EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Brussels,
SANTE B2/ARES(2016)

NOTE TO

MR. A. ITALIANER, SECRETARY-GENERAL, SG
MR L. ROMERO REQUEÑA, DIRECTOR-GENERAL, LEGAL SERVICE
MR J.B. PLEWA, DIRECTOR-GENERAL, DG AGRI
MR M. REICHERTS, DIRECTOR-GENERAL, DG EAC
MR M. SERVOZ, DIRECTOR-GENERAL, DG EMPL
MS L. EVANS, DIRECTOR-GENERAL, DG GROW
MR V. ŠUCHA, DIRECTOR-GENERAL, JRC
MR G. KESSLER, DIRECTOR-GENERAL, OLAF
MR H. ZOUREK, DIRECTOR-GENERAL, DG TAXUD
MR J.-L. DEMARTY, DIRECTOR-GENERAL, DG TRADE
MR LE ROY, SECRETARY GENERAL, EEAS

Subject: Inter-service consultation on the draft Commission Implementing Decision concerning national provisions notified by Austria prohibiting the placing on the market of chewing tobacco

On 11 May 2016, Austrian authorities notified the Commission – under Article 24(3) of the Tobacco Products Directive 2014/40/EU (TPD)¹ – of a Federal Bill to amend the Federal Act on the manufacture and placing on the market of tobacco products, tobacco products advertising, and the protection of non-smokers ("Federal Tobacco Act"). The law provides for a prohibition on the placing on the market of chewing tobacco. The notification was accompanied by justifications supporting the proposed measure.

Article 24(3) TPD establishes that 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. Article 24(3) further requires Member States to notify national provisions introducing such a prohibition to the Commission. The Commission shall, within six months of the date of receiving the

notification, approve or reject the national provisions after having verified – taking into account the high level of protection of human health achieved through Directive 2014/40/EU – whether or not they are justified, necessary and proportionate to their aim and whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between the Member States.

The Commission would seek to fulfil the above-mentioned obligations through the attached draft Decision.

In the preparation of this draft Decision, DG SANTE analysed in detail the explanations and justifications supplied by the Austrian authorities in the light of the requirements set out in Article 24(3) of the TPD. Based on this analysis, we propose to approve the measures notified by Austria and set out our reasoning in the draft Decision.

We would kindly ask you to adequately protect the draft decision against inadvertent disclosure.

We would be grateful for your comments on the above within the time period indicated in DECIDE. If you have further questions, please contact [insert contact information] in SANTE B2.

cc.: [insert contact information] (CAB)

Encl: (1) Draft Commission Implementing Decision