A dog's breakfast

written by Clive Bates | 22 July 2013



I was trying to pen some wonkish words about the state of play on the tobacco products directive now the European Parliament scrutiny debate, Council General Approach and Commission proposals are all done. But then I thought: *no, why dignify all this?* In a crowded field, it's possibly the worst legislative mess I have ever seen – a **gargantuan dog's breakfast**, a gluttonous feast of uncooked ideas unfit for human consumption. It's hard to express just how incoherent the main measures in the proposed tobacco products directive really are. But here we go….

> *The least dangerous, most promising, fastest growing nicotine products (**e-cigarettes**) with the greatest public health potential are to be barred from the market unless authorised as medicines (Article 18), which they aren't and never will be. They will be subject to an onerous regulatory regime increasing cost, limiting choice and appeal, holding back innovation and generally making the products less competitive relative to high-risk cigarettes. The views of the users and supposed beneficiaries of e-cigarette regulation are to be ignored and the opposite of what they want will be done.*
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> *If someone wants to bring a low risk nicotine product to market, they should make sure it contains tobacco – all they have to do for a **novel tobacco product** (eg that heats rather than burns tobacco) is to let the authorities have some information about it (Article 17). Nothing wrong with that, except the contrast with the extreme regulatory burdens of Article 18 on e-cigarettes.*
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> *That is unless the tobacco product in question is **snus**, the least dangerous tobacco product in earthly existence, in which case it is banned completely everywhere but Sweden (Article 15), where it has delivered a spectacular public health success. Apparently the EU is determined to prevent replication of this success anywhere else and for any individual who might wish to try it on their own initiative and at their own expense. This product is banned because it is put in the mouth and sucked rather than chewed (Article 2.32), even though it is less toxic than many forms of chewing tobacco and much less toxic than*

smoking.

***Cigarettes** can be put on the market pretty well at will, as long as they meet some easy and irrelevant tests for smoking machine measured 'yields' (Article 3 & 4), the results of which are no longer to be printed on packs because they are misleading (Article 12) because, unsurprisingly, humans and machines use nicotine in a different way (the former controlling the dose). That difference was known when the last directive, 2001/37/EC, was written, but it still required these totally misleading numbers to be printed on packs.*

*Cigarettes are to be generally allowed, except the five percent of cigarettes that are **flavoured**, mostly with **menthol** (Article 6). They will be banned – apparently because of the fake folk wisdom that 'tobacco should taste like tobacco' (Commissioner Borg is fond of this justification). We have no reason to believe they are more or less toxic than other cigarettes and they can't be inherently more attractive or more people would use them. It's just that different people like them and these different people are to be protected by being required to switch to unflavoured cigarettes. In this way, the EU will choose a small group of consumers to annoy, because it can.*

*Something will be done with **additives** (Article 6), but no-one really knows what or what effects, good or bad, whatever is done will have on smoking behaviour. No-one designing this legislation has a Scooby-Do about nicotine psychopharmacology but they are changing product formulation with hapless abandon. Less addictive nicotine sounds clever until you realise smokers are looking for a satisfying shot – so 'less addictive' might mean more is needed, more exposure to smoke and more ill-health. Who knows? I don't. They certainly don't.*

*The **labelling** of products will carefully avoid providing the most useful consumer information about e-cigs and smokeless tobacco (Article 8-11) – namely that they are 90-99% less risky than smoking, and will instead reinforce an undifferentiated message that all these products are harmful and addictive. In fact, the directive goes further and makes it illegal to suggest that a particular tobacco product is less harmful than others (Article 12) – even though this is actually true – there is an approximate 100-fold range in risk. Consumer are basically mislead by the evasions and lack of insight into relative risk.*

*Much political wheel spin will go into whether **warnings** cover 50% or 75% of the pack (Article 9), though there is nothing to suggest the difference is a matter of life or death or has any effect at all.*

*There will be a passionate row about whether the phrase "Cigarettes with a diameter of less than 7.5 mm shall be deemed to be misleading" is as insane as it sounds (article 12) – as if a covert fatty was passing itself off as an athlete. Perhaps the theory is that '**slim**' cigarettes signify that smoking makes you thin and this somehow makes girls smoke? Only the most tenuous evidence for that… But wait… what if smoking does cause weight loss? Would it be misleading to pretend that it does? It does. Oh dear.*

***Teenagers** will be infantilised, girls will be patronised, and the experimental experiences of adolescence will be misunderstood – but children will repeatedly evoked as a 'force majeur' argument to override the deficit of evidence, ethics, legality and common sense. We will be endlessly reminded that 90% of smokers start before age 25 – as if discovering that adolescence precedes adulthood is an insightful revelation on which to base tobacco policies.*

You couldn't make it up…

Please focus on what matters and try not to get that quite so wrong. The Commission estimates (Impact Assessment Annex 5) that the package will reduce consumption by just two percent – the same as a fall in EU smoking prevalence from 28 to 27.4 percent – ie. in the statistical noise. Yet analysts now forecast that e-cigs could overtake cigarettes within 10 years. If that happened it would create one of the biggest public health wins of all time and without coercive policies or loss of liberty through banning things. Legislators just need to get the regulatory framework right, properly proportionate, non-discriminatory and risk-based. They need to recognise the importance of the commercial freedoms of e-cigarettes makers in taking on the entrenched cigarette oligopoly and their market share is closely aligned with public health results. *So that would be about the opposite of the dog's breakfast they have heaved up all over irritated, despairing, and ever more hostile European citizens.*

My serious point is that this utter mess is more or less the outcome of months of highly remunerated work of the civil service elite of the European Commission, regular intensive meetings of dozens of officials from the member states and

several months of scrutiny by a European Parliament Committee. As a former civil servant myself, I look at the quality of this work and think all involved should be professionally ashamed. If anyone can come up with a worse piece of European legislation, I'd like to hear about it. Let's hope it is fixed or patched up before it becomes law, or else sent back to the drawing board to start again from scratch after the 2014 Euro elections – not by any means the worst outcome.

Doesn't the public really deserve better?