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COVER NOTE

from: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 29 July 2010

to: Mr Pierre de BOISSIEU, Secretary-General of the Council of the European
Union

Subject: Report from the Commission to the Council on the implementation by the
Kingdom of Sweden of the measures necessary to ensure that oral tobacco is
not placed on the market in other Member States

Delegations will find attached Commission document COM(2010) 399 final.

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REPORT FROM THE COMMISSION TO THE COUNCIL

**on the implementation by the Kingdom of Sweden of the measures necessary to ensure
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1. INTRODUCTION

Article 8 of the Tobacco Products Directive (2001/37/EC) bans putting on the market of oral tobacco. The ban was originally set by the first Tobacco Products Directive (Directive 89/622/EEC, as amended by Directive 92/41/EEC).

In its Accession Treaty Sweden got a derogation:

"The prohibition in Article 8a of Directive 89/622/EEC, as amended by Directive 92/41/EEC, concerning the placing on the market of the product defined in Article 2 (4) of Directive 89/622/EEC, as amended by Directive 92/41/EEC, shall not apply in Sweden and Norway, with the exception of the prohibition to place this product on the market in a form resembling a food product."¹

The derogation was granted on condition that Sweden shall take all measures necessary to ensure that the product referred to in paragraph (a) is not placed on the market in the Member States for which Directives 89/622/EEC and 92/41/EEC are fully applicable.²

The Accession Treaty also obliged the Commission to monitor the actual implementation of these measures and report to the Council.³

On 10 November 2009 the Commission sent the following request for information to all Member States through the Regulatory Committee under the Tobacco Products Directive:

- to what extent is snus consumed or marketed in your Member State (prevalence of use among adults/adolescents, sales through internet, passenger imports, smuggling)?
- what measures has your Member State taken (in addition to the marketing ban) to prevent snus from entering your market? As regards Sweden, this question seeks to know what measures this country has taken ensure that snus produced in Sweden is not placed on the market in other Member States.

Altogether 23 Member States have responded to this request.

¹ Council ACT concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden and the adjustments to the Treaties on which the European Union is founded, ANNEX XV - List provided for in Article 151 of the Act of Accession - X. MISCELLANEOUS, point (a).

² Ibid., point (b).

³ Ibid., points (c) and (d).

2. MARKETING OF SNUS

2.1. Sweden

In reply to the Commission's inquiry on the marketing of snus, Sweden pointed out that any type of sale, including sales through internet, to another Member State is illegal under the Swedish law. The relevant legal provision is found in Section 14 of the national Tobacco Act (1993:581).

However, this prohibition does not cover the sale of tobacco products or commercial messages at points of sale for tobacco products. These commercial messages at points of sale for tobacco may, however, not be intrusive or proactive or encourage the use of tobacco.

Moreover, the Swedish Consumer Agency has issued general guidelines on the marketing of tobacco products to consumers (KOVFS 2009:7). These general guidelines relate to the provisions on marketing contained in the Tobacco Act and to the Marketing Practices Act, and their aim is to increase compliance with the regulations on the marketing of tobacco directed at consumers.

2.2. Other Member States

Member States reported that snus is not placed on the market in their jurisdiction. Snus could nevertheless be brought into the country by passengers. There is no data on the quantities of passenger imports of snus, except from Finland. Finland reports that the amount of passengers travelling between Finland and Sweden, who have imported snus to Finland, has doubled during 2005-2007.

Smuggling was generally not regarded as a problem.

However, many Member States indicated that snus is marketed through the internet. Control is difficult to ensure.

Prevalence of snus in Member States is either insignificant or there is no data. However, in Finland, around 5 % of adult males and 2 % of females use snus. Around 40 % of Finland's 18-year old boys have tried snus and 10 % of them use snus regularly.

Finland states that the figures have grown in recent years due to marketing of snus to passengers travelling between Finland and Sweden. This consumption results from private imports from abroad (mainly from Sweden), internet sales (mainly from Sweden) or sales of smuggled snus in the black market. Prosecutions have shown that the illegal imports and sales is common and organised on a national scale. The Finnish custom authorities regularly conduct extensive criminal investigations in cooperation with their Swedish counterparts.

Because commercial import and selling of snus is prohibited in Finland, there are no official consumption figures. However, according to the statistics legal private imports of snus from Sweden has steadily increased since 2005⁴.

In Sweden 19% of men and 4% of women use snus daily.

Slovenia reports that one person has been fined for marketing snus in 2006.

Slovenia and Denmark report on other smokeless products than snus on their market.

3. PREVENTION MEASURES

3.1. Sweden

As a result of Sweden's commitment in the Treaty of Accession, Sweden introduced an Ordinance prohibiting the exportation of snus (1994:1266). The Ordinance entered into force on 1 January 1995. Section 1, first paragraph of the Ordinance provides that snus may not be exported to another country in the European Union. Under Section 1, second paragraph, the prohibition does not apply to goods carried by travellers and intended for their personal use or as a gift for personal use. Consequently, the purchase of snus for personal use or as a gift is exempt when making journeys from Sweden.

The exportation of snus to other Member States is a punishable offence under the Swedish law. Sanctions for offences against the above Ordinance are laid down in the Smuggling Penalties Act (2000:1225). Section 3 states that a person who intentionally transfers goods out of the country in contravention of a specifically prescribed prohibition (i.e. the Ordinance prohibiting the exportation of snus) shall be found guilty of smuggling. The current penalty for smuggling of snus, for example, is a fine or imprisonment for up to two years (Section 3).

If the court finds that the offence is grave, the sentence shall be imprisonment for at least six months and at the most six years (Section 5). Minor offences are punishable by fines (Section 4). In cases in which the offence cannot be considered intentional, an offender can be sentenced to a fine or imprisonment for at most two years for unlawful export (Section 7). Property that has been the object of an offence under the Smuggling Penalties Act or the value of such goods can be declared forfeit, unless this is obviously unreasonable (Section 16).

The Swedish statutes therefore make all exportation of snus from Sweden to another Member State unlawful and punishable, with the exception of goods for travellers' personal use or as a gift for personal use. This also makes it illegal to export snus by distance selling, including online sales, when the recipient is in another Member State. Snus can only be transported from Sweden to another Member State if an individual travelling across the border takes the snus with him or her for his or her personal use or as a gift for personal use.

⁴ Report on snus published by the Product Supervisory Centre of Social and Health Care (reference: Nuuskaraportti, Sosiaali- ja terveydenhuollon tuotevalvontakeskus, 2008).

Furthermore, it could also be stated that Swedish authorities apply the legislation in practice.⁵ A number of Swedish authorities including the courts are taking measures against sellers of snus to another Member State. As a result, increasing quantities of snus have been confiscated in Sweden as follows:

- 2006 156 kg
- 2007 323 kg
- 2008 474 kg
- 2009 (until October) 641 kg

3.2. Other Member States

A great majority of Member States report that they have not taken any measures in addition to banning snus. Some Member States indicated that they have banned sales of tobacco products on the internet.

In this respect Finland is an exception. Due to an extensive flow of snus imports from Sweden to private users and black market, the Finnish Government has decided to take more stringent action.

Finland reported that the following measures are being discussed in the parliament:

- private import of snus for own use only will be restricted to 30 small boxes per trip
- private ordering of snus from the internet will be criminalized
- private selling of snus (e.g. to a friend) will be criminalized.

4. CONCLUSIONS

In order to implement its obligations under the Accession Treaty, Sweden has criminalized commercial export of snus and applies strict penalties. Export of snus is allowed only for travellers' personal use or as a gift for personal use. Distance selling of snus is illegal under the Swedish law, including online sales, when the recipient is in another Member State.

⁵ The Ordinance prohibiting the exportation of snus (1994:1266) and the Smuggling Penalties Act (2000:1225).

No other Member State reported any signs of snus being commercially placed on their market. However, passenger imports is common and snus appears to be available through internet throughout the EU. No data exists as to what extent the internet vendors of snus operate from the Swedish territory.

Finland plans to have additional preventive measures, such as restrictions on passenger imports of snus. Other Member States have not reported any measures additional to the marketing ban.