

*The General Director*

Milan, March 14<sup>th</sup>, 2017

RE: Government of Estonia Tobacco law revision – retail display ban for the Tobacco products

Estimated Sirs

We are the leading association of the industry in Italy, representing more than 140 companies, producing the 2.5% of the National GDP. Our role is the protection of the Intellectual Property Rights (IPRs) and for this reason we are a privileged observatory for all the infringements and the illicit trade of goods. We have developed in 30 years of presence on the market, both at national and international level, a deep knowledge in all the aspects directly and indirectly able to feed the rise of illicit trade.

Our core competency, the protection of the IPRs, is centered on what is representing the 42% of the EU GDP<sup>1</sup> and the 28% of total workforce.

For this reason, we seriously consider every act potentially or directly influencing the IPRs.

IPRs are for the above mentioned reasons the key element in the EU economy. As well we consider the role the IPRs are playing for consumers. The brand is playing the role of the main element of trust directly influencing the customer's choices. We don't have to underestimate this point, as we need to evaluate the key role in the citizens choices as a priority for everyone. In our action of defense of IPRs, we watch over all the regulations, both at national and at the EU level, affecting the IPRs.

We are now in this letter concentrating our attention to the Government of Estonia decision to reform the Tobacco law, introducing among the other measures the Retail Display Ban for Tobacco products. The measure is now, according to the EU Dir. 1535/2015, under the exam of the EU Commission.

The retail display ban is mainly a limitation of the IPRs, seriously affecting the right for consumers to be informed. Considering that consumers base their decision on the information available the ban of displaying information is *de facto* generating a definitive negative impact on the possibility of free choices.

On top of this, we consider that a similar measure introduced in one country, would affect also the legal market, representing a potential threat to the supply chain, to retailers, to the government itself (more illicit trade is representing less fiscal income) and moreover to the consumers.

---

<sup>1</sup> The EUIPO/EPO report: "Intellectual property rights intensive industries and economic performance in the European Union" – October 2016

Limiting on such this way the role of trademark and generally of the IPRs, is also contrary to international regulations and is potentially generating more risks for the consumers.

The introduction of the measure of the retail display ban for the Tobacco products would also generate consequences that are more dramatic. Depriving the brand on such this way of its power, it is also rising the possibility to lower the measure contrasting the introduction in the market of illicit products, mainly tobacco smuggled products as well as counterfeited ones,. With all the risks related to the health as well as on the advantage for the criminal organization to see their illicit business increasing.

We are seriously concerned by this possibility. As the “illicit whites” market demonstrates, the tobacco smuggling is facilitated by the possibility of reducing the role of trademarks for example reducing the possibility of immediate recognition. As well the impact on the free trade in the EU is something that has to be considered, also in this case representing in the Estonian law revision a violation to the TFEU.

Of course as citizens we are taking care of the human health and we welcome every measure able to improve the quality of life, but we need to highlight that in the specific case of Estonia, no one data and information are supporting the decision. This step must be mandatory before any intervention on regulations potentially impacting the safety of the channel and the fair competition as well as, not less important, the consumer’s right to be informed and to make a free choice based on the information available.

There is another aspect to take into consideration: the EU Dir 2014/40/ aims to guarantee “uniform conditions for implementation of this Directive” (considering n. 50) and to “avoiding disparities are liable to constitute a barrier to trade and to impede the smooth functioning of the internal market in tobacco products” (considering n.23) With the approval of the new tobacco Law Estonia will potentially have a unique market condition, different from those of the other Member States, a uniqueness that the Tobacco Directive wants to avoid and repeal.

We hope that the Government of Estonia will reconsider the decision to introduce this measure, as well as we strongly suggest the Commission to focus the attention on the role of the IPRs in all the industrial sectors and to all the potential risks to intervene with limited and partial considerations as Estonia would do.

We remain at your full disposal for any further discussion on this topic.

Best regards.

Claudio Bergonzi

