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Sent: 03 July 2013 15:44
To: SCHLYTER Carl
Subject: Tobacco Products Directive Impact Assessment - The Huggard Consulting Group Review
Attachments: TPD IA Review Briefing Note.docx

Dear Mr. Schlyter,

Following on the e-mail of 28 June from Mr. Joseph Huggard and on a call with your colleague, please find attached a short Briefing Note that summarizes main points and implications of our report. Should you have any queries or would like to discuss this document in more detail, please do not hesitate to contact us.

Thank you very much.

Kind regards,

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Briefing Note

Review of the Commission’s Impact Assessment on the revision of the Tobacco Products Directive by The Huggard Consulting Group

“The impact assessment developed in support of the proposed revision of the Tobacco Products Directive is clearly inadequate as a basis for informed political decision-making and places the credibility of the process at risk.”

Joseph Huggard, The Huggard Consulting Group.

Background

The European Commission has drawn up a proposal to revise the EU Tobacco Products Directive of 2001. In line with European Commission policy, officials have developed an Impact Assessment (IA) to provide evidence for, and aid, political decision-making. Earlier drafts of this IA were found to be inadequate by the Commission’s IA oversight body, the Impact Assessment Board (IA Board).

In light of these concerns and given the importance of ensuring that debates about government intervention in this key public health issue are properly informed, Philip Morris International commissioned The Huggard Consulting Group to carry out a top level review of the IA focussing on governance aspects.

The Reviewers

The authors of this report have been actively involved in regulatory impact analysis (RIA) for almost twenty years, dating back to the initial requirement to carry out RIA being incorporated into the 1997 Treaty of Amsterdam. They have worked continuously to promote the provision of a more complete view of the role that RIA plays in informing decision-makers as they seek to address the social and economic goals of citizens and societies.

Mr. Huggard, who led the team, has worked extensively in the field of RIA and the application of econometric modelling to predict short- and medium-term impacts of potential regulatory decisions on business sectors and how these create societal consequences. His expertise also covers the interaction between science and public policy.

Conclusions of the Review

The IA, developed in support of the proposed revision of Tobacco Products Directive, is **insufficient and inadequate basis for decision-makers to assess the justifications** for the proposed regulatory action, its proportionality, or its likely effectiveness.

Key Implications

The flawed process has the following consequences:

- For political decision makers:
 - Makes it impossible to judge whether action to improve the functioning of the internal market is necessary.

- Makes it impossible to assess whether the proposals will deliver improvements in public health and successfully address the complex causes of youth smoking versus focusing on issues that may be peripheral.
- Creates doubt around the reliability of the evidence provided in relation to future regulatory proposals and sets an unfortunate precedent triggering further reductions in analytical standards and lower quality policy proposals.
- For EU citizens and other stakeholders:
 - Risks that the proposed measures will trigger negative unintended consequences, such as commoditization, down-trading, lower tobacco prices, higher smoking and increased illicit trade.
 - Leads to loss of trust in EU decision-making by citizens and stakeholders if a “built-to-fit” approach can be used to justify any regulatory proposal.
- For the European Union:
 - Risks damaging confidence in the validity and reliability of impact assessments in the EU.
 - Lowers the standards to be applied in future impact assessments on regulatory measures relating to other stakeholders.
 - Damages the standing of the EU’s legislative process with its trade partners, making it more vulnerable to challenge.

**The Huggard Consulting Group
Luxembourg, May 2013**