NOTIFICATION UNDER ARTICLE 24(3) OF THE TOBACCO PRODUCTS DIRECTIVE

On 20 August 2015, the Finnish authorities notified the Commission under Article 24(3) of Directive 2014/40/EU (TPD) of a draft bill relating to a proposed prohibition on the sale and import of all smokeless tobacco products. The aforementioned notification has been withdrawn on 11 February 2016.

Hereby we respectfully notify the Commission of the matter again under Article 24(3) of the TPD. The proposed provisions in the new Finnish Tobacco Act would be as follows:

“Smokeless tobacco products may not be sold or otherwise supplied.”

and

“The import of smokeless tobacco products is prohibited. The ban on import also applies to acquiring or receipt of smokeless tobacco products by mail or by comparable means from countries outside Finland.

In deviation from paragraph 1, private persons may, however, import for their personal use a maximum of 1 000 grams of smokeless tobacco products in their baggage per day.

The ban on import referred to in paragraph 1 does not apply to products kept in specific sales facilities or stores on board vessels in international water or air traffic.”

There would also be a provision concerning a transitional period which would allow smokeless tobacco products, other than tobacco for oral use, to be sold and otherwise supplied until 20 May 2017. This would apply to products which are already on the Finnish market when the new Tobacco Act enters into force.

Please find below information regarding the reasons for the ban, particularly as regards the special situation of Finland and public health grounds.

Smokeless tobacco products can be classed as follows:
- Tobacco for oral use, including Swedish-style snus, both in portions and loose;
- Chewing tobacco;
- Nasal tobacco;
- Any other non-combustible tobacco products.
The sale of tobacco for oral use is banned in Finland, as required under EU law. The import of tobacco for oral use is also banned, with certain limited exceptions for travellers’ imports.

Since 2010, the aim of Finland’s Tobacco Act has been to end the use of all tobacco products. The aim was accepted unanimously by the Finnish parliament. Finland is the first country in the world that has specifically set out a tobacco-free society as a legislative objective. Thus, Finland was the first country to move from an official policy of reducing the consumption of tobacco products to a policy aimed at ending the use all kinds of tobacco products. This means, among other things, that Finland does not want to promote the use of ‘less harmful’ products. The political will and the desired trend are laid out in the stated objective of the Act.

The approach chosen by Finland has attracted a great deal of international attention and the ‘endgame thinking’ has been gaining ground in tobacco policy. For example, Ireland and Scotland have specified the end of the use of tobacco products as the objective of their tobacco policy. In Finland, the Ministry of Social Affairs and Health has published the action plan ‘Roadmap to a Tobacco-free Finland’ which presents the view how the goal of the Tobacco Act can be achieved.

Despite the ban on snus and the aim of the Finnish Tobacco Act, Swedish-style snus is increasingly popular in Finland. Our concern is that the rapid and significant increase in the use of snus, as described above, will undo the positive developments that have taken place in Finland in reducing smoking. This may even lead to an increase of nicotine addiction in the population.

The widespread use of snus is primarily due to the geographical location of Finland as a neighbour of Sweden (and Russia). Finland has a long border with Sweden, which makes Finland exposed to snus, since Sweden has been granted a derogation from the ban on the sale of tobacco for oral use. Even though Sweden should ensure that such tobacco products do not enter the markets of other Member States, there are many shops near the Finnish border selling it. These shops are clearly aimed at Finnish consumers, and snus is their most important product. There is also heavy passenger ferry traffic between the two

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1 In 2014, 2.4% of Finnish men aged 15 to 64 used snus daily. The use of snus has increased markedly among young people, primarily boys, in recent years: Of 18-year old boys, 37% had tried snus in 2013, while for girls the same age the figure was 22%. In 2015, the corresponding figures had increased to 47% and 26%.

In 2010 and 2011, 4% of boys in lower secondary schools used snus daily, with 6% in upper secondary school and 5% in vocational colleges. The corresponding percentages in 2015 were 8%, 9% and 13%. In other words, there has been a clear increase in the daily use of snus.

Moreover, in 2013 0.4% of 16-year-old boys did not smoke but used snus, while in 2015 this figure was 2.3%, meaning an increase of almost 500%. A similar development was also noted among 18-year-old boys: In 2013, 0.9% of them did not smoke but did use snus, and in 2015 this had increased to 4.4%.

At the same time, the use of traditional tobacco decreased rapidly, primarily among young people: in 2013, 13% of boys and 14% of girls aged 16 smoked cigarettes daily. In 2015, these figures were just 11% for both sexes.
countries, and importing snus by sea is widespread. Sweden thereby benefits from a situation in which it can sell tobacco for oral use while Finland has to comply with the sales ban under the TPD.

Snus bought in Sweden or Russia often ends up on the black market in Finland. Snus is sold under the counter in kiosks, and individuals bringing back snus from Sweden or Russia distribute it by advertising on snus pages on Facebook, etc. The illegal snus markets compete with the legal market for tobacco in Finland. Eurobarometer 2014 reports that 5% of EU citizens have tried oral, chewing or nasal tobacco products. In most countries, regular use is less than 1%. There are only five Member States where at least one in ten respondents has tried oral, chewing or nasal tobacco: Sweden (50%), Finland (14%), Denmark (13%) and Austria and Estonia (both 10%). Compared to the results in 2012, Sweden, Finland and Hungary were the only Member States where there was an increase in the use of these products.

The black market of snus is combated by criminal sanctions: under Section 31c of the current Finnish Tobacco Act, any party who sells or otherwise against compensation supplies tobacco for oral use shall be fined or sentenced to prison for a maximum of six months. Usually, committing snus-related crimes also fulfills tax fraud, which in practice means that stricter punishments will be applied. In addition to this, the seller’s tobacco retail licence may be cancelled without compensation and without a warning if he sells or stores snus or allows the storage of snus on the sales premises. Moreover, public sector employees selling snus are subject to further sanctions, as trustworthiness is required from all public employees. For example, firemen have been dismissed from public service due to their involvement in the black market of snus. However, the measures described above haven’t been sufficient to stop the illegal market of snus.

At the EU level it has been reported that sales of chewing tobacco and nasal tobacco are increasing. The Commission’s impact assessment of the new TPD describes an increase in the sale of these products, as well as the significant product development taking place within this product segment, aimed at attracting young people. In our view, the current situation regarding chewing tobacco and nasal tobacco is comparable to tobacco for oral use in 1992, when the marketing of tobacco for oral use was banned in the EU. At that time, Swedish-style wet snus was a new product on the EU market and it was particularly attractive to young people.

The widespread and traditional use of snus and the geographical location of Finland are significant factors that make Finland more vulnerable than other Member States to chewing tobacco and nasal tobacco. Therefore, we are concerned that the use of chewing tobacco and nasal tobacco will increase in Finland, particularly among young people, unless all sales and imports of smokeless tobacco products are banned in line as per the proposed Tobacco Act.

Furthermore, continuing to allow the sale of chewing tobacco and nasal tobacco while the sale of tobacco for oral use is banned cannot be defended on health grounds, either. In terms of health, all smokeless tobacco products contain nicotine and are addictive. They also contain carcinogenic substances. The International Agency for Research on Cancer (IARC) has classified smokeless
tobacco as carcinogenic to humans. Such products contain carcinogenic substances, albeit at different levels, and are associated with a number of adverse health effects. The cancer risk of smokeless tobacco users is probably lower than that of smokers, but higher than that of non-tobacco users. In addition, there is evidence for an increased risk of fatal myocardial infarction and pregnancy complications among smokeless tobacco users. More details about these adverse health effects can be found on the Commission’s impact assessment of the TPD.

The Government of Finland proposed some changes and revisions to the proposed TPD in January 2013:

_The Government is of the opinion that in addition to tobacco for oral use (snus) other smokeless tobacco products, such as chewing tobacco and nasal tobacco, should also be forbidden. The division into tobacco for oral use (snus) and other smokeless tobacco products in the proposed TPD is artificial and facilitates circumventing the prohibition against snus by means of other smokeless tobacco products._

Under EU legislation, the purpose of a product - i.e. not its composition or its manufacturing process - is what distinguishes tobacco for oral use from chewing tobacco and nasal tobacco. This makes it easy to circumvent the legislation, as a manufacturer or importer may claim that the product is, for example, chewing tobacco, when it is actually tobacco for oral use. If the authorities suspect that this is the case, they have to investigate whether the purpose indicated by the manufacturer/importer or stated on the packaging corresponds to the actual purpose of the product, which is determined based on the qualities of the product. This can be a resource-intensive task. In some cases, the distinction between tobacco for oral use and chewing tobacco can also be so artificial that it is extremely hard to tell the products apart. This may lead to tobacco for oral use entering the market in Finland.

In the past two years, Valvira, the National Supervisory Authority for Welfare and Health in Finland, has seized five different products which were commercially imported or planned to be imported into Finland as chewing tobacco. In all cases, Valvira found that the so-called chewing tobacco was actually tobacco for oral use. Its opinion was mainly based on the fact that the product did not need to be chewed, and was suitable for use as snus. In some cases, the manufacturer or the retailer's website had also stated that the manufacturer did not recommend chewing the product, even though it was marketed as chewing tobacco (see enclosures 1-3).

According to Customs data, imports by private travellers are sometimes used as a way of importing tobacco for oral use as chewing tobacco. However, no detailed information is available concerning these cases.

If the ban on the sale and import of smokeless tobacco is implemented as planned in the new Tobacco Act, the sale and import bans on tobacco for oral use could no longer be circumvented by claiming that the product is, for example, chewing tobacco. The proposal would also eliminate the need for the authorities to investigate whether the product is tobacco for oral use or something else. By banning all smokeless tobacco products, we also wish to prevent
chewing tobacco and nasal tobacco becoming the next 'in' products among young people.

Finally, we would like to emphasise that in our view, Finland is in a special position with regard to legislation on smokeless tobacco products because of Finland’s geographical status as a neighbour of Sweden. Despite the ban on the sale and import of tobacco for oral use, the use of snus has increased markedly in recent years, especially among young people, and there is a danger that the use of other smokeless tobacco products will rise as well. The development of smokeless tobacco products continues, and one means of circumventing the ban on tobacco for oral use has been to import and sell it as chewing tobacco. If the sale and import of chewing tobacco and nasal tobacco remain allowed in Finland, the ban on tobacco for oral use would be rendered practically void. This situation is untenable, as we wish to comply with the ongoing ban on tobacco for oral use under EU law as fully as possible.

Best regards,

Permanent Secretary

Lawyer

ENCLOSURES

1. Printout of the website for [redacted]
2. Printout of the website for [redacted]
3. Printout of internet shop selling [redacted] and [redacted]
WHAT IS CHEWING TOBACCO?

The term Chewing tobacco is historically used to describe two types of smokeless tobacco.

The first type is tobacco leaf. Here, the tobacco leaves are heated and moistened with steam so they can be cut into smaller pieces. This is the process we use for both our Long Cut and Chewing Bag products. The tobacco for these pieces cut with a length of between 5 - 50 mm and a width of 0.6 - 0.8 mm.

The other main type of smokeless tobacco is called spun tobacco. Scandinavian chewing tobacco or tobacco bits. Here is the tobacco leaf is first stripped (removal of stem). Thereafter, the tobacco leaves are spun and "beaded" together by hand into a strand. The strand is cut into pieces. For comparison, snus is made of tobacco powder, where the tobacco is simply grounded.

CHEWING TOBACCO USE

Whether it is tobacco leaf or spun tobacco, these tobacco products have historically been known as Chewing Tobacco. This can be misleading to the modern smokeless tobacco user. Chewing tobacco is not chewed like chewing gum. To operate, chewing tobacco is not even chewed that often. It is usually placed in the upper or lower jaw and not centrally in the mouth. Should the upper wish to increase the speed of nicotine delivery and taste, they simply chewed one or two times lightly on the product before replacing it back against the upper or lower jaw with their tongue.

Our chewing tobacco products fall into three main categories:

1. Snus: made with cut tobacco. This type is more like the American long cut snuff, but
2. Long Cut: made with the same type of tobacco as we use in snus. Long cut is a
Using a twisted mini-roll of tobacco

The small, discreet mini-rolls of tobacco are about and have a natural nicotine content. Each mini-roll is made up of a piece of twisted tobacco leaf.

Place a mini-roll between cheek and jaw.

The mini-roll will slowly release its taste and nicotine. Whereas smokers absorb nicotine through their lungs, the nicotine in a mini-roll is absorbed through the mucous membranes in the mouth.

Although the tobacco pellet is called chewing tobacco, it should not be treated like a piece of chewing gum. As you hold it in your mouth, you can gently move it between your teeth for a stronger taste. One tobacco pellet can easily last for an hour.

Do not swallow the mini-roll after use, but discard it as you would chewing gum.
Nordic Chew is a modern chewing tobacco packed in pouches so you easily can place it under the lip like regular snus. Rather than undergo a process like traditional chewing tobacco, Nordic Chew is pasteurized and packed in pouches to eliminate the need for spitting and ships in portions similar to snus. Try...