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**From:** Florence Berteletti [<mailto:florence.berteletti@ersnet.org>]  
**Sent:** Thursday, January 06, 2011 5:08 PM  
**To:** WATSON John (SG)  
**Cc:** KLINGBEIL Marianne (SG); MAUNU Antti (SANCO); SEATTER Alan (SG); MOUSNIER Julien (SG); TESTORI COGGI Paola (SANCO); PEETSO Terje (SANCO); 'Sam Villiers'; [celine.brassart@ersnet.org](mailto:celine.brassart@ersnet.org); 'Jean King'; [archie.turnbull@ersnet.org](mailto:archie.turnbull@ersnet.org); 'Susanne Logstrup'; WIMMER Sigrid (SANCO)  
**Subject:** Message from Florence Berteletti Kemp

Dear Mr. Watson,

**Re: Request for an urgent meeting**

First of all, I would like to wish you a very happy New Year 2011. I remember sending you a similar message at the same time last year and it made me think that January must be a recurring month between the tobacco control organizations and the Secretary General.

As you know, we sent a letter (attached again) to President Barroso on the 15<sup>th</sup> of December regarding the unusual and worrying level of responses to the TPD online consultation. To date, we have not yet received any response. We understand that the Commission must be very busy. However, this is a matter of the highest importance. Indeed, we would like to know how these responses will be analysed and what measures will be taken to ensure that this does not happen again. What happened made a mockery of the EU consultation system and it also made a

mockery of those genuine interested parties who respected the rationale for the Commission's consultation process which is based on openness, accountability and transparency so that the public and the European institutions are aware of the parties involved in the consultation processes and how they conduct themselves.

We object to these responses being considered as individual responses. As you will see in the letter attached, we have been careful not to make any accusations, as we don't have any proof. However, we have compiled the number of websites from various countries (mainly UK, Germany, Austria but also Belgium and the Netherlands amongst others) inviting "citizens" to respond (with responses already made for them) to the consultations. The majority of these responses cannot be responses from genuine, concerned citizens. It resembles a petition more than a response to a consultation organised by the European Commission and should be treated as such. Furthermore, based on previous on-line consultations organised by the European Commission, one can observe that responses rarely exceed 500 with an average of 20 responses from citizens. Those citizens' responses are generally complemented by comments expressing the specific views of the person responding. As I am sure you will agree, it is very unlikely that so many citizens found the time to consider and reflect on whether the Directive still fully responds to the current and future challenges and ensures a high level of health protection as described in the (very good) consultation document<sup>[1]</sup> carefully prepared by DG Sanco.

The concerns above are reminiscent of the concerns we raised a year ago when we expressed our disquiet about the behavior of the tobacco industry; we believe that what happened raises the question of how to defend the independence and integrity of the EU Better Regulation process, of which the EC consultation is an integral part. Please note that we will meet the European Press in the following week and that we expect a strong political response from the Secretariat-General recognizing this behavior as an abuse of the EU consultation process.

Once more, we would like to stress that our wish is to find solutions with you. We are looking forward to a fruitful and constructive meeting. I will send you the list of persons attending the meeting as well as a short briefing (with an agenda, etc...) in the next two days. Please don't hesitate to suggest some discussion items. That would be most welcome.

I will try to ring you tomorrow to find out your availability.

We look forward to your response,

Yours sincerely,

Florence Berteletti Kemp  
Director  
Smoke Free Partnership

ERS Brussels Office, 49/51 Rue de Treves | B-1040 Brussels  
Tel. +32 (0) 2 238 53 63 | Fax +32 (0) 2 238 53 61 | GSM: +32 (0) 496124302  
<http://www.smokefreepartnership.eu>

[www.cancerresearchuk.org](http://www.cancerresearchuk.org)) and the European Heart Network (EHN at [www.ehnheart.org](http://www.ehnheart.org)). We aim to promote tobacco control advocacy and policy research at EU and national levels in collaboration with other EU health organisations and EU tobacco control networks.

*Please don't print this e-mail unless you really need to.*


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Information from ESET NOD32 Antivirus, version of virus signature database 5764 (20110106)

The message was checked by ESET NOD32 Antivirus.

<http://www.eset.com>

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<sup>[1]</sup> A PDF version of the consultation document can be found [here](#)  [43 KB]



[www.tobaccofree.me](http://www.tobaccofree.me)

Jose Manuel Barroso  
President of the European Commission  
European Commission  
200 rue de la Loi  
B-1040 Brussels  
Belgium

Wednesday, 15 December 2010

Dear President Barroso,

**Re: Concerns regarding abuse of the Tobacco Products Directive on-line consultation**

As stated on the Commission's website, the Public consultation on the possible revision of the Tobacco Products Directive 2001/37/EC aims at offering an early opportunity for stakeholders and the public to comment on different policy options that such revision might involve. Whilst we commend this initiative, we would like to bring to your attention the fact that, on Monday 13 December, the Commission had received a very unusual and unprecedented **53,282**<sup>1</sup> number of responses to the on-line consultation. Today, at 9.26am, the website had received **54,638**<sup>2</sup> responses, an additional **1,356** responses overnight.

Whilst we support and would encourage responses from members of the public about tobacco policies, we are alarmed that the majority of these responses do not seem to be responses from genuine, concerned citizens. Based on previous on-line consultations organised by the European Commission, one can observe that responses rarely exceed 500, with an average of 20 responses from citizens.<sup>3</sup>

The rationale for the Commission's consultation process as it is explained in the *General Principles and Minimum Standards for Consultation of Interested Parties*<sup>4</sup> is one of openness and accountability. Thus, consultation processes run by the Commission must also be transparent, both to those who are directly involved and

<sup>1</sup> <http://ec.europa.eu/yourvoice/ipm/forms/dispatch>. Accessed at 17.57pm on Monday 13<sup>th</sup> December 2010.

<sup>2</sup> <http://ec.europa.eu/yourvoice/ipm/forms/dispatch>. Accessed at 9.28am on Tuesday 14<sup>th</sup> December 2010.

<sup>3</sup> A PDF version of the consultation document can be found [here](#) [43 KB]

<sup>4</sup> [http://ec.europa.eu/civil\\_society/consultation\\_standards/index\\_en.htm](http://ec.europa.eu/civil_society/consultation_standards/index_en.htm)

to the general public. It must be clear what mechanisms are being used to consult, who is being consulted and, finally, what has influenced decisions in the formulation of policy. It follows that interested parties must themselves operate in an environment that is transparent, so that the public is aware of the parties involved in the consultation processes and how they conduct themselves.

We believe that the policy of openness and accountability of the European Commission is crucial and that the same principles should apply to all parties, including individuals, when they are seeking to contribute to EU policy development.

In the spirit of trust, transparency and openness, we are confident that the Commission will undertake an immediate investigation of responses so as to ensure an equitable treatment of all stakeholders who have genuinely participated in this consultation. More specifically, we urge the Secretary General to:

- Identify and indicate any group or groups of responses that reflect common patterns (if the response is devoid of text and content)
- Ensure that respondents have identified themselves and it can be confirmed that multiple responses have not been made from a single source. If this is not the case such responses should not be accepted as they are not open to verification.
- Identify as far as possible who (from the main interested parties) could have organised such coordinated lobbying.

The EU is a party to the WHO FCTC and under Article 5.3 to the FCTC is required, in setting and implementing public health policies with respect to tobacco control, to act to protect these policies from commercial and other vested interests of the tobacco industry.

Today, the biggest tobacco companies are still engaged in a global practice of misinformation as shown in their recent behaviour following the announcement of tobacco plain packaging in Australia<sup>5</sup> and their covert means of involving tobacco growers against Arts. 9 & 10 of the FCTC.<sup>6</sup> We are nonetheless confident that the Commission, and in particular the Secretary General, will remain vigilant against such "rent-a-mob" tactics by the tobacco industry, consistent with its obligations under Article 5.3 of the WHO FCTC. We realise you are very busy but hope that you will understand the urgency of this matter.

We look forward to your response,

Yours sincerely,

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<sup>5</sup> 54 page document of internal email correspondence, contracts and summary campaign points sent to the Australian national TV program, Lateline – please see attached document.

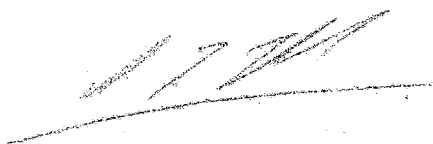
<sup>6</sup> [http://www.fctc.org/index.php?option=com\\_content&view=article&id=422:growers-association-attacks-fca&catid=233:product-regulation&Itemid=237](http://www.fctc.org/index.php?option=com_content&view=article&id=422:growers-association-attacks-fca&catid=233:product-regulation&Itemid=237)



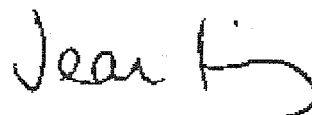
Florence Berteletti Kemp  
Director  
Smoke Free Partnership (SFP)  
[www.smokefreepartnership.eu](http://www.smokefreepartnership.eu)



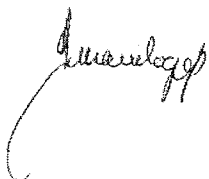
Luk Joossens  
European Cancer Leagues (ECL)  
[www.europeancancerleagues.org](http://www.europeancancerleagues.org)



Archie Turnbull  
Executive Director  
European Respiratory Society (ERS)  
[www.ersnet.org](http://www.ersnet.org)



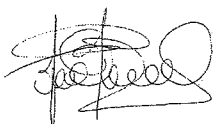
Jean King  
Director Tobacco Control  
Cancer Research UK  
[www.cancerresearchuk.org](http://www.cancerresearchuk.org)



Susanne Logstrup  
Director  
European Heart Network (EHN)  
[www.ehnheart.org](http://www.ehnheart.org)  
(Member of the Health Policy Forum)



Eshan Latif  
Acting Director  
Department of Tobacco Control  
International Union Against  
Tuberculosis and Lung Disease  
68 boulevard Saint Michel  
75006 Paris



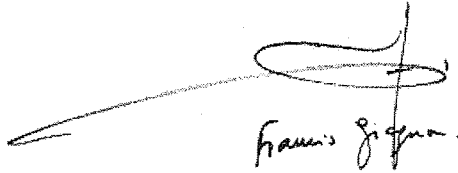
Monika Kosinska  
Secretary General  
European Public Health Alliance (EPHA)  
(Member of the Health Policy Forum)  
[www.ephah.org](http://www.ephah.org)



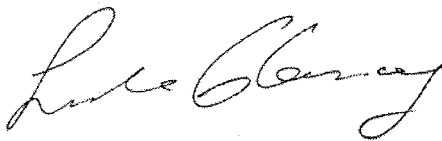
Dr. Anna Gilmore  
Clinical Reader in Public Health &  
Health Foundation Clinician,  
Scientist, University of Bath &  
London School of Hygiene and  
Tropical Medicine



Deborah Arnott  
Director  
Action on Smoking & Health (ASH)  
[www.ash.org.uk](http://www.ash.org.uk)



Francis Grogna  
Secretary General  
European Network for Smoking  
and Tobacco Prevention (ENSP)  
[www.ensp.org](http://www.ensp.org)  
(Member of the Health Policy  
Forum)



Prof. Luke Clancy  
Chairman of the (ERS) European  
Respiratory Society Standing  
Committee on Tobacco Control  
[www.ersnet.org](http://www.ersnet.org)



Prof. Yves Martinet  
President  
Comité Nationale contre le  
Tabagisme (France)  
<http://www.cnct.fr/>

C.c: Paola Testori, Director-General for Health and Consumer Protection  
John Watson, Secretariat General  
Stakeholder's Dialogue Group - DG SANCO

## **Background Documents:**

**Website of the tobacco industry regarding the revision of the Tobacco Products Directive:**

### **From Germany:**

<http://www.entscheiden-sie-selbst.de/>

The initiative „Entscheiden Sie selbst“ (decide for yourself) is supported by the major German associations of the tobacco sector e.g.

- Bundesverband des Tabakeinzelhandels (BTWE)
- Verband der deutschen Rauchtobakindustrie (VdR)
- Bundesverband Deutscher Tabakwaren-Großhändler
- Bundesverband deutsche Tabakpflanzer e.V. (BDT)
- Bundesverband der Zigarrenindustrie e.V. (BdZ)

### **In addition:**

- Automatenaufsteller (BDTA)
- Philip Morris GmbH
- Gewerkschaft Nahrung-Genuss-Gaststätten (NGG),

### **Advice at the website:**

[http://www.entscheiden-sie-selbst.de/public/Uebersetzung\\_und\\_Anleitung.pd](http://www.entscheiden-sie-selbst.de/public/Uebersetzung_und_Anleitung.pd)

“As employee you should choose the option „citizen“ if you don't represent your company”.

### **Calls for participating in the consultation:**

<http://www.zigarettenverband.de/>

<http://www.bayern-sagt-nein.de/> (website of the campaign "Bayern sagt Nein")

<http://www.netzwerk-rauchen.de/> (*German section of Forces*)

- Action campaign of the „Bündnis für Toleranz“ (of the major German associations of the tobacco sector) to alert tobacco retailers and customers of the consultation process calling for participation of smokers.
- Establishment of a free telephone hotline for answering questions in regard to the consultation.

### **From the UK**

<http://www.youtube.com/watch?v=QVOeKdrmxlc>

<http://www.forestpetition.eu/>

## **LEGRIS Gerard (SG)**

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**Subject:** Ms Berteletti Kemp / Tobacco Products Consultation  
**Location:** BERL 05/381

**Start:** Mon 14/02/2011 15:00  
**End:** Mon 14/02/2011 16:00

**Recurrence:** (none)

**Meeting Status:** Meeting organizer

**Organizer:** LEGRIS Gerard (SG)  
**Required Attendees:** LEGRIS Gerard (SG); MAUNU Antti (SANCO); GREMMINGER Michael (SG)

**Categories:** Needs Preparation

### **Flash DEBRIEF**

Following Mrs Berteletti's mail to SG ( Watson) SG (LEGRIS) accepted to arrange a meeting to provide an opportunity for SANCO colleagues (MAUNU Antti) to hear and react to Smoke Free partnership (SFP) concerns as expressed in the mails. Meeting took place 14 Feb.

SFP representatives expressed their concern ( as described in Mrs Berteletti's mail herunder). The talk focused on the huge amount of individual responses to the TPD online consultation which SFP attributes to a "petition" type of intervention led by the tobacco industry.

It was taken note of SFP's concerns and of the facts presented upon these concerns. Sanco explained that all contributions will be analysed with due respect to what they represent. It was indicated to SFP that a consultation is not a petition type of process therefore the value of the contributions are not weighted upon the number of individuals contribution.

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The following people will accompany Ms. Berteletti Kemp at the meeting on 14 February:

- Luk Joossens
- Susanne Logstrup

### **Re: Request for an meeting with Mr. Legris**

First of all, happy new year and many thanks for your kind response on the phone just now.

Please see below the exchange of e-mail I had first with Mr. Watson and then the message I sent to Mr. Gremminger and Mr. Legris on the 10<sup>th</sup> of January.

I would be very grateful if I could have a initial discussion on the phone with Mr. Legris to explain the reasons for our request for a meeting. I also would like to remind Mr. Legris that we met before when he presented the result of the transparency initiative to the DG Sanco stakeholders' dialogue group (of which I am a member since 2006).

I very much look forward to your response and will try to ring Mr. Legris again this afternoon or at his earliest convenience.

Warmest wishes,



Florence Berteletti Kemp

Director

Smoke Free Partnership

ERS Brussels Office, 49/51 Rue de Treves | B-1040 Brussels

Tel. +32 (0) 2 238 53 63| Fax +32 (0) 2 238 53 61|GSM: +32 (0) 496124302

<http://www.smokefreepartnership.eu>

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Re: Request for an urgent meeting

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We object to these responses being considered as individual responses. As you will see in the letter attached, we have been careful not to make any accusations, as we don't have any proof. However, we have compiled the number of websites from various countries (mainly UK, Germany, Austria but also Belgium and the Netherlands amongst others) inviting "citizens" to respond (with responses already made for them) to the consultations. The majority of these responses cannot be responses from genuine, concerned citizens. It resembles a petition more than a response to a consultation organised by the European Commission and should be treated as such. Furthermore, based on previous on-line consultations organised by the European Commission, one can observe that responses rarely exceed 500 with an average of 20 responses from citizens. Those citizens' responses are generally complemented by comments expressing the specific views of the person responding. As I am sure you will agree, it is very unlikely that so many citizens found the time to consider and reflect on whether the Directive still fully responds to the current and future challenges and ensures a high level of health protection as described in the (very good) consultation document[1] carefully prepared by DG Sanco.

The concerns above are reminiscent of the concerns we raised a year ago when we expressed our disquiet about the behavior of the tobacco industry; we believe that what happened raises the question of how to defend the independence and integrity of the EU Better Regulation process, of which the EC consultation is an integral part. Please note that we will meet the European Press in the following week and that we expect a strong political response from the Secretariat-General recognizing this behavior as an abuse of the EU consultation process.

Once more, we would like to stress that our wish is to find solutions with you. We are looking forward to a fruitful and constructive meeting. I will send you the list of persons attending the meeting as well as a short briefing (with an agenda, etc...) in the next two days. Please don't hesitate to suggest some discussion items. That would be most welcome.

I will try to ring you tomorrow to find out your availability.

We look forward to your response,

Yours sincerely,

Florence Berteletti Kemp

Director

## LEGRIS Gerard (SG)

---

**From:** Florence Berteletti <florence.berteletti@ersnet.org>  
**Sent:** 16 February 2011 18:26  
**To:** LEGRIS Gerard (SG); GREMMINGER Michael (SG); MAUNU Antti (SANCO); PEETSO Terje (SANCO); AMPELAS Anna Eva (SANCO)  
**Cc:** 'Celine Brassart'; 'Archie Turnbull'; 'Jean King'; 'Susanne Logstrup'; 'Luk Joossens'; 'Joossens Luk'  
**Subject:** Thank you and follow up from Tobacco control delegation  
**Attachments:** Thank you letter to SEc Gen and DG Sanco.doc

Wednesday, February 16, 2011

Dear Mr. Legris, Mr. Gremminger and Mr. Maunu,

First of all, thank you very much for taking the time for the meeting on Monday the 14th to discuss our concerns regarding the misuse of the Tobacco Products Directive online consultation.

We appreciate the opportunity for a frank exchange of views. You suggested to us the possibility to file a complaint underlining a violation of the code of conduct on the registry but we decided not to do so. Indeed, we felt that we had an excellent meeting and came out reassured regarding your plans for the analysis of the consultation; we were pleased to hear that the analysis will not emphasize the *quantity* of responses received and will focus instead on the *quality* of the content.

As we suggested during our meeting, and in order to avoid similar misuse in the future, we would be grateful if your report on the online consultation could also outline the duties of stakeholders so that consultations are not treated as petitions. An argument that could be used is that such endeavours cause an unnecessary administrative burden on the institutions.

As we stated before, we acknowledge and support the aim and content of the minimum standards for consultations. We also believe that it is paramount for inclusive consultative processes to be maintained. However, we would like to stress that the minimum standard for consultations and the Article 5.3 FCTC guidelines, although not mutually exclusive, are not the same.

As we explained, we have concerns related to the legitimacy of the tobacco industry. Indeed, this industry is not like any other and is recognised in the 5.3 guidelines:

- First, tobacco kills one in two of its long-term users, when used exactly as intended by the manufacturer. This is unique to the tobacco industry.
- Second, the tobacco industry's business interests not only directly conflict with the goals of public health and other policy goals but also to the goals of many businesses who respect ethical and fair rules. This understanding has come about due to actions by the tobacco industry itself. There is solid and overwhelming evidence the tobacco industry has actively and systematically sought to hinder, delay, and prevent the adoption of effective tobacco control policies. This evidence is outlined as an appendix to the FCTC Article 5.3 guidelines.

You asked us to state clearly what our position was on the 5.3 guidelines and you said that you had taken note of our comments during the meeting. From our side, we recognize that interaction between the Commission and the tobacco industry may be necessary because the Commission is a regulator and the tobacco industry is required to comply with and implement EU legislation. In our view, such interaction should be limited to what needs to be done for the Commission to regulate tobacco products and the tobacco industry effectively.

Over and above that, we would like the European Commission to specifically take into account the Article 5.3 FCTC guidelines and to establish measures to limit interactions with the tobacco industry and ensure the transparency of those interactions.

Principle 2 of the guidelines specifies that:

*Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.*

And

*Where interactions with the tobacco industry are necessary, Parties should ensure that such interactions are conducted transparently. Whenever possible, interactions should be conducted in public, for example through public hearings, public notice of interactions, disclosure of records of such interactions to the public.*

We would like to expand this to:

*The European Commission should ensure that every meeting with the tobacco industry or those working to further its interests should be published ex-ante.*

Mr Duncan Bannatyne forwarded to us Mr Barroso's response to a letter he had sent to him. In his response (sent on the 19<sup>th</sup> of February 2009) to Mr Bannatyne, Mr. Barroso outlined in that it was the Commission's intention to respect its obligations under FCTC Article 5.3 as well as the adopted guidelines.

Please note that we do not underestimate the complexity of the situation and that we want to work with the Commission to achieve a positive outcome for EU public health and global tobacco control. We would therefore appreciate a response from you stating clearly how you intend to implement the FCTC 5.3 guidelines. We would be happy to state our case to Commissioner Barroso if you think that this might assist the situation.

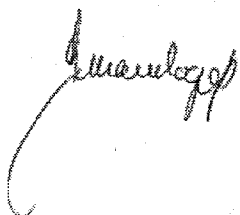
We remain available for any further discussions and consultations you may wish to undertake in this matter.

With our very best wishes and thank you once again for a stimulating and fruitful meeting,

Yours sincerely,



Florence Berteletti Kemp



Susanne Løgstrup



Luk Joossens

Florence Berteletti Kemp  
Director  
Smoke Free Partnership

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<http://www.smokefreepartnership.eu>

The Smoke Free Partnership is a strategic, independent and flexible partnership between the European Respiratory Society (ERS at [www.ersnet.org](http://www.ersnet.org)), Cancer Research UK (CR-UK at [www.cancerresearchuk.org](http://www.cancerresearchuk.org)) and the European Heart Network (EHN at [www.ehnheart.org](http://www.ehnheart.org)). We aim to promote tobacco control advocacy and policy research at EU and national levels in collaboration with other EU health organisations and EU tobacco control networks.

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