Dear [name],

Subject: Notification under Article 24(3) of Directive 2014/40/EU

On 11 May 2016, the Austrian Federal Ministry of Health submitted a notification, in accordance with Article 24(3) of Directive 2014/40/EU, of draft measures prohibiting the placing on the market of chewing tobacco.

It is proposed to implement the ban by the insertion of a new Section 2(1) in the Federal Act concerning the production and placement on the market of tobacco products, the advertising of tobacco products and the protection of non-smokers (Tobacco Act).

According to the notification, the proposed prohibition is justified on public health grounds. The notification explains that the products at issue contain substances which pose serious health risks, including, increasing the risk of pancreatic carcinoma and cancer of the oral cavity. In addition, the Austrian notification refers to practical difficulties in distinguishing chewing tobacco from tobacco for oral use (snus) which is prohibited.

The Commission recalls that, pursuant to Article 24(3) of Directive 2014/40/EU, a Member State may prohibit a certain category of tobacco or related products where the conditions laid down in that Article are fulfilled. In particular, any such prohibition is to be based on grounds relating to the specific situation in the Member State concerned and must be justified by the need to protect public health, taking into account the high level of protection of human health achieved through that Directive.

In order to allow the Commission services to assess whether the proposed measure complies with the requirements laid down in Article 24(3) of Directive 2014/40/EU, the Austrian authorities are kindly invited to reply to the following questions:

(a) The Commission services would request clarification as to what the Austrian authorities consider to be the specific circumstances in Austria that would justify the adoption of the proposed measure. The Commission services would be thankful to receive up-to-date data, assessments or impact assessments in this regard, where available, as well an outline of the expected effects of such a measure demonstrating the justification of the need to protect public health in the light of the specific situation identified in respect of Austria.

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(b) The Commission would also request further clarification as regards the justification relating to the practical difficulty in distinguishing chewing tobacco from tobacco for oral use (snus). In particular, the Commission would be grateful to receive details of the kind of difficulties that have emerged in practice and the grounds for which it is considered that such a difficulty would justify the proposed ban on chewing tobacco (rather than, for example, taking other enforcement measures to prevent the circumvention of the prohibition on the placing of the market of snus).

(c) With respect to each of the justifications referred to in (a) and (b) above, the Commission services would be interested in evidence supporting the proportionality of the proposed measure, including whether any alternative or less restrictive measures were considered.

(d) The Commission services would appreciate a detailed breakdown of information on the current prevalence of the use of chewing tobacco products in the population, including, if possible, a breakdown per product segment (tobacco for oral use, chewing tobacco, nasal tobacco, other).

The Austrian authorities are kindly invited to submit their reply to SANTE-B2-TOBACCO-CONTROL@ec.europa.eu before 22 June 2016.