Letter to European Commissioner for Better Regulation on the worst regulation in the EU – the snus ban

written by Clive Bates | 1 June 2017



A damaging regulation that should not exist should not be defended in court

Updated 19 July 2017 with the reply.

Eighteen of us have written a detailed letter to Mr Frans Timmerman, the EU's Commissioner for Better Regulation (amongst other things) drawing his attention to one of the worst regulations in the EU, the ban on oral tobacco, better known as snus. This ban is now facing challenge in the Court of Justice of the European Union (case C 151/17) by a producer, Swedish Match, and the consumer group, New Nicotine Alliance (see NNA background on the case).

The letter is available here (PDF): Lifting the unjustified European Union ban on oral tobacco or "snus" in the light of ongoing legal action

The covering email below outlines the main arguments detailed in the letter.

Letter regarding the EU prohibition of oral tobacco ("snus") and related legal challenge

To: Mr Frans Timmermans, Commissioner for Better Regulation, Interinstitutional Relations, the Rule of Law and the Charter of Fundamental Rights

CC:
Mr Vytenis Andriukaitis, Commissioner for Health & Food Safety
Ms Elżbieta Bieńkowska, Commissioner for the Internal Market
Ms Therese Comodini Cachia MEP (Rapporteur, JURI committee, European Parliament)

1 June 2017

Dear Mr Timmermans

Please find attached a letter for your consideration.

We write as experts in the field of nicotine and tobacco policy and science. We write to you primarily in your capacity as Commissioner for Better Regulation to draw your attention to one of the worst cases of poor EU regulation. This is the EU ban on oral tobacco or "snus", which is now the subject of legal action in the Court of Justice.

Snus use carries a small fraction of the risk of smoking and is responsible for significantly lower levels of smoking, disease and premature death where it is in use within the EU, only in Sweden. It is banned outright in the other 27 member states. There was no justification for renewing the prohibition in 2014, when it was once again extended in the Tobacco Products Directive 2014/40/EU Article 17. There is no justification for defending it in court now.

Our detailed letter, attached, sets out why this prohibition violates the main principles of better regulation and of policymaking under the EU treaties. In brief:

- *It does not meet the essential requirement to base EU action on evidence and understanding of the impacts.*
- *It is disproportionate and discriminatory. There is no possible*

justification for allowing cigarettes and other smokeless tobacco products but prohibiting snus.

- *It does not promote the internal market with a high level of health protection. In reality, it is anti-competitive and likely to be causing material harm to health.*
- *It was not based on open and transparent decision-making. The justification for the prohibition is inadequate and there has been no response to substantive criticisms of the case made by the Commission in 2012.*
- *It ignored the views of citizens and stakeholders. The 2011 consultation findings on this measure showed significant support for lifting the prohibition.*
- *It violates the Charter of Fundamental Rights by denying people an option to reduce life-threatening smoking-related risks and to take personal responsibility for their health.*

We hope the Commission will use the opportunity of the legal challenge to correct this case of poorly conceived and harmful regulation. It could do so by bringing forward a proposal to amend the Directive to treat snus no differently from other smokeless tobacco products. A further possibility would be to amend the directive to provide a coherent regulatory framework for all low risk tobacco and nicotine products, including smokeless tobacco, e-cigarettes and other vapour products, heated tobacco products and novel nicotine products.

We affirm that we do not have conflicts of interest or any affiliations that fall under Article 5.3 of the Framework Convention on Tobacco Control.

We would welcome a reply. Please channel any communication through Clive Bates (email / phone)

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Background: I've previously given 10 reasons why I think the case should succeed even though a similar challenge failed in 2004 and written a lot about snus – while the directive was being negotiated.

Reply – 18 July 2017

Just over six weeks later, a reply from someone I didn't send it to saying they can't speak about such issues. The letter was about *better regulation*.

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EUROPEAN COMMISSION

Cabinet of Commissioner Vytenis Andriukaitis
Head of Cabinet

Brussels, 18. 07. 2017
Ares(2017)

Mr Clive Bates and colleagues
E-mail: clivedbates@gmail.com

Dear Mr Bates and colleagues,

I refer to your letter of 1 June 2017 concerning the ban on oral tobacco as provided for by the Tobacco Products Directive 2014/40/EU and the ongoing court proceedings in relation to the request for a preliminary ruling addressed to the European Court of Justice (C-151/17). Your letter was addressed to Vice-President Timmermans, who asked me to reply on his behalf.

I take note of your letter. In view of the pending court proceedings, I am not able to comment further. Thank you for your understanding.

Yours sincerely,

Arūnas Vinčiūnas

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Electronically signed on 18/07/2017 17:57 (UTC+02) in accordance with article 4.2 (Validity of electronic documents) of Commission Decision 2004/563

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