Ministry of Health, Welfare and Sport

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European Commission
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Subject Joint Letter on the revision of TPD and TAD

Dear Commissioner Várhelyi,

This letter originates from the shared recognition among the signing Member States that the tobacco and nicotine landscape has profoundly evolved since the adoption of the current European legislative framework in 2014. The emergence of new product categories, rapidly evolving technologies, and increasingly sophisticated marketing strategies have created regulatory gaps that were not anticipated by the current Tobacco Products Directive (TPD) and Tobacco Advertising Directive (TAD).

In this context, the signing Member States (hereafter: Member States) welcome the European Commission's initiative to revise the TPD and TAD and consider this revision as a unique opportunity to strengthen the EU regulatory framework. The current challenges require a shift from a reactive approach, focused on regulating existing products, towards a proactive and preventive framework capable of anticipating future market developments, closing regulatory loopholes and protecting current and future generations from nicotine addiction.

The revision of the TPD and TAD represents a key milestone in achieving the EU ambition of a smoke-free generation by 2040, as set out in the European Beating Cancer Plan.

The Member States therefore call on the European Commission to take the following considerations into account in the revision of the TPD and TAD:

Future-proof regulations

The Member States call for an end of the nicotine industry's ability to continuously introduce new nicotine-containing products[1] onto the European market using aggressive marketing and unfounded reduced-risk claims, with the aim of getting (young) EU citizens addicted for the industry's financial gain. The Member States urge the Commission to introduce a **market freeze** to make sure no new products containing any form of nicotine or a substance with nicotine-like properties, or any devices used to deliver such products, can enter the EU market in the future. This should also cover products that contain neither nicotine nor nicotine-like substance but resemble products that do.

[1] Nicotine-containing products refers to all tobacco and related products containing any form of nicotine or a substance with nicotine-like properties.

This can be achieved by banning all non-TPD regulated products containing nicotine or substances with nicotine-like properties as consumer products.

Importantly, achieving future-proof regulation also requires adherence to Article 5.3 of the FCTC, both in letter and in spirit.

Reducing attractiveness for young people

It is crucial that the TPD reduces attractiveness of existing tobacco, nicotine and non-nicotine -containing products, especially for young people. Therefore, it is necessary to introduce youth focused product regulations aimed at decreasing product appeal across tobacco and nicotine-containing products and accessories with and without nicotine. To drastically reduce attractiveness for these products, Member States call for the Commission to apply **strict maximum nicotine levels across all products**, implement **a broad flavour ban for all products**, implement **standardised products and devices and** introduce **plain packaging** for all products. All products that are allowed on the market should also be regulated to the same extent in order to prevent continuous substitution between different product categories.

Nicotine pouches

Oral tobacco (snus) has been banned since 1992 in the EU.[2] Recently, the nicotine industry is aggressively marketing and promoting nicotine pouches to young people. Nicotine pouches are strikingly similar to oral tobacco and can be seen as a circumvention of the oral tobacco ban. Nicotine pouches are highly harmful and addictive, though marketed with unfounded claims related to smoking cessation. Furthermore, the marketing tactics employed can encourage dual use, hinder cessation attempts and undermine regulations prohibiting smoking or use of other nicotine-containing products in public places. Therefore, we call for the **reinforcement of the EU wide oral tobacco ban and therefore call for Member States to be allowed to adopt strict national measures, including a total ban on nicotine pouches and be allowed to implement strict measures for other nicotine products without tobacco**.

Advertisement bans

Advertisement bans should apply to all tobacco and nicotine-containing products, as well as to the devices used with them and should cover all communication channels including social media. These restrictions should apply regardless of whether promotional content is disseminated directly by manufacturers, distributors or third parties, including influencers, content creators or other intermediaries acting on behalf of commercial interests. Furthermore, social media platforms must take greater responsibility for the marketing and sale of tobacco and nicotine-containing products on their services, particularly when young people are targeted. By allowing such promotion while failing to take preventive action, these platforms are fuelling an increase in use among young people. **Therefore, the revised TPD or TAD should require social media platforms to proactively remove such content, and to prevent it from being uploaded in the first place.**

Cross border distance sales

In addition to the health protection provided by harmonised tobacco control legislation, Member States also protect the health of their citizens from the harms caused by tobacco and nicotine-containing products through national public health policies.

[2] With the exception of Sweden

National measures to make these products less attractive and less accessible, such as bans on cross-border distance sales, are increasingly undermined by online sales and cross-border trade, including from third countries. The current functioning of the internal market offers little protection when these products remain a few clicks away. We therefore call upon the Commission **to adopt proposals that protect citizens, improve the functioning of the internal market and effectively address the banning of cross-border distance sales within the EU, to keep these harmful products out of young people's reach.**

One Health approach

Environmental considerations should be fully integrated into the revised tobacco control framework, in line with the One Health approach. Tobacco and nicotine products generate significant environmental impacts throughout their lifecycle, from production to disposal, including waste generation, plastic pollution and the accumulation of non-biodegradable components. The revised framework should therefore aim at reducing the environmental footprint of these products. **The Member States should be given sufficient flexibility to introduce national bans to decrease the environmental impact of tobacco and other nicotine products, including but not limited to strict rules on single use electronic cigarettes.**

Concluding remarks

The TPD is rooted in Article 114 of the Treaty on the Functioning of the European Union (TFEU). It exists to harmonize national laws and remove trade barriers across Member States, while simultaneously ensuring a high level of public health protection. At the same time, it must leave ample room for Member States to go beyond this baseline and adopt stricter national measures to protect their citizens. This is also fully in line with the WHO Framework Convention on Tobacco Control, which explicitly encourages Parties to implement measures beyond those required by the Convention. EU-level regulation should therefore be as ambitious as possible, so that it does not create unnecessary barriers for Member States wishing to go further than the minimum standards set out in the WHO FCTC. To achieve our shared goal of a smoke-free generation by 2040, we must use our internal market powers to fully support ambitious public health action. The revised directives must establish a strong and future-proof regulatory framework capable of addressing evolving products and market developments and prioritizing the prevention and reduction of tobacco and nicotine use and, ultimately, phasing out nicotine dependence across the European Union.

Kind regards,

Sophie Hermans
Minister of Health, Welfare and Sport
the Netherlands

Also, on behalf of the following Ministers listed in alphabetical order of the countries they represent:

Belgium
Frank Vandenbroucke
Deputy Prime Minister and Minister of Social Affairs and Public Health

Finland
Karoliina Partanen
Minister of Social Security

France
Stéphanie Rist
Minister of Health, Families, Autonomy and Persons with Disabilities

Hungary
Zsolt Hegedűs
Minister of Health

Latvia
Hosams Abu Meri
Minister of Health of the Republic of Latvia

Slovenia
Tadej Ostrc
Minister of Health

Spain
Mónica García Gómez
Minister of Health