

To the attention of

Ms Ursula von der Leyen
President of the European Commission

Ms Stella Kyriakides, Health Commissioner

Monsieur Johannes Hahn, Budget and Administration Commissioner

Subject : Transparency and objectivity of data used for the revision of the Tobacco Products Directive

October 27th 2020

Dear Madam President, Dear Madam and Mr Commissioners,

We would like to draw your attention to the Tobacco Products Directive's revision announced for 2021. The lockdown, a consequence of the Covid-19 epidemic, has interrupted the MEPs work on this subject, in particular that of the Informal Parliamentary Working Group "to prepare the revision of the Tobacco Directive" (IPWG TPD), which Michèle Rivasi now honored to chair, at the request of MEP Cristian Busoi, the new President of ITRE.

The Commission, for its part, has continued in the last months to prepare this revision, in particular through two initiatives:

A public consultation on a European Beating Cancer plan: Launched on 3 February, this Europe-wide public consultation, which ended on 21 May and therefore took place during the lockdown¹, highlighted the overwhelming prevalence of tobacco consumption in the development of cancer: as the leading risk factor for lung cancer, smoking is also the leading preventable risk factor for 16 other types of cancer.

A review of the Tobacco Products Directive conducted by ICF consultancy: "ICF is conducting on behalf of the European Commission a "Study in support of the Report on the Application of Directive 2014/40/EU" which aims to provide the Commission with a comprehensive and independent evidence-based assessment of the application of the Tobacco Products Directive by the Commission, Member States and relevant stakeholders. As part of this study, the study team is contacting the competent authorities, stakeholders and private companies concerned in order to collect their comments, which may be considered relevant in the present case".

¹ <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12154-Europe-s-Beating-Cancer-Plan>

Madam President, Commissioners, it is mandatory that this preparatory work is not carried out by the Commission alone. The European Parliament, in particular the ENVI Committee and the MEPs involved in the informal parliamentary working group, must be closely involved. Why ?

As you are certainly aware, tobacco issues are subject to insidious and aggressive lobbying by the tobacco industry and its allies who often act in hidden ways, including during public consultations². These exercises of democracy and transparency appear as essential steps of the regulatory process in the EU must therefore be thoroughly monitored to prevent them from by the tobacco multinationals meddling for the sole benefit of their marketing and financial interests. For this reason, the study published during the summer by Corporate Europe Observatory entitled « **Smoke and mirrors - Weak EU transparency rules allow tobacco industry lobbyists to dodge scrutiny** » - based on hundreds of documents received via access to information requests - show that the Trade Directorates-General of the Commission's Tax Policy have had numerous meetings with tobacco lobbyists in recent years and are clearly open to the influence of the tobacco industry. This research documenting the links between the tobacco industry, its allies and the Commission, is absolutely edifying and cannot be ignored.³ This is a further reason for the European Parliament's willingness to be as closely involved as possible in the review's preparation, beginning at the stage of the request for third party consultation on these issues.

We would also remind you that the study carried out by European Public Health Alliance (EPHA)), drafted at the request of the European Parliament's ENVI Committee as regards the main public health policies to be implemented during the current term of office. Entitled « **State of play, current and futures challenges** », this report sets out priorities for tobacco control, including bringing the European system for the traceability of tobacco products in line with the WHO Protocol⁴. It is imperative to take this fully into account when revising the Directive.

The experience of the drafting of the Tobacco Products Directive teaches us that on the one hand, the Commission is sometimes permeable to the influence exerted by the tobacco lobby and on the other hand that the call for "external consultants" under the restrictive prism of the specifications set by the Commission may result in reports endorsing certain preconceived choices made by the Commission. These choices are criticized by a large part of the civil society - from institutional experts of the Framework Convention Alliance (FCA), to academics from the University of Bath, public health NGOs, and in the publications from Transparency International and Investigative Journalists Organized Crime and Corruption Reporting Project ("OCCRP") in particular.

The present risk is that the issues that worry tobacco companies and that we know perfectly well (stricter regulation of electronic cigarettes after the notice of harmfulness issued by the WHO in July 2020; implementation of the WHO recommendation to assimilate heated tobacco products to traditional cigarettes and to apply the same legislation and taxation; new strict framework for lobbying of tobacco companies with a ban on any political funding in the EU, and any cultural or sports sponsorship; debate on the marketing use of filters; end of tax optimization of tobacco companies to balance the social cost of tobacco; assertion of tobacco companies' responsibility in organizing and fuelling parallel trade; replacement of Articles 15 and 16 of the Tobacco Products Directive by the WHO Protocol ratified by the EU on 24 June 2016 and to be applied by the Parties as of 2023...) are not taken into account by the external consultants current scope of work, and that these choices be ratified without any public and transparent debate, and without the intervention of the European Parliament in due time.

² https://tobac.tuxic.nl/index.php?title=EU_Tobacco_Products_Directive_Revision

³ <https://corporateeurope.org/en/2020/07/smoke-and-mirrors>

⁴ [https://www.europarl.europa.eu/RegData/etudes/STUD/2019/638426/IPOL_STU\(2019\)638426_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2019/638426/IPOL_STU(2019)638426_EN.pdf)

We solemnly ask you to ensure that the revision of the Tobacco Products Directive, in terms of both substance and timing, is done as a co-production from the Commission and European Parliament, which cannot be considered as a mere registration chamber in these matters of full integration where its role as co-decision-maker must play fully.

We also ask that ICF be heard by the members of the ENVI Committee, in particular by the group of MEPs committed to the fight against smoking. We also request that ICF hold public hearings with representative anti-smoking associations and relevant technical experts.

We also call for the application to all Commission Directorates-General of the guidelines followed by DG Health in its meetings with the tobacco industry - recommendations made in a 2011 memo signed by Director General Paola Testöri Coggi - as required by the Protocol to the UN FCTC.

We also request that the Commission and the WHO invite MEPs, notably from the ENVI Committee, to participate in the EU delegation to the FCTC Working Group tasked with the elaboration of technical specifications for tobacco traceability systems in line with the WHO Protocol. After an almost unanimous vote of the European Parliament on 7 June 2016, the Protocol was concluded by the EU on 17 June 2016, entered into force on 25 September 2018, and is to be applied from 2023. Although this subject may seem technical, it is above all eminently political. This negotiation has consequences in terms of public health and public finances, and is considered crucial by the tobacco industry, which is doing its utmost to undermine its effectiveness. Members of the European Parliament, as co-legislators, must be involved and be present alongside European officials.

Finally, we request that the Commission services in charge of tobacco control be required to take into account WHO recommendations, reports and studies by tobacco control associations, investigative journalists and verified figures. Since the beginning of the mandate, both during ENVI Committee hearings and in response to written questions, we have had statements from Commission representatives that have been embarrassing to say the least, as they were contrary to the work of the WHO or incumbent anti-smoking associations, for example on heated tobacco products or the origin of parallel trade.

For example :

In its responses to Parliamentary questions E-003162/2019 and E-003239/2019, the Commission states that the "EU traceability system is fully consistent with multilateral obligations under the WHO Framework Convention on Tobacco Control (Protocol to the FCTC)". However, numerous documented publications by parliamentarians, associations or academics demonstrate the legal and technical flaws of the European system in relation to the WHO Protocol ⁵.

It is unlikely that any Commission service could be right against everyone, let alone on such a technically complex subject, and we call for a public and transparent debate on the compliance of the European traceability system with the WHO Protocol.

In addition, in its reply to our questions from MEPs on the European Union's cooperation agreements with the tobacco industry ⁶ and the fight against illicit tobacco trade ⁷, the Commission states that "the three remaining anti-fraud cooperation agreements concluded with

⁵ <https://livrenoirlobbydutabac.wordpress.com/2018/09/03/premier-article-de-blog/>

⁶ https://www.europarl.europa.eu/doceo/document/E-9-2019-003162_EN.html

⁷ 11 October 2019, E-003239/2019

global manufacturers (...) complement in a relevant and globally effective manner the framework of the Union's action". It seems to us, however, that the debate organised in the European Parliament in March 2016 on the request for renewal of the cooperation agreement with Philip Morris International had definitively settled this debate. Are the European Parliament's debates, reflections and votes negligible? If parallel trade is essentially composed of tobacco that comes directly or indirectly from the cigarette companies' factories, how can we imagine that collaborating, even if only partially, with the tobacco companies would make it possible to solve a problem created and maintained deliberately by the tobacco companies themselves?

Also in its reply to our parliamentary questions on the EU's cooperation agreements with the tobacco industry and the fight against illicit tobacco trade, the Commission also states that "the composition of the illicit tobacco market in the EU has changed significantly in recent years. At present, "cheap whites" (cheap unbranded cigarettes) account for a preponderant share of the seizures reported by Member States". Apart from the already embarrassing fact that this is the classic speech of the tobacco lobby in an attempt to hide its own turpitudes, this claim is unfounded. We refer you in particular to the "Black Book of the Tobacco Lobby in Europe" by our colleague and MEP Younous Omarjee, which demonstrates this argument⁸ : let us recall first of all that according to Seita-Imperial Tobacco's own figures in November 2016, "illicit whites" or "cheap whites" only represent 1% of the total parallel trade. In other words, almost nothing. Studies have shown that the tobacco majors are hiding behind the concept of "illicit whites" or "cheap whites" factories. Finally, it should be recalled that the French anti-smoking association Le Comité Contre le Tabagisme (CNCT) has proven that the figures on "illicit whites" or "cheap whites" published each year in the KPMG-SUN Report were manipulated to give a truncated picture of the reality of parallel trade, certainly at the request of the tobacco companies⁹.

In its reply to one of our parliamentary questions on the conformity of the traceability system for tobacco products in the Union with the obligations of the Framework Convention on Tobacco Control¹⁰, the Commission states that it shares "the Honourable Member's concern about the presence of illicit raw tobacco, which is an essential element in the clandestine production of tobacco in the EU". This concept of "illicit" raw tobacco is a completely new concept, which is not mentioned in any past studies (neither those of the tobacco companies nor those of civil society). It would be interesting for the Commission to cite its sources and figures in this regard.

It should be specified from the outset, using the figures from the above-mentioned Seita-Imperial Tobacco survey of November 2016, that if counterfeiting weighs 0.2% and "illicit whites" or "cheap whites" 1%, raw tobacco must represent a tiny quantity of trafficking. On the other hand, we have seen that cigarette manufacturers were trying to exploit for their own profit, in order to appear as victims, the discovery in Belgium of clandestine cigarette manufacturing workshops, thus using raw tobacco. In its investigations, OCCRP published information that clandestine workshops are often the work of the tobacco majors themselves, as in Pakistan for example¹¹.

⁸ See in particular: <https://tobaccocontrol.bmj.com/content/early/2019/08/30/tobaccocontrol-2019-055094>; https://www.fctc.org/wp-content/uploads/2019/07/FCA-Policy-Briefing_Why-the-EU-tracking-and-tracing-systems-works-only-for-the-EU.pdf; <https://cnct.fr/actualites/systeme-europeen-suivi-tracabilite-tabac-2/>; <https://exposetobacco.org/resources/tobacco-track-and-trace-system-brief/>

⁹ <https://cnct.fr/communiqués/rapport-kpmg-philip-morris-manipulation/>

¹⁰ https://www.europarl.europa.eu/doceo/document/P-9-2020-001530_EN.html

¹¹ <https://www.occrp.org/en/loosetobacco/without-a-trace>

These concrete examples show, Madam President, Commissioners, that if we want to efficiently revise the Tobacco Directive in 2021, in order to reduce the number of premature deaths from tobacco, to prevent our teenagers from taking up smoking, to put an end to parallel trade and to reduce the social cost of tobacco, which is between six and eight times higher than the tax revenue generated on tobacco consumption, we must all work together on the basis of studies and figures that are free of any suspicion.

This is not the case today, and we note with amazement that the tobacco industry's spurious arguments sometimes find their way into the public and official responses of European Commission representatives.

We solemnly demand, Madam President, Commissioners, that the relevant services be duly informed of our working group members, its scope of work, and of the necessity to exchange in full collaboration on these topics.

Many thanks in advance for your support in forwarding these fundamental public health and environmental policies.

Please accept, Madam President, Commissioners, the assurance of our highest consideration.

Signatories

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Copies:

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