



Commissioner Kristalina Georgieva
Vice President – Budget and Human Resources
European Commission
B - 1049 Brussels

Wednesday, 04 November 2015

Dear Commissioner Georgieva,

RE: Request for a meeting in the coming weeks in relation to the EU Legal Agreements with Tobacco Companies and their implications on International Treaties

Following our letter of the 27th of October, we are writing again to raise the issue of the relation between the EU legal agreements with the tobacco industry and related international law and treaties, specifically the Framework Convention on Tobacco Control (FCTC) and the Illicit Trade Protocol. We believe this to be an important consideration in the decision on whether to renew the agreement with Philip Morris International, and also in relation to how the EU and the Member States should implement the provisions of the Protocol after ratification.

We note the following provisions of the four current agreements:

- Section 13.06 of the agreement with Philip Morris International, signed in July 2004
- Section 20.2 of the agreement with Japan Tobacco International, signed in December 2007
- Sections 22.1 and 22.2 of the agreement with British American Tobacco, signed in July 2010
- Section 13.6 of the agreement with Imperial Tobacco Limited, signed in September 2010.

These sections all contain very similar language, stating that the provisions of the agreements are subsidiary to relevant laws, statutes, ordinances, rules and regulations in force in the European Union and in the Member States. It follows that parties to the agreement must comply with their obligations under European and Member State legislation even if doing so breaches or appears to breach any provision of those agreements.

However, the agreements are not explicit in relation to treaty obligations applying to the EU and Member States, and in particular to obligations under the FCTC and the Protocol. While many of the provisions of these treaties will be, or already are, transposed into EU and Member State legislation, some will not. Such provisions include Article 5.3 of the FCTC, which as you know requires Parties to protect the setting and implementation of public health policies relating to tobacco control from the vested interests of the tobacco industry. In addition, a number of FCTC provisions, including Article 5.3, have accompanying Guidelines, which have been ratified by Parties to the FCTC, and therefore constitute treaty obligations, but which will not be legislated in detail.

The Protocol also contains provisions on information sharing, co-operation between Parties in training, technical assistance, scientific and technical and technological matters, and co-operation in law enforcement. The interaction between these provisions and the agreements is a matter of concern for several reasons. First, some information provided by the EU and Member States under the Protocol may be influenced by the tobacco companies, for example information on seizures. Secondly, the agreements may restrict the sharing of information under the Protocol, for example if the information is considered “commercially sensitive”. Thirdly, information provided by non-EU Parties might be provided to the tobacco companies under sections of the agreement requiring sharing information on the nature and sources of illicit trade. Finally, EU and Member States’ participation in capacity building and training efforts under the Protocol might be influenced by interactions with the tobacco companies under the agreements. Clarity about whether the provisions of the agreements are subsidiary to treaty obligations would be most helpful in allaying concerns on these points.

We would therefore welcome your observations as to whether the legal agreements are subsidiary to treaty obligations, as they are to EU and Member State legislation under the Sections listed above. In our opinion, it would not be possible for civil society tobacco control organisations to support renewal of the agreements if this issue remains unresolved.

We were most grateful for the opportunity to meet with you on the 12th June to discuss the Protocol, the revised Tobacco Products Directive and the legal agreement with PMI, and we were very pleased by your commitment to and understanding of tobacco control policy. We think it would be helpful if we could arrange a further meeting in the reasonably near future to discuss progress on all these issues. If you agree, we would be pleased to contact your office to agree timing and arrangements for such a meeting.

With warmest wishes,