

# LEGAL REGULATION OF TOBACCO AND TOBACCO PRODUCTS IN THE SLOVAK REPUBLIC AND IN THE EUROPEAN UNION

## PRÁVNÁ ÚPRAVA TABAKU A TABAKOVÝCH VÝROBKOV NA SLOVENSKU A V EURÓPSKEJ ÚNII

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### I. Introduction

Tobacco as raw material, but especially products thereof, in recent years repeatedly found themselves at the center of attention of political leaders, doctors, but also consumers, particularly in the context of already adopted or planned legal acts, respectively their amendments. Despite increasingly stronger warnings on cigarette boxes, recurring campaigns warning of the negative health effects of smoking, and rising prices of cigarettes and other tobacco products, the number of consumers does not decrease, on the contrary, the first experiences with smoking are shifted to increasingly lower

age categories. As a result of long-term daily smoking of large quantities of cigarettes, cigars and so on, number of illnesses related, and hence the amount of funds that are needed to treat these patients subsequently rises, together with the growing tax evasion linked to illegal imports, respectively, manufacture of tobacco products, which are due to the rising price mentioned above.

So called electronic cigarette have become phenomenon of recent months, presented as a healthy alternative to smoking, gradually leading to quitting smoking of traditional cigarettes and cigars. However, practical experience shows that smokers often consider them only as an alternative in places

#### Abstract (EN)

The contribution deals with the Slovak and the EU legal regulation of tobacco and tobacco products. Its primary purpose is to point out the Slovak and European legal acts which constitute the main regulatory instruments in this field using the method of analysis and synthesis. Rules of production, distribution and conditions of use of tobacco and products thereof are in the Slovak Republic contained mainly in two acts – the Act No 335/2011 Coll. on Tobacco Products and the Act No 377/2004 Coll. on the Protection of Non-smokers, as well as in special Decree No 212/2012 Coll., regulating tobacco products. Regulation of excise duty on tobacco products can be found in the Act with the same name – Act No 106/2004 Coll.. Another objective of the paper is also to draw attention to the amendment of Act on Protection of Non-smokers which entered into force on 1 July 2013.

The European Union struggles with the negative consequences of smoking at the supranational level and its institutions – the European Commission, the European Parliament and the Council of the EU – are already for several years adopting legal acts to facilitate uniformity and easier interpretation of European law also in the field of legal regulation of tobacco and tobacco products. The predominant part of the existing legislation deals with the approximation of laws in areas that are closely related to the manufacture, presentation and sale of tobacco products, but also to the collection of taxes from these products.

#### Abstrakt (SK)

Predkladaný príspevok sa zaoberá právnou úpravou tabaku a tabakových výrobkov v podmienkach Slovenskej republiky a Európskej únie. Jeho primárnym cieľom je prostredníctvom analýzy a syntézy poukázať na slovenské a európske právne akty, ktoré predstavujú hlavné regulačné nástroje v tejto oblasti. Pravidlá výroby, distribúcie a podmienky využívania tabaku a výrobkov z neho sú v slovenskej právnej úprave obsiahnuté predovšetkým v dvoch zákonoch – v zákone č. 335/2011 Z.z. o tabakových výrobkoch a v zákone č. 377/2004 Z.z. o ochrane nefajčiarov, ako aj v osobitnej vyhláške č. 212/2012 Z.z., upravujúcej tabakové výrobky. Právna úprava spotrebnej dane z tabakových výrobkov sa nachádza v rovnomennom zákone č. 106/2004 Z.z. Cieľom príspevku je tiež upozorniť na novelu zákona o ochrane nefajčiarov, ktorá nadobudla účinnosť 1. júla 2013.

Európska únia bojuje s negatívnymi následkami fajčenia na supranacionálnej úrovni a už niekoľko rokov jej inštitúcie – Európska komisia, Európsky parlament a Rada Európskej únie – prijímajú právne akty, ktoré majú napomôcť jednotnosti a ľahšej interpretácii európskeho práva aj v oblasti právnej úpravy tabaku a tabakových výrobkov. Prevažná časť existujúcich európskych právnych aktov sa venuje aproximácii práva v oblastiach, ktoré úzko súvisia s výrobou, obchodnou úpravou a predajom tabakových výrobkov, ale tiež s výberom daní za tieto produkty.

#### Keywords (EN)

tobacco, tobacco product, excise tax, the protection of non-smokers

#### Kľúčové slová (SK)

tabak, tabakový výrobok, spotrebná daň, ochrana nefajčiarov

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where today it is not allowed to smoke, or that after a short time of the use of electronic cigarettes they again return to traditional tobacco products. The problem is also the fact that smokers ignite electronic cigarette often in places where they had not been contemplate about this before in the case of the classic cigarette.

These are just some of the reasons for which the representatives of the government and parliament not only in Slovakia, but also in other EU countries, are moving towards more strict regulation of possibilities of production, distribution and use of tobacco and tobacco products. Maybe it could be talked about certain tendency to expel smokers from the largest possible number of public places and about positive discrimination of non-smokers, as is reflected in the text of the proposed amendment to the Slovak Act on the protection of non-smokers.

Our intention is to bring in the following article a closer view to a valid legal regulation related to these issues not only in the Slovak Republic, but also at the level of the EU and to draw attention to the upcoming legislative changes.

## II. The legal regulation of the tobacco in the European Union

The first of European Communities was created strictly on the economic base. In 1951 France, Belgium, Luxembourg, Italy, Netherlands and Federal Republic of Germany decided to establish integration including supranational model of cooperation. The European Coal and Steel Community was the result of this decision - it created the common market for these two raw materials on the basis of united legal regulation and establishment of common bodies, by the decisions of which its Member States should be bound to.<sup>(1)</sup>

The European Union as one of the biggest world economies has tried to control the tax flow from the time of creation of two communities on the basis of so called treaties of Rome in 1957<sup>(2)</sup>. The tax issue was also the first of solved problems connected with tobacco. There were adopted three directives of the Council - Directive 92/79/EEC of Council of 19 October 1992 on approximation of taxes on cigarettes, Directive 92/80/EEC of Council of 19 October 1992 on approximation of taxes on tobacco products with exception of cigarettes and the Directive 95/59/EC of 27 November 1995 on other taxes that influence consumption of manufactured tobacco, as the sales tax. These directives were later incorporated into the one consolidated version. Nowadays there is a complex of directives, regulations, decisions and recommendations of the European institutions which deals with the issue of tobacco products, as well as tax issue.

Regulations are generally binding and directly applicable in all Member States. They are therefore mainly used in areas where the EU has extensive powers. Their effects are similar

to Slovak acts, whereas they establish rights and obligations for all subjects of law in the EU Member States automatically from the date of its effectiveness. Transposition of the regulation as a whole into national law is prohibited, but there may be rules for its implementation adopted - but only if the regulation explicitly authorizes it and only within its limits. The enforcement of the regulation in the Slovak Republic is possible by the means of the act or approximation regulation of the government.

In regard to tobacco, directives are more frequently used as the softer legal instruments in comparison with the regulations. They enable reconciling of the unity of EU law with the desire to preserve the diversity of national arrangements. In contrast with the regulations, Member States are required to transpose the directive, therefore, take it into national law. So, we can talk about the legal effects of the directive at the two levels:

- at the EU level there is determined the objective of the directive, which obliges one or more Member States;
- then, at the national level, the authorities of a Member State have a duty to carry out the objective of the directive within the prescribed period, by the means of the adoption of adequate national measures.<sup>(3)</sup>

Decisions are binding in their entirety upon those to whom they are addressed (natural persons, legal persons, group of entities or Member States). They impose rights and obligations to their recipients. The Court of Justice of the EU in its decisions not only provides authoritative interpretation of EU law, but it also fills the gaps in writing European law and complements general legal principles. The recommendations are not legally binding and therefore can not be the subject of European actions. However, national courts may referred to the Court of Justice of the EU a preliminary question concerning the interpretation of recommendations.<sup>(4)</sup>

### 2.1 Directive 2001/37/EC of the European parliament and of the Council

Directive 2001/37/EC of the European parliament and of the Council of 5 June 2001 on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products<sup>(5)</sup> was adopted to eliminate the barriers which have still persisted on the internal market of the European Union. The aim was also to preserve the possibility of introducing such requirements as the Member States consider necessary in order to guarantee the protection of the health of individuals. The question of health protection was given priority, because of the harmful effects of smoking in relation to health, safety, environment protection and protection of the consumers (points 2 - 4).

<sup>(1)</sup> JANKŮ, M and JANKŮ, L.: Politické a právní základy evropských integračních seskupení.

<sup>(2)</sup> The European Economic Community (later only the European Community) and the European Atomic Energy Community.

<sup>(3)</sup> SIMAN, M. - SLAŠŤAN, M.: Právo Európskej únie - inštitucionálny systém a právny poriadok Európskej únie s judikatúrou.

<sup>(4)</sup> KARZEL, D.: Evropský soudní dvůr.

<sup>(5)</sup> The directive can be seen at <http://eur-lex.europa.eu/LexUriServ.do?uri=CELEX:32001L0037:EN:HTML>

Before this directive has been implemented into practice, there existed two different directives associated to this topic. First of directives, Directive 89/622/EEC, was adopted to establish a general warning to be carried on the unit packaging of all tobacco products, together with additional warnings exclusively for cigarettes, and from 1992, extended to the requirement for additional warnings to other tobacco products. This directive also prohibited the sale of certain types of tobacco for oral use in the Member States, but the Kingdom of Sweden has a derogation from these provisions (point 6 and 28). Directive 90/239/EEC established maximum limits for the tar yield in the cigarettes marketed in the Member States with the effect from 31 December 1992. The carcinogenic nature of tar makes it necessary to reduce further the levels of tar in cigarettes (point 5).

The call for adoption such a directive was caused by the request of few Member States which declared that if measures establishing maximum carbon monoxide yields for cigarettes will not be adopted at the level of the EU, they will adopt it at national level and this may cause the constitution of another barriers to trade and to smooth operation of the internal market (point 7).

The directive also draws attention to the regular evaluation of the direct and indirect socioeconomic costs of active and passive tobacco use. As it is set further, tobacco products have been shown to contain and emit many noxious substances and known carcinogens hazardous to human health when burnt. In recent years it has also been shown that passive smoking is dangerous in particular for unborn children and infants and that it can cause or aggravate respiratory problems in persons inhaling smoke. And as we mentioned in introduction, 80% of new smokers in the Community are below the age of 18 (point 21 and 26).

This document consists of 17 articles in which it deals with the questions of maximum tar, nicotine and carbon monoxide yields in cigarettes, measurement methods and labelling, as well as with the issue of adaptations, regulatory procedure and import, sale and consumption of tobacco products. It defines the basic terms: tobacco products, tar, nicotine, tobacco for oral use and ingredient (art. 2). Directive sets the maximum amount of the certain substances per cigarette as follows: max. 10 mg for tar, 1 mg per nicotine and 10 mg for carbon monoxide (art. 3 par. 1). In the same article there are listed also derogations. Together with this fact it is necessary to mention three ISO standards which should be followed: ISO 4387 (tar), 10315 (nicotine), 8454 (carbon monoxide) and 8243 for the accuracy of the tar and nicotine indications on packets (art. 4 par. 1).

The rules for placing the product composition on the packets are set together with the general warning which should be printed on each unit packet of tobacco products. Its wording is „Smoking kills/ Smoking can kill,“ or „Smoking seriously harms you and others around you.“ (art. 5 par. 2 letter a)). Additional warnings can be found in the annex of the directive. Article 5 governs warnings system as a whole rather detailed, even determines the extent of the area that warning must cover.

In accordance with this directive, manufacturers and importers of tobacco products shall submit a list of all ingredi-

ents and quantities thereof, used in the manufacture of those tobacco products by brand name and type. Their function and category shall be indicated in accompanied statement setting, as well as toxicological data. (art. 6 par. 1). Texts, names, trade marks and figurative or other signs suggesting that a particular tobacco product is less harmful than others are prohibited (art. 7).

The European Commission, in cooperation with scientific and technical experts, is responsible for the implementation of this directive. It has an obligation to submit a report on the application of the directive to the European Parliament, the Council and the Economic and Social Committee (art. 11).

## 2.2 Commission Regulation (EC) No 2182/2002

Commission regulation (EC) No 2182/2002 of 6 December 2002 laying down detailed rules for the application of Council Regulation (EEC) No 2075/92 with regard to the Community Tobacco Fund<sup>(6)</sup> is the result of the need to lay down detailed legal regulation for the operation and funding of the Community Tobacco Fund. This regulation was amended by newer regulations from 2004<sup>(7)</sup> and 2005<sup>(8)</sup>. It is made up of 29 articles and is dealing with the issue of information programmes and with the measures to promote a switch of production.

The Community Tobacco Fund was established in 1992 by the Regulation on the common organisation of the market in raw tobacco (No 2075/92). It finances measures with a view to improving knowledge of the harmful effects of tobacco and appropriate preventive and curative measures; and directing Community production towards other crops or other job-creating economic activities. Fund finances information programmes designed to public's understanding of the mentioned harmful effects of tobacco and to prevent and stop people from smoking. The projects can be submitted by the natural and legal persons who have to agree with the conditions laid down in that Regulation and to be able to provide at least 25% of the total financing needed for the project from their own resources. Fund is managed by the

European Commission which is supported by a scientific and technical committee.

The Fund has financed individual measures to encourage diversification in the activities of tobacco-growing holdings, through producer training and the creation of marketing structures for quality products other than tobacco; and general interest measures including studies on the opportunities to switch production to other crops or activities, guidance for producers who give up tobacco production and innovative experiments for demonstration purposes.<sup>(9)</sup>

The Tobacco Fund is financed by a deduction from the premiums granted to tobacco producers, so it is desirable

<sup>(6)</sup> The regulation can be seen at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2002:331:0016:0022:EN:PDF>.

<sup>(7)</sup> Commission Regulation (EC) No 480/2004 of 15 March 2004.

<sup>(8)</sup> Commission Regulation (EC) No 1181/2005 of 17 November 2005.

<sup>(9)</sup> Available at: [http://europa.eu/legislation\\_summaries/public\\_health/health\\_determinants\\_lifestyle/c11577\\_en.htm](http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11577_en.htm)

that all public assistance for measures financed under the Fund be provided from the Community own resources in the Fund (point 4).

As the regulation sets the rules for two main areas referred to in art. 13 par. 2 of Regulation (EEC) No 2075/92 in the form of information programmes and measures to promote a switch production, expenditure by the Fund in each of the two categories may amount to maximum 50% of the total amount of the Fund. In case where the amount available for the one of these categories is not used up in full, the Commission shall reallocate the remaining amount to the other, provided that, in the latter area, there are eligible projects still in need of funding (art. 1 and 2).

### 2.2.1 Information programmes

Their main purpose is to improve public awareness of the dangers of all forms of tobacco consumption and they shall consist of project involving information of education, data collection and studies (art. 3 par. 1 and 2). The European Commission is responsible institution for management of the Fund as regards the information programmes (art. 4 par. 1). In articles 6 and 7 everyone who is interested in these possibilities can find closer information about the conditions which should be fulfilled by natural or legal person submitting the projects, as well as the description of evaluation process. Call for proposals or public invitation to tender together with the list of projects financed shall be published in the Official Journal of the European Communities (art. 5 and art. 8 par. 2).

When the project is accepted, there is contract based on the appropriate standard contract drawn up by the Commission and it may not be financed by other Community financing from different sources (art. 9 par. 1 and art. 10).

### 2.2.2 Measures to promote a switch of production

These measures consist of specific individual measures and general interest measures to encourage raw tobacco producers to switch production to other crops or economic activities that generate employment, and to support studies into the possibilities for raw tobacco producers of switching to other crops or activities (art. 12). Regulation in article 13 and 14 defines the individual and general interest measures in more detail.

The total amount of Community assistance per producer for all of the measures may not exceed 300 000 EUR, but for measures not involving the production, marketing or processing of products this total amount of Community assistance may not exceed 100 000 EUR (art. 16 par. 3). Applicants have to declare that they will not apply for funding for the same project under another assistance scheme (art. 19 par. 1), because this shall cause certain legal consequences.

## 2.3 Directive 2003/33/EC of the European parliament and of the Council

Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member

States relating to the advertising and sponsorship of tobacco products<sup>(10)</sup> presents relatively brief legal regulation, because it has only 12 articles. At the beginning the representatives of the EU in 18 points explain the reasons why there is a need for such a regulation to be adopted. Between them, the differences between the Member States' laws, regulations and administrative provisions on the advertising of tobacco products and related sponsorship, need for high level of health protection and the availability of advertising tobacco products by the means of information society services and radio broadcasting can be included.

The directive is aimed at the advertising of tobacco products and their promotion in the press and other printed publications, in radio broadcasting, in information society services and through tobacco related sponsorship, including the free distribution of tobacco products. It is intended to ensure the free movement of the media concerned and of related services and to eliminate obstacles to the operation of the internal market (art. 1).

In the article 2, there are also defined basic terms such as tobacco products, advertising, sponsorship and information society services. Further the content of the directive includes the legal regulation of advertising in printed media and information society services, radio advertising and sponsorship, sponsorship of events, report and free movement of products and services.

The regulation associated with the advertising of tobacco products is very strict. It means that all forms of radio advertising for tobacco products, as well as advertising in printed media and information society services (in addition to the exemption provided for in article 3 par. 1) shall be prohibited. Free distribution tobacco products in the context of sponsorship of the events having the purpose or the direct or indirect effect of promoting such products shall be also prohibited (art. 5 par. 2).

## 2.4 Council recommendation 2003/54/EC

Council recommendation 2003/54/EC on the prevention of smoking and on initiatives to improve tobacco control<sup>(11)</sup> was adopted in accordance with the article 152 of the EC Treaty to ensure a high level of public health protection by complementing national policies. The main reason is that the smoking remains the biggest cause of avoidable death in Europe and the advertising, marketing and promotion strategies of the tobacco products more foster their consumption. The problem also is that many of these strategies are aimed at young people who are easily influenced. The measures are additional to the Directive on tobacco products and Directive on advertising and sponsorship of tobacco products. The legislators paid attention also on the consistency of these provisions with the World Health Organisation's Framework

<sup>(10)</sup> Available at: [http://eur-lex.europa.eu/smartapi/cgi/sga\\_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003L0033&model=guichett](http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexapi!prod!CELEXnumdoc&lg=EN&numdoc=32003L0033&model=guichett)

<sup>(11)</sup> Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32003H0054:EN:HTML>

Convention on Tobacco Control.

The recommendation draws attention on the need for adoption legislative or administrative measures designed to prevent the sale of tobacco products to children and adolescents, for example by removing tobacco products from self-service displays, restricting distance sales (via Internet), prohibiting the sale of cigarettes individually or in packets of fewer than 19 cigarettes.

Further it deals with the issue of restricting the advertising and promotion of tobacco products, measures targeting manufactures of tobacco products, protection against passive smoking and monitoring.<sup>(12)</sup>

## 2.5 Commission decision 2003/641/EC

Commission decision 2003/641/EC of 5 September 2003 on the use of colour photographs or other illustrations as health warnings on tobacco packages<sup>(13)</sup> is aimed at strengthen the warnings about the dangers of smoking, because the research and experience in some countries have proved that health warnings which include colour photographs or other illustration can be an effective means of discouraging smoking (point 5).

The Member States have only option, not obligation to use also warnings consisted of colour photographs – if they decide to do so, these warnings shall be in accordance with this decision.

The definitions used in the decision are based on the article 2 of Directive 2001/37/EC. Further there are provided conditions for use of combined warnings (art. 4) and their visual integrity. These combined warnings shall be irremovably printed, indelible and in no way hidden or interrupted by other written or pictorial matter or by opening of the packet and must be displayed in a manner that ensures that none of the textual or visual elements of the combined warnings will be severed when the package is opened (art. 5 par. 1 letter a) and b)).

## 2.6 Directive 2011/64/EU of the Council

Council directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco<sup>(14)</sup> is one of the latest legal acts in the field of regulation of tobacco products. This document was adopted as a codification act of three previous directives – Council directive 92/79/EEC of 19 October 1992, Council directive 92/80/EEC of 19 October 1992 and the Council directive 95/59/EC of 27 November 1995. Its objective is the same as it was in the case of other legal acts associated to this issue – to ensure the proper functioning of the internal market and the high level of health protection, as it is required by the article 168 of the Treaty on the functioning of the EU. In other words,

this directive lays down general principles for the harmonisation of the structure and rates of the excise duty to which the Member States subject manufactured tobacco (art. 1).

The structure of the excise duty on cigarettes must include, in addition to a specific component calculated per unit of the product, a proportional component based on the retail selling price, inclusive of all taxes. The turnover tax on cigarettes has the same effect as an ad valorem excise duty and this fact should be taken into account when the ratio between the specific component of the excise duty and the total tax burden is being established (point 11).

For the purposes of this directive, cigarettes, cigars, cigarillos and smoking tobacco (fine-cut tobacco for the rolling of cigarettes and other smoking tobacco) are considered as manufactured tobacco – all of products are defined in more detail in this document.

Directive is divided into provisions applicable to cigarettes and provision applicable to manufactured tobacco other than cigarettes. These provisions are followed by determination of the maximum retail selling price of manufactured tobacco, collection of excise duty, exemptions and refunds.

According to the article 7 par. 1, all cigarettes manufactured in the Union and those imported from third countries shall be subject to an ad valorem excise duty calculated on the maximum retail selling price, including custom duties, and also to specific excise duty calculated per unit of the product. Until 31 December 2013, the specific component of the excise duty shall not be less than 5% and shall not be more than 76,5% of the amount of total tax burden resulting from the aggregation of the specific excise duty, the ad valorem excise duty and the value added tax (VAT) levied on the weighted average retail selling price (art. 8 par. 3). From the 1 January 2014, the specific component of the excise duty on cigarettes shall not be less than 7,5% and not more than 76,5% of the amount of the total tax burden resulting from the aggregation of the specific excise duty, the ad valorem excise duty and VAT levied on the weighted average retail selling price (art. 8 par. 4). Other specifics are set in articles 10 – 12 of the directive.

There is a special group of manufactured tobacco which is the subject to a minimum excise duty as laid down in article 14 – cigars and cigarillos, fine-cut tobacco intended for the rolling of cigarettes and other smoking tobacco. Rules for determination of the excise duty for these type of products are provided in chapter 4 of this directive.

Article 17 deals with the issue of exemptions from excise duty and conditions under which the excise duty already paid may be refunded. These exemptions include denatured manufactured tobacco used for industrial or horticultural purposes, manufactured tobacco which is destroyed under administrative supervision, manufactured tobacco which is solely intended for scientific tests and for tests connected with product quality and manufactured tobacco which is reworked by producer (letters a) – d)).

<sup>(12)</sup> Available at: [http://europa.eu/legislation\\_summaries/public\\_health/health\\_determinants\\_lifestyle/c11574\\_en.htm](http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11574_en.htm)

<sup>(13)</sup> Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:226:0024:0026:EN:PDF>

<sup>(14)</sup> Directive is available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:176:0024:0036:EN:PDF>

### III. Legal regulation associated with the tobacco and tobacco products in the Slovak Republic

As the Slovak Republic became a Member State of the European Union in 2004, it has an obligation to implement all the binding legal acts of the EU institutions. We mentioned above that the EU is trying to prevent the negative consequences of smoking, so regarding to this objective, its institutions are adopting still more and more strict legal regulation. Our task is to adapt our internal legal acts or to apply the European regulations, which are generally binding and directly applicable in all the EU Member States.

There can be found four fundamental documents, but the regulation of smoking is also included in a few other acts, e.g. Act on protection of consumers, Act on advertising etc.

#### 3.1 Act on Tobacco Products

Act on Tobacco Products No 335/2011 Coll.<sup>(15)</sup> which is in force from 1 November 2011 can be considered as the basis of the further regulation of tobacco products' consumption, distribution and manufacture.

This document adjusts requirements for the manufacture of tobacco products, placing them on the market, designation and organization, power and competence of the authority of official control of tobacco products (sec. 1). In section 2 the terminology used in the text is explained. It introduces the obligation of the operator to register his facility before he will start to produce tobacco products or place them on the market at the competent Regional Veterinary and Food Administration in order to obtain the certificate from the Ministry of Agriculture and Rural Development of the Slovak Republic. Of course, the manufacturer is responsible for the quality of his products and is obliged to observe all the duties set by this Act (sec. 2 and 3). It is strictly forbidden to place on the market products which are packed into containers and packing materials that not conform to the requirements according to § 6 of this Act, which are incompletely labelled or incorrectly labelled, which do not meet the quality requirements, or those which are falsified, damaged, deformed or dirty (sec. 5 letters a) - e)).

All steps associated with placing tobacco products on the market (as packaging, labelling, storage and transportation) have to fulfill the legal conditions, especially there is a need to ensure the quality of products and to enable to identify their origin.

The Ministry of Agriculture and Rural Development of the SR and the State Veterinary and Food Administration are responsible for official control of observance of these rules. They are also authorized to impose a fine of 100 to 2000 EUR in case of their infringement (sec. 13 par. 1).

#### 3.2 Act on Protection of Non-smokers

Act on Protection of Non-smokers No 377/2004 Coll.<sup>(16)</sup> as later amended was adopted in order to ensure the harmonization of Slovak legislation with the EU conditions. It has been amended by more than 5 amendments. The last one will enter into force on 1 of July 2013.

This document can be seen as the „positive discrimination“ of non-smokers. It regulates conditions for the protection of people from addiction to nicotine as harmful ingredient found in tobacco and tobacco products, from the harmful effects of smoking and from other methods of tobacco products' use, affecting the health of smokers and non-smokers exposed to smoking immediately, as well as conditions for the protection of people against products that are intended to be smoked and do not contain tobacco and the terms of the sale, manufacture, labelling and marketing of tobacco products (sec. 1). Simply we can say that this Act reproduces the text of the Directive 2001/37/EC of the European parliament and of the Council of 5 June 2001 on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products which is mentioned above.

Nicotine, tar and carbon monoxide, together with tobacco products, tobacco for internal use, smoking room, smoking space and harmful substances are the fundamental terms used in this legal regulation.

From our point of view, the most important is § 4 which is dealing with the issue of warning designations. These designations are required for each consumer package. They can be general<sup>(17)</sup> or additional<sup>(18)</sup>. In § 5, there is the maximum amount of the certain ingredients per cigarette set: max. 10 mg for tar, 1 mg per nicotine and 10 mg for carbon monoxide. This provision also transposes the Directive of the EU.

According to the legislation in force, smoking is prohibited in many public places, e.g. airports, primary and secondary schools, universities and campuses, health and cultural facilities etc. The smoking rooms or smoking spaces represent the only derogations.

The Act has established concrete control authorities: the Slovak Trade Inspection, the State Veterinary and Food Administration of the SR, bodies of public health service, municipality, the Police Corps and operators of rail, bus and other scheduled passenger transport (sec. 9). Violation of provisions of this Act can be considered as administrative delict or the offense for which the fine can be imposed by the control authorities.

According to this topic, the effort of the EU connected with the ban on smoking in public places and with the issue of environmental tobacco smoke (ETS) can be also mentioned. On 18 July 1989 there was adopted Resolution of the Council and the Ministers for Health of the Member States, meeting within the Council of 18 July 1989 on banning smoking in places open to the public which said that „in addition to

<sup>(16)</sup> Available at: [www.zbierka.sk/sk/predpisy/377-2004-z-z.p-7979.pdf](http://www.zbierka.sk/sk/predpisy/377-2004-z-z.p-7979.pdf)

<sup>(17)</sup> „Smoking kills.“, „Smoking can kill.“

<sup>(18)</sup> „Smokers die younger.“, „Smoking clogs the arteries and causes heart disease.“, „Smoking causes lung cancer.“ and others.

<sup>(15)</sup> Act is available at: [www.zbierka.sk/sk/predpisy/335-2011-z-z.p-34297.pdf](http://www.zbierka.sk/sk/predpisy/335-2011-z-z.p-34297.pdf)

the potential encouragement to smoke and the unpleasant physical effects and nuisance which smoke causes for non-smokers, there is an increased risk of contracting respiratory diseases for non-smokers involuntarily exposed to the smoke of tobacco products. It is therefore necessary to protect the right to health of non-smokers. The Member States are called on to take the following measures by introducing legislation or by other appropriate means: ban smoking in enclosed premises open to the public which form part of the public or private establishments listed in an Annex to the resolution; Member States may add to this list; extend the ban on smoking to all forms of public transport; provide, where necessary, for clearly defined areas to be reserved for smokers in the above establishments and, if possible, in public transport, particularly for long journeys; ensure that, in the event of disputes, in areas other than those reserved for smokers, the right to health of non-smokers prevails over the right of smokers to smoke.<sup>(19)</sup>

Tobacco causes 650,000 deaths in the EU each year. It is the single largest cause of death, disease and disability. Environmental tobacco smoke (ETS) is just as dangerous in that it contains over 4000 gaseous and particulate compounds, including 69 carcinogens and toxic agents. Having regard to the diseases caused by ETS, such as asthma or chronic pulmonary disease, the European Commission considered joint action by the Member States necessary in order to reduce exposure to tobacco, which is detrimental to society. On the basis of this, Proposal for a Council Recommendation of 30 June 2009 on smoke-free environments was presented.

This Proposal sets out the measures to be taken with a view to implementing Article 8 of the WHO Framework Convention on Tobacco Control. Ratified by Member States, the Article requires signatories to provide effective protection from exposure to tobacco smoke in: indoor workplaces; indoor public places; public transport. Smoke-free policies should be complemented by supporting measures such as measures relating to cessation of tobacco use or treatment for tobacco dependence. Other supporting measures were considered to be introduced in the area of information, such as the use on tobacco packages of photographs and warnings about associated health risks.<sup>(20)</sup>

Proposal was following by the Green Paper of 30 January 2007 - Towards a Europe free from tobacco smoke: policy options at EU level the content of which is reflected also in the Slovak legal regulation.

Nearly 70% of EU citizens do not smoke, and studies show that the majority of smokers want to stop smoking. The initiative on developing smoke-free areas entail protecting people from the harm of ETS exposure and also contribute to the reduction of tobacco consumption in the whole population. This have two enormous consequences in the field of health: reduced illness and increased life expectancy. From an economic point of view, given that passive smoking also leads

to significant costs in terms of healthcare spending and sick leave due to tobacco-related diseases, an action of this type could produce net benefits in each Member State. However, a reduction in tobacco consumption cause job losses in the tobacco industry, and a drop in Member States revenue from taxes on cigarettes. On the other hand, smoking bans could increase the disposable income of smoking households, and the new expenditure by such households would lead to additional revenue in the form of VAT.

At European level, there are non-binding provisions such as the Resolution on smoking in public places and the recommendation on the prevention of smoking and on initiatives to improve tobacco control. There are also directives to be transposed into national law by the Member States. The following measures aim to protect workers from ETS:

- the Framework Directive on health and safety at work by which employers are obliged to evaluate all risks to the safety and health of workers at work and to take appropriate risk prevention and protection measures;
- the Directive concerning the minimum safety and health requirements for the workplace which obliges employers to protect non-smokers from tobacco smoke in rest rooms and to ensure sufficient fresh air in enclosed workplaces;
- the Directive on carcinogens and mutagens and the Directive on asbestos which ban smoking in places where carcinogens and mutagens and asbestos are handled;
- the Directive on pregnant workers which states that employers must take measures to protect pregnant and breastfeeding women from exposure to carbon monoxide.

For comparison, all the Member States have developed regulations to reduce ETS exposure. Some of them (Ireland and Scotland) impose comprehensive bans on smoking in all enclosed public places and all workplaces, including bars and restaurants. Others (Italy, Malta and Sweden) have general bans with exemptions which allow employers to create special sealed-off smoking rooms with separate ventilation systems. There are, finally, some countries (Belgium, Cyprus, Estonia, Finland, the Netherlands, Slovenia and Spain) which have opted for a ban on smoking in all enclosed public places and all workplaces, with the exception of the hospitality sector (hotels, restaurants and cafés) where partial restrictions apply.<sup>(21)</sup>

### 3.2.1 Changes, contained in the Amendment n. 142/2013 of Coll. of the Act on the Protection of Non-smokers

The amendment to the Act on the Protection of Non-smokers, which entered into force on 1 July 2013, somehow extends already applied protection of non-smokers, and thus at higher level limits regular and occasional consumers of tobacco products, but also persons who are within its business activities devoted to their manufacture, distribution or sale.

The previous law did not state sufficient conditions to

<sup>(19)</sup> Ban on smoking in public places. Available at: <[http://europa.eu/legislation\\_summaries/public\\_health/health\\_determinants\\_lifestyle/c11506\\_en.htm](http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11506_en.htm)> [2013-05-08]

<sup>(20)</sup> Exposure to environmental tobacco smoke (Proposal). Available at: <[http://europa.eu/legislation\\_summaries/public\\_health/health\\_determinants\\_lifestyle/sp0010\\_en.htm](http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/sp0010_en.htm)> [2013-05-01]

<sup>(21)</sup> Green Paper on promoting smoke-free areas in the European Union. Available at: <[http://europa.eu/legislation\\_summaries/public\\_health/health\\_determinants\\_lifestyle/c11571a\\_en.htm](http://europa.eu/legislation_summaries/public_health/health_determinants_lifestyle/c11571a_en.htm)> [2013-04-25]

protect non-smokers from exposure to passive smoking, to which are non-smokers involuntarily exposed. Protection firstly consists of a clear definition of places where smoking is prohibited or restricted. Secondly, the protection consists of a clear definition of the relevant legal instruments, which lead to sanctioning behavior that is heading to violation of the provisions of the Act. Tobacco control measures include regulation of the sale of tobacco products through vending machines and the regulation of sales at the places where children and youth move.

From the domestic and European opinion polls is apparent that more than 70% of Slovak citizens would accept a total ban on smoking in public places. Citizens are exposed to passive smoking especially in bars, restaurants, shopping centers and public transportation stops. In particular, it is therefore necessary to create the conditions for long-term protection of non-smokers in all public places where an increased risk of passive smoking arises. Slovak citizens are sensitive to manifestations of smoking in public places and recognize that passive smoking can lead to health risks especially with regard to children.

The amendment emphasized the decentralization of powers and the transferred performance of the competencies in the field of control and discussing of misdemeanors. This requirement will be fulfilled by regional public health authorities.<sup>(22)</sup>

After approval of the amendment, the prohibition of smoking refers not only to classical, but also to electronic and herbal cigarettes. Smoking ban includes shopping malls, mass caterers, into which the already prepared meals are imported (e. g. candy bars) or uncovered sports facilities. There was confirmed also rate increase of penalties for breaching the smoking ban.

The amendment also requires that the construction separation of smoking part from non-smoking was done in order to avoid penetration of harmful substances of tobacco products, respectively of products which are intended to be smoked, but do not contain tobacco. Another innovation is also a provision that area for non-smokers should be placed at the entrance to the facility and smoking area will not be set up in mass caterers, which are located in legally defined areas (e. g. caterers at public airports, educational facilities and so on). Parliament approved the amendment on the basis of which there will be possibility to smoke in shopping malls in areas that are constructionally separated and smoke does not penetrate into public spaces in shopping mall.

From the new definition of „food“, introduced by the amendment, results that as mass caterers will not be considered companies, which serve only drinks, chips and nuts. Amendment also includes definitions of products intended to be smoked which do not contain tobacco - all products which do not contain tobacco, but are intended to be smoked belong here. Electronic cigarettes or products containing dried plants which are used by smoking will be from 1 July 2013 covered by the legislation. Under the new wording of

<sup>(22)</sup> Explanatory memorandum accompanying the Act on Protection of Non-smokers. Available at: <[www.nrsr.sk/web/dynamic/Download.aspx%3FDocID%3D291907&cd=1&hl=sk&ct=clnk&gl=sk](http://www.nrsr.sk/web/dynamic/Download.aspx%3FDocID%3D291907&cd=1&hl=sk&ct=clnk&gl=sk)> [2013-05-30]

the provision of § 2 par. 4 letter e) as the harmful substances will be considered - except substances from the smoke and tar - also the substances contained in products intended to be smoked which do not contain tobacco, so smoking ban will be extended to the aforementioned electronic and herbal cigarettes.

Due to these changes it was also necessary to supplement the provision of § 2 par. 4 letters l) and m), which define the terms “mall” and “official building”. Mall is here characterized as a closed space, permanent architectural object, which consists of a set of stores or spaces designed for provision of services and sale of goods, including other publicly accessible spaces. Official building is defined as a closed space, permanent architectural object that is used for or designed for performing of public authorities' tasks.

The text of the additional warnings on tobacco products covered by § 4 par. 4 will be newly changed according to the transposition of Commission Directive 2012/9/EU of 7 March 2012 amending and supplementing Annex I to the Directive of the European Parliament and of the Council 2001/37/EC on the approximation of laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products. By current wording of the additional warnings consumer tobacco package could be designated only until 27 March 2014, no later.

The amount of the fines that may be imposed to a natural person - entrepreneur or legal person for failing to ensure compliance with the smoking ban has been also changed. Instead of the current range of fines from 331 to 3,319 euros will be imposed a fine of 500 to 15,000 euros. There has been also amended the Act No 128/2002 Coll. on State control of the internal market in consumer protection issues in order to facilitate the implementation of control of ensuring the ban on sale of tobacco products and products intended to be smoked and do not contain tobacco to persons under 18 years of age.<sup>(23)</sup>

### 3.3 Act on excise duty on tobacco products

Act no. 106/2004 Coll. on excise duty on tobacco products was lastly amended by the Act no. 546/2011 Coll. which came into force on 1 January 2012, except article X. This amendment brought a few important changes to the system of tax collection.

From 1 February 2012 the person who wants to receive, store and provide raw tobacco for the purpose of production of tobacco products, has an obligation to apply for inclusion in the registry of traders at the Customs Office. Also, those who have in possession technological device for production of tobacco products or their parts are required to notify the Customs Office this fact. Office will issue a certificate on inclusion such a device. The new conditions for issuing the permission to print control stamps have also changed from 1 February 2012.

The most important contribution to the prevention of

<sup>(23)</sup> [www.ulclegal.com/sk/bulletin-pro-bono/ine/4646-pripravuje-sa-v-nr-sr-novela-zakona-o-ochrane-nefajciarov](http://www.ulclegal.com/sk/bulletin-pro-bono/ine/4646-pripravuje-sa-v-nr-sr-novela-zakona-o-ochrane-nefajciarov)



smoking is the increase rate of excise duty on tobacco products. Minimum tax rate on cigarettes is 88,50 €/ 1000 pieces, on cigars, cigarillos 75,56 €/ 1000 pieces and on tobacco 69,44 €/kilogram. The tax rate on cigarettes except the minimum tax rate (the combined tax rate) seems as follows: specific part: cigarettes 58 €/ 1000 pieces; percentual part: 23% from the price of cigarettes.

The consumer package of cigarettes which has been placed at the market after 31 January 2012, has to be designated by control stamp with the sign - the capital letter „D“ indicating the validity of the new tax rate.

After 29 February 2012 it is not allowed to sale, store or transport consumer cigarette package designated by the control stamp with the letter „C“ - fine for the breaching this rule is at least 331, 93 €. <sup>(24)</sup>

### **3.4 Decree on the Regulation of Tobacco Products**

Decree of the Ministry of Agriculture and Rural Development No 212/2012 Coll. <sup>(25)</sup> came into force only on 1 August 2012, so it can be considered as relatively new legal regulation. It consists of implementing provisions to the Act on tobacco products.

Decree establishes ingredients, raw materials, and other substances which can be used in manufacture of tobacco products and their permitted yield, forbidden ingredients, conditions which facilities have to fulfill, details on designation of tobacco products, quality requests on tobacco products and the model notification of registration of manufacturing tobacco products and activities relating to the placing them on the market (sec. 1).

Only thirteen sections are supported by the annexes in which all the legally allowed and prohibited ingredients are listed, together with the permitted yields.

### **3.5 Writ No 2606/2004-100 of the Ministry of Agriculture of the SR and the Ministry of Health of the SR, issuing the head of the Food Code of the Slovak Republic, regulating tobacco products**

Writ of two Ministries No 2606/2004-100 issuing the head of the Food Code of the Slovak Republic, regulating tobacco products provides details of the production and imports of tobacco products, tobacco products' labelling, handling them and placing them on the market. It has three annexes - the list of ingredients which can be added to the tobacco raw material, the list of ingredients which can be used in the manufacture of single categories of ingredients and the list of ingredients which cannot be used in the manufacture of tobacco products. In relation to the determination of content

<sup>(24)</sup> Available at: [http://www.colnasprava.sk/wps/PA\\_1\\_0\\_9D/OpenFile/Zakonc.106\\_2004Z.z.ospotrebnejdaniztabakovychvyrobov.pdf?docID=pbrgOkmJhfmrH9I6oy/AvyzY](http://www.colnasprava.sk/wps/PA_1_0_9D/OpenFile/Zakonc.106_2004Z.z.ospotrebnejdaniztabakovychvyrobov.pdf?docID=pbrgOkmJhfmrH9I6oy/AvyzY)

<sup>(25)</sup> Available at: [www.zbierka.sk/sk/predpisy/212-2012-z-z.p-34766.pdf](http://www.zbierka.sk/sk/predpisy/212-2012-z-z.p-34766.pdf)

of tar, nicotine, carbon monoxide in cigarettes and verifying data about content of the tar and nicotine placed on consumer packs of cigarettes it refers to ISO standards. For the designation of tobacco products the writ requires the business name and trade name, the seat of the manufacturer, packager, distributor or importer, the indication of the amount, the origin of the tobacco product and identification of the dosage, the batch, lot or its equivalent.

Tobacco products can be stored only in dry and clean warehouses and transport in dry and clean vehicles; warehouses and vehicles shall be free from foreign odor. Another requirement is that in warehouses with concrete floor or other than wood floor, the shipping containers of the tobacco are stored on a wooden dry palettes. Shipping containers shall be placed at least 50 cm from walls and windows, must be protected from direct weather conditions, soil moisture before, radiant heat from heaters and from foreign odors.

## **IV. Conclusion**

Smoking and prevention of its negative influence on the public health is the topic which is not new, but the effort to eliminate it still does not bring the desired results. Because of it, not only single national states, but also the supranational entity like the European Union and worldwide international organisations like the World Health Organisation are trying to cope with these problems more successfully.

Annually on 31 May we celebrate the „World day without tobacco“. This tradition has arisen in 1989, so it has already quite long history. In 1996 the World Health Organisation started to work on the WHO Framework Convention on Tobacco Control. It was adopted in 2003 and in 2005 it entered into international force. Slovakia has become a party of this Convention as the twelfth State.

According to the recommendations adopted on the following sessions, Contracting parties are required to adopt measures in a few defined fields, e.g. in the field of protection of public health policy before commercial and other interests of tobacco industry, the protection of citizens before the effects of passive smoking, regulation of tobacco products' content, prohibition of tobacco advertisement, control of illegal trade with tobacco products and many others.

It is very difficult to predict the future development, as the smoking is moving into increasingly lower age categories and if someone is addict on his daily amount of nicotine, the very strong will is needed to quit and only a few are able to do it. But one thing is clear and undeniable - States all over the world are fighting with smoking as undesirable habit and the legal regulation of using tobacco products is aimed at still more extensive positive discrimination of non-smokers.

The draft of revised directive on tobacco products is currently the subject of the decision-making process and is waiting for approval of the European parliament. Health Ministers reached political agreement about its text. In their view, health warnings should cover 65% of the cigarette package. They also supported a ban on flavors like vanilla or peppermint, or ingredients that increase dependency and toxicity. The Commission has also proposed a prohibition sign „slim“ on the cigarettes. The ministers did not support this position,

but „slims“ will have to be send in less attractive package. Electronic cigarettes will be regulated, too.<sup>(26)</sup>

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<sup>(26)</sup> Mentolové cigarety budú zrejme minulosťou. Available at: <<http://www.euractiv.sk/danova-politika/clanok/mentolove-cigarety-budu-zrejme-minulostou-021233>> [2013-06-24]