Massaging the evidence to fit the policy: a critique of the European Commission's case for banning snus

written by Clive Bates | 21 March 2013



It was painful to go through the European Commission's attempt to justify the continuing ban on 'snus' (or 'oral tobacco' as it is known in Brussels). It's hard to imagine a worse case of evidence being massaged into supporting a pre-determined policy conclusion – the conclusion is that beloved of bureaucrats everywhere: *we were right all along!* But they are not right and they never were.

Lars Ramström and I have released a critique of the Commission's case as set out in the Impact Assessment that accompanies the proposed revised Tobacco Products Directive. Our response is: *A critique of the scientific reasoning supporting the proposed measures relating to oral tobacco*. To sum up:

> *We show that the scientific reasoning in the impact assessment has pervasive errors of fact and interpretation, selective use of evidence, important omissions, and poor conceptual framing. Legislation based on flawed scientific foundations will harm the health of Europeans, impede the development of the internal market and open the directive to legal challenge. […] Our critique suggests that science has been misused to justify a predetermined policy, rather than the policy developed on the basis of sound science.*

Apart from that, it's *great*!

Snus: what we know. Snus is the least hazardous form of tobacco (~90-99% less than cigarettes) and the main reason why Sweden has the lowest rate of smoking

(13%) in the EU (28%) by some distance, and lowest rate of smoking related disease as a result. There are no significant gateway effects and it is widely used to quit smoking [see this one-page summary]. We know that experts have called for lifting the ban and replacing it with regulation of ingredients to reduce toxicity, and made this clear to the Commission (here and here). This would potentially remove the most dangerous of the smokeless tobaccos from the market (though no smokeless product is remotely as dangerous as smoking).

What they've done. Yet snus is banned outside Sweden, and would remain banned under the proposed revisions to the Tobacco Products Directive. Not only that, the proposal would ban flavouring for snus and make it relatively less attractive compared to cigarettes, potentially undermining its harm reduction potential and causing harm in Sweden. The contortions necessary to support this evidence-free proposal are all too obvious in the Impact Assessment. The Commission even tries to draw on the *precautionary principle*, but ends up violating its own guidelines.

What we said to the European Parliament. I wrote to key members of the European Parliament to enclose this critique and commented:

> *We assume that if it comes to the apparently paradoxical choice between banning a tobacco product and protecting the health of European citizens, the European Parliament would wish to protect lives and reduce harm. The issue of oral tobacco presents you with that choice. So with that in mind, I hope you find this useful input to your discussions.*

There are some MEPs who do understand this and some that are prepared to be persuaded by evidence. But too many are content to take the path of political least resistance, look tough on tobacco and look away from the consequences.

What we've asked for. I have written to Commissioner Borg and relevant officials suggesting they undertake a 'peer review' of the science – not least to check whether the ban has any legal credibility, given the state of scientific knowledge and expert opinion – especially as so much has emerged since the ban was tested in court in 2003-4.

> *Dr Tonio Borg*
> *Commissioner for Health and Consumer Policy*

European Commission
B-1049 Brussels

CC: Chief Scientific Adviser, Dr Anne Glover
Chef De Cabinet, Ms Joanna Darmanin
Head of Unit, DG SANCO, Mr Dominik Schnichels

From: Clive Bates, Former Director Action on Smoking and Health (1997-2003)
Lars Ramström, Executive Director, Institute for Tobacco Studies, Stockholm

18 March 2013

Dear Dr Borg

Thank you for your reply to my letter of 5 December 2012 about the proposal for a revised Tobacco Products Directive, and also for the substantive response I received from Mr Schnichels. I am grateful to you both for your letters.

However, we were very disappointed that the Commission's proposal does so little to advance the concept of 'harm reduction', and in fact works against it. Harm reduction is an important strategy in public health: the idea is to promote much lower-risk alternatives to cigarettes and thereby to reduce the harm caused by smoking – something that has proved a spectacular success in Sweden and is a market and consumer based measure consistent with developing the internal market. I hope therefore that you will consider with some interest the attached scientific critique of the Commission's impact assessment as it relates to oral tobacco and harm reduction. The critique covers health risks, harm reduction and relative risk, initiation, cessation, dual use, characterising flavours and the misuse of the precautionary principle.

We find numerous errors of fact and interpretation, selective use of data, important omissions and poor conceptual framing. Not only is this likely to lead to more smoking and more harm to health, it erodes the legal foundations of the proposed directive, which appears disproportionate, discriminatory, anti-competitive and not consistent with securing a high level of health protection. The poor quality of scientific reasoning clearly opens the proposed directive to legal challenge. This critique suggests that science has been misused to justify a predetermined policy, rather than the policy developed on the basis of sound science.

I attach the following for your consideration:

1. A critique of the Commission's scientific reasoning supporting the proposed measures relating to oral tobacco, 18 March 2013 as discussed above (also attached)

2. A letter from six experts to the Swedish health minister proposing a politically pragmatic approach to oral tobacco based on allowing each member state to decide whether to lift the the ban, and then regulating ingredients to a common standard where oral tobacco can be placed on the market. 15 February 2013.

3. Supporting data on tobacco use and health in Sweden accompanying the letter above. 15 February 2013

4. A simple visual 1-page presentation of the best available scientific understanding of the impact of snus in Sweden by Lars Ramström and Tom Wikmans. We believe that anyone looking at this data objectively cannot conclude that the right course of action is to ban snus in countries other than Sweden.

Proposal for scientific peer review
We recognise that responsibility for development of the directive under the ordinary legislative procedure now rests primarily with the Council and Parliament. We will of course circulate this critique to the relevant working groups, rapporteurs and committees, and make it more widely available.

However, the Commission is the author of the proposal and originator of the scientific justification for it. I would like to suggest therefore that as responsible Commissioner you request advice from the Chief Scientific Adviser to the Commission, Dr Glover, and publish a 'peer review' of the scientific reasoning in the impact assessment as it relates to oral tobacco. I believe it will assist the European Parliament, European Council and you as Commissioner to know whether the proposal is built on robust or inadequate scientific foundations. Very little time elapsed between your appointment and circulation of the proposal, so I hope you will take the opportunity to take a considered view of whether the directive is, in fact, based on sound science.

In the light of our critique, I hope you or Dr Glover will be able to confirm that

you will reassess the scientific justification for the proposal as it relates to oral tobacco and publish a peer review. Or, alternatively, that you will confirm that, despite our critique, that you stand behind the scientific reasoning in the impact assessment and have the support of the Commission's Chief Scientific Adviser.

We look forward to hearing from you.

Yours sincerely,

Clive Bates

Disclosure: Clive Bates is former Director Action on Smoking and Health (London-based) 1997-2003 (and former civil servant 2003-12). He is currently developing a new public-interest advocacy and consultancy practice focussed on broad aspects of sustainability, including public health. Lars Ramström has worked in tobacco control for many years and is an expert on the epidemiology of snus. Neither of us have competing interests.

What do 'health' groups think? It's also worth pointing out that although many experts regard the ban on snus as an obvious absurdity, various cancer, heart and respiratory groups in Europe declared their support for a ban on snus and other smokeless tobacco in a meeting with the European Commission in February 2012. Here are the meeting minutes. I simply don't understand on what evidential basis they arrived at this position. They have never been able to explain and apparently don't believe they need to. They don't seem that bothered about more deaths from cancer, heart disease and respiratory illness. So I repeat my offer to the people and organisations attending:

Florence Berteletti (Smoke Free Partnership)
Archie Turnbull (European Public Health Alliance)
Susanne Logstrup (European Heart Network)
Jean King (Cancer Research UK)
Luk Joossens (Association of European Cancer Leagues)
Marc Decramer (European Respiratory Society)

…please can you explain on what scientific basis you believe snus should be banned?