments of the distribution chain and may lead to a diminished competitiveness of the producers on third-country markets.

Moreover, the proposed introduction of combined health warnings with the size to be extended to 75% of the external area of both the front and back surface of packing could present an inadequate restriction of the rights of the trade-mark owners as the distinctiveness of the producer's trade mark would be radically diminished. In the legal context, the Czech Republic is of the opinion that the relevant provisions of the Proposal might not correspond to the principle of proportionality and be therefore contrary to the existing international obligations (TRIPS WTO, The Paris Convention for the Protection of Industrial Property).

Very important question is also the competitiveness of the Union as regards the trade with the third countries and the benefits brought by novel tobacco products that will be introduced on the market. Based on the growing demand by consumers, the entrepreneurs have been investing in new types of products with a potential of lower health-risk both to adult consumers and to their surroundings. The positive impacts of future introduction of such products on the market should not be ruled out. From a technological perspective, this could be an entirely new type of products with a higher added value and innovation potential that could, besides the possible harm reduction effects, generate new investment, jobs and contribution to economic growth.

The Internal-Market aspect

In general, when it comes to harmonization of the regulative framework for products, positive impacts on the free movement of goods are assumed. However, the Czech Republic does not share positive expectations in respect to the Proposal's impact on the Internal Market and free movement of goods. While the objectives of this Proposal are obviously related to public health protection, the proportionality of such measures needs to be carefully scrutinized. Restrictions of marketing and product diversity along with limitation of advertising opportunities and other measures introduced on both European and national level will make hardly possible for product's producers and distributors to succeed on a foreign market. In addition, the potential positive impacts of the harmonization are further diminished by the possibility for the Member State to adopt even stricter measures and thus limit access to the market.

Impact on employment

The forecasted reduction of tobacco-products consumption of about 2 % will lead to a decrease of job opportunities in the tobacco-industry sector and to loss of jobs of the tobacco-industry workers. The direct negative impact on growers and processors as well as indirect negative impact on tobacco retailers are also expected. In the Czech Republic, there are currently 14 business operators with their main field of activity "tobacco products manufacturing", employing with suppliers over 5000 workers, about additional 240,000 workers are employed in the retail sector.

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The Czech Republic is a significant producer of tobacco products, with more than 2/3 of products being exported. The proposed ban on more than 10% of the current legal production in the Union (i.e. menthol or "slim" cigarettes) will, in combination with further packaging standardisation, therefore, have a stronger impact on the economy of the Czech Republic than on economies of some other countries. At the same time, these measures could facilitate imitation of the cigarette packaging and thus boost related increase of illegal trade and related dangers for consumers (the consumer would be harmed by the increase of illegal trade with poor quality products). This can also lead to significant impact on tax revenues. Estimated 5% increase of illegal trade resulting from the proposed measures would in the Czech Republic translate, only in excise duties, to tax evasions in the amount of EUR 130 mil. per year.