**Regarding: Belgian notification of the national regulation prohibiting manufacturing and marketing of nicotine pouches (notification No 2022/0417/B-X00M; structured information line MSG 001 IND 2002 0417 B FR 15-06-2022 B NOTIF)**

The national provisions of the Royal Decree (prohibiting manufacturing and marketing of nicotine pouches) was notified by the Belgian Government (under No. 2022/0417/B-X00M). The notified provisions pertain to which, in fact, is a new product intended for adult customers and already subject to an extensive regulation of the Tobacco Directive (i. e. Directive 2014/40/EU) and associated with it, quite extensive regulation – also pertaining to marketing of tobacco and tobacco-like products.

The notification coincides with advanced legislative work on a revision of the Tobacco Directive meant to better address new products which have appeared on the EU internal market in recent years. Nicotine pouches are a type of a new product intended for the active tobacco product users who would like to switch to a less harmful alternative. In this context, nicotine pouches are less harmful because they contain a limited amount of nicotine whereas traditional tobacco products expose consumers to a variety of additional substances activated by burning tobacco. The amount of nicotine in the pouches is limited not only because of production circumstances, but also because of the rules adopted by the industry pursuant to which manufacturers are obliged to keep the amount of nicotine at a very limited level.

Nicotine pouches are manufactured in Denmark, Hungary, Italy, Poland and Sweden. Their manufacturing and marketing is expected to grow in the near future. No EU Member State (except Belgium) has notified any ban on the production of this product. Needless to say that no EU Member States has ever adopted restrictive measures which would be of the magnitude and gravity similar to the notified Belgian regulation.

The notified national provisions breach the EU rules on free movement of goods on the EU internal market (i. e. the breach of Article 34 TFEU) and – as it has already been said – their adoption in Belgium coincides with the now significantly advanced legislative works on the review of the Tobacco Directive. Thus, these national provisions cannot meet the standard of Article 36 TFEU as they fail to avoid arbitrary discrimination and any disguised form of restriction on trade between Member States. The notified rules fail to meet the standard set forth in Article 36 TFEU mostly because the present EU rules (the Tobacco Directive and associated EU legislation) render quite adequate scope and level of protection of public health in each and every Member States.

As it has already been said, the notified national rules also breach the EU principle of proportionality. Firstly, they treat manufacturing and marketing of nicotine pouches (containing limited amount of chemically pure nicotine) manifestly worse than traditional cigarettes. Secondly, the existing EU regulation achieving adequate level of protection of health is significantly less intrusive and avoids disrupting the EU internal market (by treating pouches in the same or similar way as traditional cigarettes and other tobacco products are treated under the Tobacco Directive).

For these reasons we urge the European Commission to take measures appropriate to correct the situation which might result from the entry into force of the notified Belgian regulation prohibiting manufacturing and marketing of nicotine pouches.