



EUROPEAN COMMISSION  
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Health systems, medical products and innovation  
**Cross-border healthcare and tobacco control**

Brussels,  
SANTE B2/

## MEETING OF THE GROUP OF EXPERTS ON TOBACCO POLICY

24 NOVEMBER 2020

MEETING VENUE: ONE-DAY WEBINAR 9:30 – 17:00

–MINUTES–

### 1. Welcome and introduction

The Chair welcomed the participants and explained the rules for the online WebEx meeting. The Chair introduced the tobacco control team as well as the team's newcomers. The agenda was presented and adopted without changes.

### 2. Implementation and monitoring of the TPD

#### - Article 28 report preparation on the application of the Directive

DG SANTE updated MS on the progress of the work relevant for the Article 28 report, namely the external support study, Eurobarometer 2020, SCHEER preliminary opinion, as well as updated on the court cases and new requests.

#### 2.1. Support study

DG SANTE thanked MS for their collaboration throughout the data collection process, including in the recent gap-filling workshop. The draft report should be stabilised by the external contractor in the coming weeks and its key observations would be discussed with relevant stakeholders in a concluding validation workshop. The publication is planned for May 2021, together with the Commission's Article 28 report.

#### 2.2. Eurobarometer

DG SANTE updated MS that the fieldwork was delayed by COVID-19 and outlined some preliminary key high level trends observed. The report is under preparation and should be published in the coming weeks.

### **2.3. SCHEER preliminary opinion debrief**

DG SANTE updated MS on the state of play of the SCHEER opinion on e-cigarettes which is delayed due to COVID-19 and informed that publication of the final opinion is now foreseen for Q1 2021. The public consultation of the draft opinion received a high level of participation.

### **2.4. Court cases**

DG SANTE informed MS about the state of play of court proceedings, including the recent judgement in **Case T-654/19** dismissing citizen's claim related to the alleged non authorised use of his image in the library of pictorial health warnings and ongoing requests for preliminary ruling (**Cases C-452/20, C-370/20, C-160/20**).

## **3. Characterising flavours**

The Commission reported about the on-going work as regards the Independent Advisory Panel and outlined the basic standard procedures for the initiation, notification, investigation and determination of characterizing flavours. Some Member States reported suspected tobacco products with characterizing flavours on their market. A few Member States had started national investigation procedures and informed the Commission and other Member States. However, several Member States reported they had not received such notifications. Other Member States reported about specific challenges in defining whether the same products were present in their markets that makes it unclear how to deal with parallel procedures. A few Member States suggested a full ban of menthol under Article 7(6) TPD as a solution. Several Member States asked the Commission to co-ordinate these procedures. The Commission proposed using the ingredients subgroup for facilitation and exchange of information that was welcomed by the Member States.

In the context of requests addressed to Member States for access to documents originating from the Commission, DG SANTE highlighted the appropriate consultation procedure foreseen by Article 5 of Regulation (EC) 1049/2001.

## **4. Tobacco and e-cigarette advertising, promotion and sponsorship**

The Commission expressed its concern over the presence of tobacco and related products promotion within social media. The Commission highlighted two recent ECJ cases that should help in enforcing the advertising ban: C-18/18 and C-484/14, confirming that social media platforms qualify as “information society services”.

DG SANTE invited MS to report on how they observed and enforced two main issues: Formula One (those MS who hosted races) and social media (namely any monitoring and enforcement actions to address advertising in social media). In addition, it also informed on the state of play of advertising/smoke free study and asked for cooperation from Member States.

The majority of the MS have not observed any major advertising infringement during the Formula 1 2020 event.

As regards social media, some MS reported that they have spotted various contents (posts/groups/profiles) promoting and advertising tobacco-related products or e-cigarettes. The majority of MS has no capacity for regular monitoring, with most MS reporting reactive approaches instead of proactive actions. Some MS have contacted social media platforms such as Facebook and Instagram which, according to these Member States, normally agree to remove notified materials. Other MS have not yet contacted any social media platform. Few MS reported having contacted the companies behind the advertising and not the platforms per se.

#### **4.1. Objectives and state of play of advertising/smoke free study**

DG SANTE recalled that in June the Commission launched a one-year study on monitoring smoke-free environments and advertising, promotion and sponsorship of tobacco and e-cigarettes. The objective is to provide a comprehensive overview of the application of rules (both EU and MS level) on tobacco and e-cigarette advertising, promotion and sponsorship, as well as of the implementation, functioning and impacts of the 2009 Council Recommendation on smoke-free environments. The study also aims to identify gaps in the current regulatory framework for both these areas of tobacco control. The contractor is now undertaking the data collection and field research. DG SANTE strongly encouraged all MS to provide replies by the extended deadline of 15 December 2020.

## **5. Other tobacco control developments**

### **5.1. Single Use Plastics Directive**

DG ENV gave an update on the preparatory works for an act implementing the provisions of the Single Use Plastics Directive (EU) 2019/904 related to marking requirements for certain products, including tobacco products with filters and filters marketed for use in combination with tobacco products. The act should be adopted by end of the year and its provisions are to be applied from July 2021.

Few MS raised questions concerning proposed markings and plain packaging. Some MS expressed concerns about industry's use of greenwashing (i.e. promoting use of greener products/alternatives), including in a way that is not compatible with the ban on advertising and sponsorship. Further concerns were expressed in relation to awareness raising measures, including the availability of re-usable alternatives that are also harmful. Some MS reported that public campaigns are currently being conducted under the banner of information and awareness, which raises relevant concerns from the tobacco control point of view.

DG SANTE concluded that further close collaboration is essential in order to ensure that the actions under the SUP Directive are in line with the work done under the TPD.

## **6. Joint Actions on Tobacco Control**

DG SANTE updated MS on the state of play and timeline for closing Joint Action I, its final event on 4 December, connection of JA outcomes with the cancer plan and preparations of JA II.

### **6.1. Joint Action I**

DG SANTE recalled the final JA event on the 4th of December and reminded that the ingredients subgroup would be also invited. A number of deliverables have been submitted recently and a few are still pending. DG SANTE underlined that the first JA was a great learning experience both on the substance and the organisation, paving the way for JATC-2.

### **6.2. JA II**

DG SANTE recalled the submission deadline of the 1<sup>st</sup> of December for the JATC-2 proposal. Following the evaluation and possible amendments in the offer, the kick-off thereof may be expected in Q2 2021. Denmark, the coordinating MS, asked MS to make sure they hand in application budgets as soon as possible. On the basis of the available partial budgets it seems unlikely to reach the threshold for the “exceptional utility” clause what would result in the lower funding rate of 60%.

## **7. Any other business**

DG SANTE provided an outlook to the Cancer Action Plan and under AOB Austria informed the participants on the ECJ press release No 141/20 from 19 November 2020 on Judgment in Case C-663/18, indicating that a Member State may not prohibit the marketing of cannabidiol (CBD) lawfully produced in another Member State when it is extracted from the *Cannabis sativa* plant in its entirety and not solely from its fibre and seeds.

## Annex I

## List of participants

### Commission:

DG SANTE B2

Thea Emmerling (Chair)  
Matus Ferech  
Agnieszka Kozakiewicz  
Antti Maunu  
Anna Maria Wozniak  
Corina Vasilescu  
Anita Hegyi  
Ana Duarte  
Kleopatra-Maria Sakellari  
Jose Jorge Diaz Del Castillo

DG ENVI

### Member States:

Austria	(Federal Ministry of Health and Women´s Affairs)
Belgium	(Federal Public Service Public Health, Food Chain Safety and Environment)
Bulgaria	(Ministry of Economy, Tobacco and Tobacco Products Institute)
Croatia	(Ministry of Health, Institute of Public Health)
Cyprus	(Ministry of Health – Medical and Public Health Services – Health Services)
Czech Republic	(Ministry of Agriculture, Ministry of Health)
Denmark	(Ministry of Health, Danish Safety Technology Authority)
Finland	(Ministry of Social Affairs and Health)
France	(Ministry of Social Affairs and Health, Ministry of Europe and Foreign Affairs, French Agency for Food, Environmental and Occupational Health and Safety (ANSES))
Germany	(Federal Ministry of Food and Agriculture, Federal Office of Consumer Protection and Food Safety)
Greece	(Ministry of Health)
Hungary	(Ministry of Human Capacities – Focal Point on Tobacco Control)
Ireland	(Department of Health, Tobacco and Alcohol Control Unit)
Italy	(Ministry of Health)
Latvia	(Ministry of Health)
Lithuania	(Ministry of Health of the Republic of Lithuania)
Luxembourg	(Permanent Representation)
Poland	(Ministry of Health, Bureau for Chemical Substances)
Portugal	(General Directorate of Health)
Slovakia	(Public Health Authority of the Slovak republic)
Slovenia	(Ministry of Health, National Laboratory of Health, Environment and Food)
Spain	(Ministry of Health)
Sweden	(Ministry of Health and Social Affairs, Public Health Agency)
The Netherlands	(Ministry of Health, Welfare and Sport, Permanent Representation of the Netherlands)
Iceland (observer)	(Ministry of Welfare)
Norway (observer)	(Ministry of Health)