

MAROŠ ŠEFCOVIČ

VICE-PRESIDENT OF THE EUROPEAN COMMISSION

Brussels,

03. 12. 2012

Dear Madams,  
Dear Sirs,

Thank you for your letter of 29 October to President Barroso regarding the revision of the Tobacco Products Directive and the Commission's ethics rules and Transparency register which the President has asked me to reply to on his behalf.

As you may already be aware, the responsibility for the Tobacco Products Directive lies with the Commissioner for Health and Consumer Policy, Tonio Borg, who, on the 29<sup>th</sup> of November, launched the Inter-service Consultation on this file. I am sure he will be willing to discuss with you the substance of this file.

Allow me to respond to some other points raised in your letter.

Regarding your point on ethics rules, the Staff Regulations set strict rules for officials and staff of the European Union, enshrining a wide range of obligations in the domain of professional ethics. The Commission is attached to the highest ethical values which guide its administration in its contacts with the public, in particular lawfulness, non-discrimination, proportionality and consistency, in accordance with the Code of Good Administrative Behaviour.

As regards Commissioners, the existing ethical framework is guided by the Treaties and the Code of Conduct for Commissioners. The principles of integrity refer to the complete independence of Commissioners who should discharge their duties in the general interest of the Community. The general interest requires that in their official and private lives Commissioners should behave in a manner that is in keeping with the dignity of their office. Protecting against risks of a conflict of interests helps to guarantee their independence. There are also strict rules for both Commissioners and staff on accepting gifts and hospitality. The Commission privileges a baseline of clear rules, a maximum of transparency, and clarity on the principle that it is the responsibility of each Commissioner and each member of staff to ensure they behave according to the highest standards.

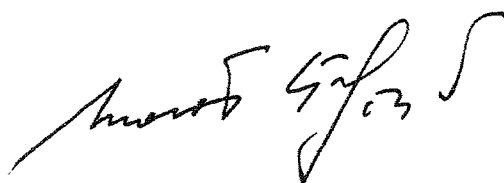
Regarding the review of the Transparency Register, please note that the inter-institutional agreement between the European Parliament and the European Commission on the Transparency Register foresees a review of this instrument within two years of its launching i.e., in 2013. The first annual report on the operations of the Register was published on 18 November. Taking into account the results of a public consultation that took place earlier this year, the report lists for possible consideration during next year's review several policy options, including the voluntary versus the mandatory nature of registration. It is however premature at this time to prejudge the outcome of this review process which will involve both the European Parliament and the European Commission.

Regarding the issue of greater transparency and the review of the smart regulation agenda, I would like to inform you that in December 2012, the Commission plans to adopt a communication in its smart regulation policy. The Communication will report on the findings of the Commission review of its public consultation policy and outline how the Commission intends to further improve the existing consultation mechanisms.

Regarding public consultations, please note that the Commission thoroughly analyses all contributions received, taking due account the number of identical responses, as it was done in the Report on the public consultation on the possible revision of the Tobacco Products Directive ([http://ec.europa.eu/health/tobacco/docs/consultation\\_report\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/consultation_report_en.pdf)).

In addition, in line with the Commission Impact Assessment guidelines, impact assessment reports are required to present in detail the various positions expressed and how they have been taken into account. The Impact Assessment Board verifies how services report on stakeholders' views and may issue recommendations in this respect. Impact assessment reports and Impact Assessment Board opinions are public, once the Commission approves the underlying proposal.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Archie Turnbull', with a stylized flourish at the end.

Archie Turnbull  
President, EPHA  
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1040 Brussels  
Email: [epha@epha.org](mailto:epha@epha.org)

José Manuel Barroso  
President of the European Commission  
1049 Brussels

Brussels, October 2012

**OPEN LETTER: Call for immediate progress on revision of Tobacco Products Directive and for greater transparency**

Dear President Barroso,

We are writing to you in with regard to the announcement that the Tobacco Products Directive (TPD) will be postponed until the appointment of a new Commissioner. We are concerned that this sends the wrong message to people in Europe, that the Commission is disconnected from the priorities of its citizens and refuses to do its legal and moral duty by releasing this long-awaited piece of legislation. A stronger Tobacco Products Directive is urgently needed to help protect people from tobacco marketing and reduce youth smoking rates. Tobacco causes 650,000 deaths each year in Europe<sup>1</sup>.

We cannot accept any further delay; this is undermining citizens' confidence in EU decision making and hampering the EU and its Member States as global leaders in the reversing the trend of tobacco consumption. Tobacco has a devastating effect in terms of chronic disease in Europe and associated healthcare costs and lost productivity for European economies. This is unacceptable and we urge you to show leadership and bring this to public debate now.

The facts of the resignation of Commissioner Dalli still remain uncertain. What has become evident from this incident is that the Commission approach to transparency and impact assessment must be urgently revisited. According to the Commission press release "the OLAF report showed clearly that the European Commission's decision-making process and the position of the services concerned has not been affected at all by the matters under investigation."<sup>2</sup>

If this is so postponing the release of the Directive would not only be unjustifiable, but overly undemocratic. Since 2007, the European Parliament, the Council of Ministers, and the 2010 public consultation have repeatedly called for the revision of the Directive. In addition, the Commission's own report on the Application of the Tobacco Products Directive of November 2007 found the revision necessary. Should any delays occur in the confirmation of

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<sup>1</sup> European Commission, Tobacco or Health in the European Union: Past, Present and Future, Luxembourg, 2004

<sup>2</sup> Press statement on behalf of the European Commission

Commissioner-designate, Dr Borg, we ask that the proposal we released under the responsibility of Vice-President Šefcovic in line with the principle of institutional continuity.

The events surrounding the release of the Tobacco Products Directive demonstrate the need for enhanced EU transparency policies and decision making processes. The Commission's ethics rules remain unclear and we ask for the urgent introduction of far more effective conflicts of interest rules for Commissioners and Commission officials. Both the Code of Conduct for Commissioners and the Commission's Staff Regulations need to be strengthened to avoid that the Commission's contacts with lobbyists leading to potential conflicts of interest and undue influence. We call upon you to use the review of the "Transparency Register" next year to secure far greater transparency by solving the shortcomings of the current voluntary register and introducing a mandatory register before the end of this Commission's term. In addition to the Transparency Register through which lobbyists report on their activities, the European Commission should provide online transparency about meetings, phone calls and correspondence between Commission officials and lobbyists.

We encourage you to take every opportunity of the review of the Smart Regulation agenda this year to promote public interest in the EU's decision making process and ensure greater transparency in the Consultation process. The stakeholder approach to the Commission needs to be revisited. For public consultations, the reliance on multiple choice questionnaires has become increasingly problematic. The Consultation for the Tobacco Product Directive resulted in 57% of the 82,117 responses being duplicates of one submission, largely as a result of the rent-a-mob tactics of the tobacco industry and its allies, designed to delay and undermine the legislative process from introducing stronger tobacco regulation in Europe.<sup>3</sup>

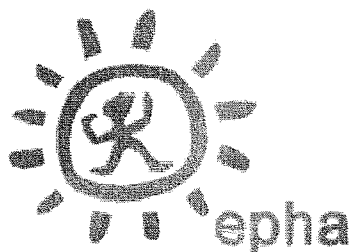
To lay the foundations of a review process next year and the finalization of first annual report of the "Transparency Register" and the review of the Smart Regulation agenda, we urge you to be proactive in promoting the public interest and protecting the health of people living in Europe. The appointment of a new Commissioner cannot delay the work programme of the European Commission, in particular the release of the Tobacco Product Directive. Therefore we call on you for fast and concrete action to address our concerns.

Sincerely yours,

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<sup>3</sup> [http://ec.europa.eu/health/tobacco/docs/consultation\\_report\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/consultation_report_en.pdf)

## Signatories



*Archie Turnbull*

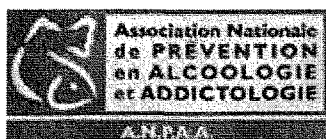
*President*



*Teresa Petrangolini*  
*Director*  
*Active Citizenship Network*



*Anne-Sophie Parent*  
*Secretary General*  
*AGE Platform Europe*



*Claude Riviere*  
*Head of European and International*  
*Affairs Association Nationale de*  
*Prévention en Alcoologie et*  
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*Emma Woodford*  
*Policy and Project Coordinator*  
*Association of European Cancer Leagues*



The Association of Schools of Public Health  
in the European Region

*Christopher A Birt*

*Association of Schools of Public  
Health in  
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**SLATKI ŽIVOT**

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*Zeljko Jakovic*

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**CANCER  
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*Jean King*

*Jean King*

*Director of Tobacco Control  
Cancer Research UK*



**Equity in Health Institute**

Redefine budget to include equity in health & health promotion

*Fausto Felli*

*President*

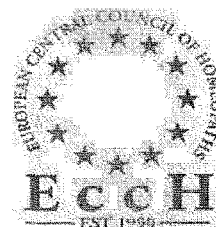
*Equity in Health Institute*



*Erik Wesselius*

*Erik Wesselius*

*Corporate Europe Observatory (CEO)*



*Stephen Gordon*

*Stephen Gordon*

*General Secretary*

**ecda**

United to reverse the rise in chronic disease

European  
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*Prof Norbert Lameire,  
European Chronic Disease Alliance (ECDA)*



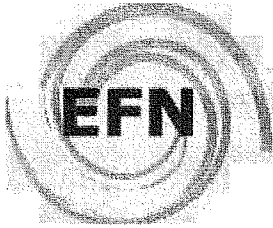
*Catherine Hartmann  
Secretary General  
European COPD Coalition*



*Breda Flood*

*President*

*European Federation of Allergy and*



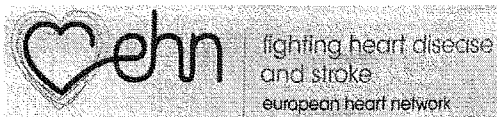
**Paul de Raeve**  
*General Secretary*  
*European Federation of Nurses Associations*



**René de Winter**

*President*

*European Federation of Patients'*



**Susanne Løgstrup**  
*Director*  
*European heart network*



**Peggy Maguire**

*Director General*



**Cornel Radu-Loghin**  
*Director of Policy and Strategy*  
*European Network for Smoking and Tobacco Prevention (ENSP)*  
*Board Member – Framework Convention Alliance (FCA)*





*Floris Barnhoorn*  
*Senior project officer*  
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*Seamus Connolly*  
*Political Officer*  
*European Shiatsu Federation (ESF)*



European Society  
*for Quality in Healthcare*

*Paul Bartels*

*Vice-president*



**International  
Diabetes Federation  
Europe**

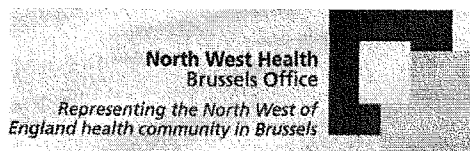
*João M. V. Nabais*

*João Manuel Valente Nabais*  
*President Elect*  
*International Diabetes Federation Europe*



*Anthony Guillaumier*

*Chairperson*



*David Ritchie  
EU Health Specialist  
North West Health Brussels Office*

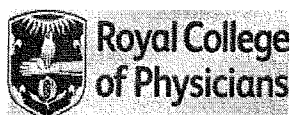


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*Lukasz Balwicki*

*Vice president*



*John Britton*

*Professor John Britton  
Chair, Tobacco Advisory Group  
Royal College of Physicians*



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