



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 20 December 2013

17467/13

**SAN 511
MI 1167**

“I/A” ITEM NOTE

from : General Secretariat
to : Permanent Representatives Committee/Council

No. Cion prop.: 16937/13 SAN 492 MI 1082

Subject: COMMISSION DIRECTIVE ../.../EU of XXX amending Directive 2012/9/EU as regards the date for its transposition and the deadline for the end of the transitional period
– *Decision not to oppose adoption*

1. Article 9(2) of the Directive 2001/37/EC of the European Parliament and the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products¹ provides that the adaptations of health warnings on the unit packets of the tobacco product to the scientific and technological progress shall be decided by the Commission in accordance with the regulatory procedure with scrutiny.

¹ OJ L 194, 18.7.2001, p. 26.

2. The Commission Directive 2012/9/EU² replaces Annex I to Directive 2001/37/EC, providing for new additional health warnings to be used on unit packets of tobacco products and sets 28 March 2014 as the deadline for its transposition by Member States and 28 March 2016 as the deadline for the end of the transitional period provided for in Article 3 of that Directive.
3. In order to ensure that Member States have adequate time to comply with the deadlines for transposition of Directive 2012/9/EU it is appropriate to postpone those deadlines by additional two years. This measure shall be adopted in accordance with the regulatory procedure with scrutiny.
4. According to the second subparagraph of Article 12 of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers³, the effects of Article 5a of Decision 1999/468/EC are maintained for the purposes of existing basic acts making reference thereto.
5. Before adopting the draft Directive in the subject and in accordance with Article 5a(2) of Council Decision 1999/468/EC, the Commission consulted the Standing Committee on Tobacco Products, which voted on 31/10/2013 by 323 votes in favour and 29 votes against in favour of the above Directive.
6. Consequently, the Commission submitted the draft Directive to the Council on 19 November 2013, in accordance with Article 5a(3)(a) of Council Decision 1999/468/EC.

² Commission Directive 2012/9/EU of 7 March 2012, amending Annex I to Directive 2001/37/EC 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 products (OJ L 69, 8.3.2012, p. 15).

³ OJ L 55, 28.2.2011, p. 13.

7. Under the regulatory procedure with scrutiny, the Council, acting by qualified majority, may oppose the Commission's adoption of the draft Regulation on the grounds that this draft measure:
- exceed the implementing powers provided for in the basic instrument, or
 - are not compatible with the aim or the content of the basic instrument, or
 - do not respect the principles of subsidiarity or proportionality.
8. The delegations were asked on 6 December 2013 to indicate until 20 December 2013 their possible opposition to the draft Directive. The delegations did not raise any of the above-mentioned grounds for opposition.
9. **The Permanent Representatives Committee is therefore invited to recommend to the Council to confirm, as an "A" item of its agenda, that it is not opposed to the draft Directive in subject.** Unless the European Parliament opposes draft Directive within 3 months from its submission, the Commission shall adopt it in accordance with Article 5a(3)(d) of Council Decision 1999/468/EC.
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