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EUROPEAN CIGAR MANUFACTURERS ASSOCIATION

European Commission
DG Health & Consumers Unit D4
Mr D. Schnichels
B-1049 BRUSSELS
Belgium

Tilburg, 24 October 2013
Re. Trilogue on the Tobacco Products Directive

Dear Mr Schnichels,

After the vote on the Tobacco Products Directive (TPD) in the European Parliament on 8 October, Health Commissioner Borg noted that the Commission would carefully analyse the amendments adopted and define its position so that negotiations could continue in trilogue.

In the context of these negotiations, the European Cigar Manufacturers Association (ECMA) would like to inform you about its views on some of the issues that are currently on the table.

We would highly appreciate to be given the opportunity to discuss the foregoing with you in a personal meeting.

Yours sincerely,

Marcel Crijnen,
Secretary General



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ECMA views on the revision of the Tobacco Products Directive

Commission proposal COM(2012) 788 final

In its proposal the Commission exempted tobacco products other than cigarettes, roll-your own tobacco and smokeless tobacco products, i.e. cigars, cigarillos and pipe tobacco from some provisions such as the prohibition of products with characterising flavours. As regards labelling and packaging the Commission noted that "the proposal exempts tobacco products other than cigarettes and roll-your own tobacco from larger health warnings. Other tobacco products (e.g. cigars and pipe tobacco) will be subject to rules corresponding to the provisions set out in Directive 2001/37 EC, i.e. text warnings of not less than 30% (front) plus 40% (back) of the packages". These exemptions were justified considering that these products are mainly consumed by older consumers, while the focus of the proposal was to regulate tobacco products in such a way as they do not encourage young people to start using tobacco. The exemptions will be removed if there is a substantial change of circumstances (in terms of sales volume or prevalence level among young people).

Labelling of tobacco for smoking other than cigarettes and roll-your-own tobacco

ECMA welcomes the fact that both the Council as well as the European Parliament have suggested to amend the Commission proposal in such a way that, in line with Directive 2001/37 EC, the warnings on cigars, cigarillos and pipe tobacco may be affixed by means of stickers, provided that such stickers are irremovable. In addition the European Parliament is also of the opinion that, in the case of packets whose most visible side has an area exceeding 75 cm², the warnings must cover an area of at least 22,5 cm² on each side (to be increased to 24 cm² for Member States with two official languages and 26,25 cm² for Member States with three official languages). As this provision also stems from Directive 2001/37 EC, it is in line with the Commission views that cigars, cigarillos and pipe tobacco would be subject to rules corresponding to the provisions set out in Directive 2001/37 EC. For the cigar industry, with its enormous variety in pack sizes, it is of utmost importance that both provisions remain part of the future labelling requirements.

We would like to draw your attention to the fact that, in line with Directive 2001/37 EC, several Member States introduced combined health warnings on the back of tobacco product packs in recent years. As these rules correspond to the provisions set out in Directive 2001/37 EC, we urge you to make sure that also these Member States can exempt tobacco for smoking other than cigarettes and roll-your-own tobacco from the obligations to carry the information message laid down in Article 8(2) and the combined health warnings in Article 9 without having to change their labelling rules. In our view this could best be solved by referring to "a text warning or a combined health warning in accordance with Article 9 (1) (a) and (f)" in paragraphs 10.1, 10.3 and 10.4.

Finally we question the need for the formulation of article 10.1 as suggested by the Council in its General Approach ("Member States may exempt .."), as Member States will anyhow have the right to maintain or introduce more stringent national provisions on the basis of Article 24.2.

Product description

ECMA welcomes the fact that the European Parliament has suggested that the variety of tobacco used to manufacture the product, its country of origin, or both, may be indicated on the unit packet, as this information is highly relevant for cigar smokers in their decision making process. We are of the opinion that existing trademarks should be respected.

Traceability and security features

ECMA welcomes the fact that the European Parliament has suggested to exempt tobacco products other than cigarettes and roll-your-own tobacco from the application of paragraphs 1 to 8 of article 14 during a period of seven - instead of five - years following the date of national implementation. However, we would like to note that we are of the opinion that the tracking and tracing system, in line with the provisions of the WHO FCTC protocol on the illicit trade in tobacco products, should not go beyond the first customer who is not affiliated with the manufacturer. A tracking and tracing system that would go as far as the last economic operator before the first retail outlet would create conditions that are impossible to meet for the small and medium sized enterprises in the European cigar sector - let alone the exporters from Latin America - with their small production- and sales volumes, regardless of any transition period.

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Regulation of ingredients

ECMA welcomes the fact that, according to the Commission proposal, tobacco products other than cigarettes, roll-your-own tobacco and smokeless tobacco products shall be exempted from the prohibitions laid down in paragraphs 6.1 and 6.5. The Commission shall be empowered to adopt delegated acts in accordance with Article 22 to withdraw this exemption if there is a substantial change of circumstances as established in a Commission report. Contrary to the Commission proposal it is not clear to us how the exemption as suggested by the European Parliament would work. According to the Parliament, tobacco products other than cigarettes, roll-your-own tobacco and water pipe tobacco would be exempted from the application of the ban on additives which, when used, may impart a characterising flavour. However, would there be a separate list of approved additives specifically for tobacco products other than cigarettes, roll-your-own tobacco and water pipe tobacco, or would the list perhaps contain different levels of permitted additives for different products (as you know currently different reporting thresholds are used for cigarettes and fine-cut tobacco compared to pipe tobacco, cigars and smokeless tobacco products)? Finally we fear that the exclusion criteria proposed by the European Parliament, such as the application of the Classification, Labelling and Packaging Regulation in article 6.1.d, would lead to a de-facto ban on additives.

Delegated acts / substantial change of circumstances / report

The proposal exempts cigars and pipe tobacco from certain provisions of the new Directive unless there is a substantial change in circumstances in terms of sales volumes or prevalence level among young people. Given that, according to the Parliament, the Commission would already be required to report on the application of the Directive after three - instead of five - years and in order not to create any uncertainty for the SMEs working in the cigar and pipe tobacco sectors, we welcome the suggestion of the Parliament to delete the reference to the delegated acts in articles 3.3 (maximum yields), 10.5 (labelling) and 13.4 (appearance and content of unit packets). Another alternative that would give the SMEs working in the cigar and pipe tobacco sectors some more certainty would be the addition to the definition of 'substantial change in circumstances' as suggested by the Council. An additional reason not to establish a delegated act to adopt maximum yields for emissions of tobacco products other than cigarettes is the fact that, for the time being, no internationally standardised methods for measuring those emissions exist. According to the Parliament the report should, among others, pay special heed to the development of standards concerning products other than cigarettes.

Definitions

As mentioned before we would welcome the addition to the definition of 'substantial change in circumstances' as suggested by the Council. In addition the proposal also introduces a definition of cigarillos. In our view cigarillos do not need to be defined separately as a cigarillo simply is a specific cigar model, like others such as the senoritas, panatela or corona.

Transposition and transitional provision

The proposal would require Member States to transpose the provisions of the new Directive into national law within 18 months (Council: 24 months) of entry into force, with a sell-through period of non-compliant stock of six months (Council: 12 months). Cigars are produced in small volumes and in a large variety of models, sizes and brands. As a result, production runs are small and the turnover rate for manufacturers, wholesalers and retailers is low. For this reason consideration (18) of Directive 2001/37 EC stated: "Transitional periods should also be provided for in relation to other provisions of this Directive in order to allow the necessary modifications in production to take place and for disposal of stocks, particularly for products other than cigarettes". By way of derogation, products other than cigarettes which did not comply with the provisions of the Directive could continue to be marketed for two years after the date of entry into force. We believe that, after the transposition of the new Directive into national law by the Member States, at least 12 months are required for the industry to adapt their products and packages in order to comply to the new regulations (compliance), followed by at least another two years during which products complying to Directive 2001/37/EC could continue to be marketed (sell-through of stocks).

October 2013.

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