

By email to Comissao.9A-CSXII@ar.parlamento.pt

Brussels, 30 June 2015

Dear Member of the Parliament,

Re: Public consultation on the draft Portuguese implementation of Directive 2014/40/EU – ESTA submission

The European Smoking Tobacco Association, ESTA, represents companies that manufacture and sell roll-your-own tobacco, pipe tobacco, nasal snuff tobacco and traditional chewing tobacco products. ESTA member companies include small and medium sized companies, of which several are family owned and exist for over a century as well as multinational companies.

ESTA welcomes the Portuguese Parliament Health Committee's consultation on the draft Portuguese implementation¹ of Directive 2014/40/EU 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 (hereafter "the Directive" or "TPD II"). Against this background, ESTA would like to submit the following comments:

TPD II transposition

ESTA welcomes the Portuguese government initiative to proceed with the transposition of TPD II into Portuguese law as soon as possible. Such an approach allows our industry to have a degree of legal certainty which permits the initiation of required investments in order to adapt existing production lines to the various requirements of the national transposition act. This being said, **it is essential that the provisions of the act do apply from 20 May 2016 and not before that date.**² As mentioned above, our members need to adapt existing machinery or order new machinery and integrate those changes into the current producing and distribution processes in order to be compliant with various TPD II labelling requirements as well as with the requirements set in the national implementing act. They should, therefore, be allowed the necessary time to make the required changes and the currently remaining time (until 20 May 2016) is already extremely tight for all our members but, in particular, for our small and medium sized member companies.

¹ "Proposta de Lei n.º 322/XII ».

² Article 29 (TPD II) states that "the Member States **shall apply those measures from 20 May 2016** [...]."

Market Clearance

Article 30 of TPD II stipulates that Member States may allow tobacco products which are not in compliance with the Directive to be placed on the market until 20 May 2017 provided that those tobacco products are manufactured or released for free circulation and labelled in accordance with Directive 2001/37/EC ("TPD I") before 20 May 2016. **The one year placing on the market period included in the Directive is absolutely necessary for our members given that their products (be it roll-your-own tobacco or any category of other smoking or smokeless tobacco products) have a significantly longer life-shell duration than, for instance, cigarettes.** Not allowing for a one year placing on the market (20 May 2016 to 20 May 2017) would, therefore, result in a discrimination of certain categories of tobacco products (roll-your-own, pipe and smokeless tobaccos) against others (cigarettes).

Labelling of pipe tobacco products

Article 11 of the Directive 2014/40/EU stipulates that Member States may exempt pipe tobacco products from the obligation to carry the information message and combined health warnings laid down in respectively Article 9 and 10. One of the objectives of the Directive is to approximate laws, regulations and administrative provisions of the Member States concerning certain aspects of the labelling of tobacco products, taking as a base a high level of protection of human health, especially for young people.

Pipe tobacco products are produced in a great variety of brands, packaging types, formats and shapes. One of ESTA's member companies produces for example over 1600 Stock Keeping Units (SKU) to cater for a very diverse consumer base that favours small niche brands rather than mass produced tobacco products. Some SKUs are produced in batches of less than 250Kgs. For tobacco products such as pipe tobacco, Directive 2014/40/EU foresees specific labelling requirements. This is evidenced by consideration (26): "For tobacco products for smoking, other than cigarettes and roll-your-own tobacco products, which are mainly consumed by older consumers and small groups of the population, it should be possible to continue to grant an exemption from certain labelling requirements as long as there is no substantial change of circumstances in terms of sales volumes or consumption patterns of young people. **The labelling of these other tobacco products should follow rules that are specific to them.**"

Applying the labelling requirements for factory made cigarettes and roll-your-own tobacco to pipe tobacco products not only disregards the reasoning of the Directive, it also poses serious complications as the labelling requirements of Articles 9 and 10 were not designed for pipe tobacco packaging. It is unclear how for example, the 65% health warning can be placed on pyramid shaped packaging or on pipe tobacco pouches where the flap of the pouch only extends to 50% of the surface and therefore does not have enough space for a 65% health warning measured to the total surface back or front without breaking the health warning.

In conclusion, Directive 2014/40/EU exempts pipe tobacco products from the labelling requirements laid down in Article 9 and 10 and caters for a specific labelling regime in Article 11. ESTA believes that

the Portuguese government has no reason not to allow the product specific labelling regime for pipe tobacco.

For all the above reasons, ESTA calls upon the Portuguese Parliament to apply the specific labelling requirements for pipe tobacco as stated in article 11 of Directive 2014/40/EU.

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We thank you for taking the above points into consideration. Please do not hesitate to contact us for any further information.

Yours sincerely,



Peter van der Mark
Secretary General of ESTA