From: Antonella Pederiva <antonella.pederiva@ceccm.eu>
Sent: 12 December 2013 15:07
To: CAB BORG WEBPAGE
Cc: SCHNICHELS Dominik (SANCO)
Subject: letter from CECCM
Attachments: letter to Commissioner Borg 12.12.13.pdf

Follow Up Flag: Follow up
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Dear Commissioner Borg,

I send you in the attachment a letter from CECCM relating to the implementation timelines of the future Tobacco and Related Products Directive.

Yours sincerely

Antonella Pederiva

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Original sent by regular mail.

CECCM

Mr. Tonio Borg
Commissioner for Health
European Commission
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Cc. Dr. Dominik Schnichels
Head of Unit
Unit D4 - Substances of human origin and Tobacco control
Health and Consumers DG (SANCO)
European Commission
Rue de la Loi 200
1049 Brussels
Belgium

Brussels December 12, 2013

Re: Timelines for implementation of certain provisions covered by the revision of the Tobacco and Related Products Directive.

Dear Commissioner,

We understand that the Trialogue is about to finalise the revision process of the Tobacco and Related Products Directive.

A host of new regulations shall be implementable by various economic operators.

We therefore urge you to consider our requests for longer implementation deadlines of the future Directive, to enable CECCM member companies (British American Tobacco, Imperial Tobacco Group and JT International) and the broader supply chain to secure the compliance with all the regulatory requirements.

1. Article 26 (transitional period)

A minimum of four years after entry into force is needed for manufacturers to achieve compliance with Articles 8(3), 9(1)(e) and 13.

Why?

- No country has produced a more wide reaching piece of tobacco legislation than the Tobacco and Related Products Directive.
- The EU, however, expects both national implementing legislation and manufacturing compliance in 28 countries to be achieved in only two years. This is unrealistic.

Confederation of European Community Cigarette Manufacturers A.I.S.B.L.
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- For example, certain provisions, namely the need for new packaging capable of holding slim products and avoiding product damage will have to be developed (consequent to Article 8(3)), pack appearance requirements in Article 13 and the repositioning of tax stamps (Article 9 (1)(e) will require a substantial number of new machines and machine conversions.
- Approximately, a fourfold increase in demand for new machines and a seven fold increase in demand for machine conversions should be expected as soon as there is certainty re final outcomes on Articles 8(3), 13 and 9 (1)(e).
- The normal lead time for delivery and installation for new machines is up to 18/20 months to develop/ build and 2 months to install (up to 22 months in total). The normal lead time for machine conversions is up to 11 months.
- The spike in demand for machines once the articles referenced above will increase these lead times substantially. The net effect is that a minimum of four years after entry into force is needed for manufacturers to achieve compliance with Articles 8(3), 9(1)(e) and 13.
- Manufacturers are constrained from achieving earlier compliance by the capacity limitations and availability of engineers for design and installation in the machine manufacturing industry. There is no prospect of the machine production industry investing in significant new capacity to meet a one off spike in demand (indeed they would not have the time to do so).
- With respect to many of the Articles in the Directive, manufacturers cannot begin implementation work before the Commission has passed implementing acts and/or the Member States have passed national legislation.
- However, the deadline for compliance of manufacturing, as set out in Article 26(1)(a) in the General Approach, is exactly the same as the deadline for Member States to transpose the provisions into national law. Industry can only be expected to begin the transition to manufacturing compliance after national transposition legislation and/ or implementing acts are final. Article 26(1)(a) of the General Approach is unhelpful in this regard and should be removed.

2. Specific time-line for menthol derogation (article 6.10 (b) (new)):

It is also important that the longest possible time be allowed before menthol products are removed from the market and we note that the European Parliament decided that this should be 8 years (3+5).

Why?
Menthol products represent a significant market share in some Member States. Significant illicit trade risks are associated with this ban. A long transition period is necessary to mitigate this risk, if only partially.

3. Specific time-line for implementation of article 14:

It is ambitious, but reasonable, to expect that provisions of Article 14 can be met by all economic operators within a minimum of 6 years from the point of adoption of implementing acts. Since the adoption of Implementing Acts will take a number of years, at least 8 years in total should be envisaged from the date of entry into force of the Directive.

Why?
The tobacco supply chain, which consists of tens of thousands of wholesalers, sub-wholesalers, warehousing and transport service providers, cannot achieve the track and trace requirements imposed by Article 14 within the 4 years given by the Council's General Approach (Article 14.9).
- Moreover, these 4 years include an unspecified period in which the Commission and the Member States need to specify the implementation details of the system. In particular, the following steps have yet to be completed:
  - The feasibility study currently being undertaken by the Commission;
  - Details of the treatment of import and export transactions;
  - The adoption of implementing acts envisaged in Article 14.8.

CECCM

- The FCTC AIT Protocol envisages the need for 5 years to implement a global tracking and tracing system. That 5 years is the time for implementation of track and trace to the level of the first customers. Article 14 gives less time to implement a much more burdensome and complicated system of track and trace to the level of the last economic operator before the last retail outlet.
- The hardware and software to allow track and trace for packs through the supply chain from first customer to the last economic operator before the first retail outlet has yet to be designed.
- Implementation work cannot begin until the implementing acts referred to in Article 14.8 are adopted by the Commission. Since this could take years, the actual implementation time left available to the supply chain out of the four year total could be extraordinarily inadequate and guarantee universal non-compliance.
- There is also an urgent technical requirement to split the implementation into (a) development of the unique identifier for each pack and tracking by manufacturers to their customers and subsequently, (b) tracking by economic actors in the supply chain beyond the first customer. These systems are significantly different and cannot be implemented in parallel. Each manufacturer will apply the unique identifiers and fulfill their other obligations. All subsequent economic operators in the supply chain have to deal with products and data sets from all manufacturers and be provided with the necessary systems. For these reasons, the implementation within the trade is complex cannot start before the previous phase has been finalised.

I thank you in advance for considering our requests.

Yours sincerely

Antonella Pederiva
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