

Address by Tonio Borg former European Commissioner for Health at Conference  
Berne, Friday 20<sup>th</sup> May 2016

Ladies and Gentlemen,

May I start by making an observation which in my view should be the basis of any debate on tobacco control.

One cannot remain neutral on this issue. To use a Churchillian phrase, one cannot be neutral between the firemen and the fire. One cannot remain aloof, impartial and neutral between a lobby which seeks to protect our health by further tobacco control through banning of advertising and sponsorships, insisting that tobacco products should look and taste like tobacco, impose visual and written health warnings to enlighten consumers on their choices; and on the other hand an industry which trades in , and promotes a product which, without the shadow of any doubt causes at least 700 000 deaths in the EU alone, is directly linked to several forms of cancer, ( 8 out of 10 who contract lung cancer are smokers and more that 60 % of bladder cancer patients are smokers.

So talk of freedom of expression when States try to ban advertising or impose health warnings, is to say the least hypocritical; bearing in mind that all human

rights instruments I know of accept restrictions to this right in the interests of health.

I hope that Switzerland- the only European country not to have ratified the WHO Tobacco Control Convention, - will join the rest of Europe in ratifying such Convention which imposes clear obligations in favour of our citizens to protect their health.

And may I make this abundantly clear. States have an interest in protecting the health of their citizens: first of all because health is a value in itself; and secondarily because the State often foots the bill to take care of smoke related diseases. Why do we impose a legal duty on motorists and passengers to wear seat belts ? not because by not doing so one causes harm to others , but because one causes harm to oneself; the State does not become a nanny state because it intervenes to protect the health of its own citizens; it allows them a choice but an informed one ; and it has an interest to do so for moral, political humanitarian and economic reasons.

The point is that those governments which have opted for tobacco control do not make smoking illegal. Everyone is free to smoke, but the thrust of the new Tobacco Directive is that consumers should not be exploited or defrauded, tobacco should look like tobacco and taste like tobacco, and everyone should be warned of

the dire health consequences resulting from smoking. Of course the aim of all public authorities in line with the WHO Tobacco Control Framework Convention is to reduce smoking by several measures fiscal and educational. The choice however remains that of any person to smoke or not to

In launching, piloting the Tobacco products Directive through the law making institutions of the Union, I faced interesting and sometimes disappointing surprises.

The Directive was launched within 20 days from my taking office,

The obstacle race started from the moment of launching.

I do remember a rather animated discussion within the Economical and Social Committee which has to be consulted prior to any legislative proposal. The mood was not an easy or a happy one. Trade union representatives , and others from social network, asked pertinent questions regarding employment,. This Directive, I was told, will lead to loss of jobs in times of economic crisis. My first reaction was: so what should a European Health Commissioner do: promote smoking throughout the Union to increase employment? Following this sardonic comment I explained that even this argument was false, since with the money saved by ex-smokers and States in controlling tobacco consumption, millions would be saved which would be invested in other areas of the economy by the State or the

individual, creating even more jobs than those lost within the tobacco industry with the decrease of the number of smokers.

The State has an interest in reducing smoke related diseases for two main reasons (a) to protect its own members and their relatives (b) to prevent and reduce public expenditure related to the treatment of such diseases .] One can also add- though this is a secondary reason- the fact that a healthy society composed of healthy members guarantees economic stability and productivity. .

Another incident during the journey of the Directive through the EU institution was the complaint registered by some that the imposition of written and visual health signs constitutes a breach of the constitutional freedom of expression enshrined in their domestic Constitution. This argument always baffled me. I know of no Constitution which protects smoking. I replied that probably this is an *interpretation* of the Constitution, and not an *express provision* therein. After all no right is absolute, not even freedom of expression. I remember in my student days coming across the dictum of a US Supreme Court Justice who once said that the right to express an opinion, does not include the freedom to shout ``Fire, Fire`` in a packed hall just for the fun of creating panic.

In the European Convention on Human Rights after all, article 10(2) specifically accepts "public health" as a statutory derogation to freedom of expression. And

besides if one were to accept this wide interpretation of no limits to rights, why, one might also argue that mandatory wearing of seat belts is a hindrance of one's freedom of movement? !!

Another argument put forward is that these legal measures in favour of tobacco control are futile, and the number of smokers will remain the same whether one bans advertising or not, whether one imposes mandatory health warnings or not ; experience and studies have shown that there is no one single factor which reduces the number of smokers. It is the cumulative effect of different factors. But if tobacco advertising is not effective, and banning it is futile, why spend millions of euro on advertising: and if the EU Tobacco Products Directive is not effective, why spend millions of euro on lobbying the law makers to dilute it and then challenge it in Court , even if that attempt has been unsuccessful; for I am happy to note that on 4<sup>th</sup> of this month, the Court held that the TPD was in accordance with the Treaties and that such legislation was reasonable and proportionate to the legitimate aim pursued. The ECJ concluded that the extensive standardisation of packaging, the future EU-wide prohibition on menthol cigarettes and the special rules for electronic cigarettes were lawful, and rejected objections raised by Poland and Romania, Philip Morris and Pillbox38 (maker of e-cigarettes) respectively. The Court said:

“It must, however, be stated that human health protection — in an area characterised by the proven harmfulness of tobacco consumption, by the addictive effects of tobacco and by the incidence of serious diseases caused by the compounds those products contain that are pharmacologically active, toxic, mutagenic and carcinogenic — outweighs the interests put forward by the claimants in the main proceedings. ... The Court finds, in the light of the foregoing, (i) that the prohibition laid down in Article 13(1) of Directive 2014/40 is such as to protect consumers against the risks associated with tobacco use, as follows from paragraph 152 of this judgment, and (ii) that that prohibition does not go beyond what is necessary in order to achieve the objective pursued”

I said in the beginning that one cannot be neutral between the fire and the firemen.

Even a cursory look at the Framework Convention for Tobacco Control, to which the EU has subscribed, reflects this. The rules in the UN Guidelines are clear: contact with tobacco lobbyists should be reduced to the bare necessary minimum: and then full disclosure and transparency should be guaranteed

. For there is an irreconcilable difference between the interests of the tobacco industry (*producing and selling as much* of a substance as possible, in order to maximise profit) and that of public health regulators (*reducing* the consumption of that same substance as much as possible, in order to minimise cancers and other negative health impacts). Or put another way, as the Smoke Free Partnership's **Florence Bertelletti Kemp** has so eloquently said , **"If you want to resolve malaria, you're not going to include the mosquito."**

Thus, MPs, local or European, as with all policy-makers involved in

legislating on public health, should— as a matter of law - be having as few contacts with the tobacco industry as is strictly necessary to regulate them,

One last word of encouragement : time is in our favour. First of all it is no longer the ``in`` thing to do to smoke. This new consciousness which has led to legislative and fiscal measures against smoking in public places, and sometimes even in cars where children are present or near schools, helps in fighting the efforts of the tobacco lobbyists. Unlike alcohol consumption, it is no longer fashionable to smoke or be amongst smokers. We should use this new attitude as proper ammunition in our fight against tobacco lobbyists. The figures are impressive: at the time of the drafting and launching and approval of the TPD there were around 97 full time tobacco lobbyists working in Brussels, with an annual lobbying budget of around €5.3 million. And yet the smoke-free lobbyists with limited resources won the day.

The way forward should , in my humble opinion, be the following:

- (a)ensure that the UN guidelines are observed by all . The high rate of contact between tobacco lobbyists and parliamentarians and members of government indicates that *not all is well in the state of Denmark* in this respect to quote a Shakespearean phrase. The sheer number of contacts indicates that they are not essentially necessary.

- (b) Propagate the `mosquito` argument. There should be no neutrality between anti-tobacco and health lobbyists and lobbyists acting on behalf of companies which are attempting to invalidate the TPD, and whose activists promote a product which is seriously detrimental to health should NOT be treated *at par* with the pro-health ngo`s and lobbyists;
- (c) The time has also come to consolidate the efforts of health lobbyists and ngo`s ; of course each ngo has its own charisma , origin and *raison d`etre*. But in the face of strong lobby efforts by resources-rich tobacco companies success can only be guaranteed if the efforts of all health lobbyists and ngo`s are centralized without any loss of identity of any one of them.
- (d) And finally to remain always vigilant: the leaks of the secret tobacco lobbying revealed disturbing information on the network which has been built: let us therefore certainly use the current mood against smoking as wind in our sails, but the boat has to move forward with our own efforts , vigilance and resilience . for I have no doubts that the tobacco lobbyists have not surrendered... but nor shall we!