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Federal Department of Home Affairs FDHA
Mr. Federal Councillor Alain Berset
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By email to:

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Bern, November 29, 2022

**SwissHoldings Statement
Consultation procedure on the partial revision of the Federal Act on Tobacco
Products and Electronic Cigarettes (TabPG)**

Dear Federal Councillor Berset,
Dear Mr Anderegg,
Dear Sir or Madam,

We refer to the consultation procedure on the partial revision of the Federal Law on Tobacco Products and Electronic Cigarettes (TabPG) and thank you for the opportunity to comment on it.

SwissHoldings is a cross-sector business association of industrial and service companies in Switzerland and currently represents 61 member companies. Our members are major issuers on the capital market; they account for around 66 percent of total Swiss stock market capitalization (as of March 31, 2022). The shaping of the regulatory framework in Switzerland represents one of the core topics of our association. Attractive and internationally competitive regulatory frameworks in Switzerland contribute to the prosperity of Switzerland and the Swiss population. Excessive regulatory intervention to the detriment of the economic framework conditions in Switzerland must be avoided at all costs. The submitted preliminary draft represents such an excessive regulatory intervention in that it goes beyond the constitutional mandate of the people and the will of parliament.

Summary

The preliminary draft goes beyond the will of the people and the will of parliament. The Tobacco Products Act, which was passed by Parliament on October 1, 2021, has in principle conclusively



regulated all topics. The partial revision should therefore have referred exclusively to those topics that would have been necessary due to the acceptance of the popular initiative "Yes to the protection of children and adolescents from tobacco advertising" on February 13, 2022. However, the preliminary draft not only goes beyond the constitutional mandate, but also introduces an extraneous element with the obligation to report marketing expenditure, which was not the subject of the initiative and was already rejected in the parliamentary deliberations. This approach is questionable in terms of the rule of law. The preliminary draft would violate the constitutionally guaranteed economic freedom under Article 27 of the Federal Constitution. **Against this background, the bill is rejected as a whole.**

1. Total advertising ban instead of proportionate measures

The preliminary draft provides for a total ban on advertising for all tobacco products and electronic cigarettes for all communication channels and thus goes far beyond the demands of the initiative. Even the initiators of the popular initiative did not demand a total ban. However, digitalization and the progress of technology in general would nowadays make it possible to give preference to suitable age-testing measures. Advertising is already being targeted according to age group, whether in online or offline media. An advertising ban to protect minors would therefore be technically feasible without violating economic freedom with such an absolute advertising ban. Suitable alternative instruments and existing or new technological possibilities should first be examined in detail before such an incisive advertising ban is enacted.

2. Extraneous element

The obligation to report marketing expenses proposed by the Federal Council in Article 27a TabPG was not the subject of the popular initiative. Such a requirement therefore also does not belong in the preliminary draft, which is the only means of implementing the initiative. Moreover, during the deliberations on the new Tobacco Products Act, Parliament has consistently rejected such a reporting requirement several times. The introduction is also irrelevant because it does not contribute to the protection of minors. The provision should therefore be deleted without replacement. There is no constitutional provision or legal basis that would justify such an information obligation.

3. Attractive general conditions in Switzerland

Restricting economic freedom without examining alternatives represents a dangerous deterioration of the framework conditions in Switzerland. The implementation of the popular initiative should take place within the framework of an appropriate balancing of interests and under the guarantee of fundamental economic freedom. This should consider technological possibilities and, in principle, self-regulation whenever possible. Excessive regulatory intervention to the detriment of the economic framework conditions in Switzerland must be avoided at all costs. In addition, attention must also be paid to the undesirable spillover effect on other economic sectors as well as to the resulting flood of bans and general overregulation.

4. Questionnaire

In the context of this consultation response, we refrain from making detailed amendments to the articles of the law and refer in connection with the aforementioned considerations to the corresponding motions and statements submitted by the association KS/CS Kommunikation Schweiz. The obligation to report marketing expenses proposed by the Federal Council in Article 27a TabPG is to be deleted as an extraneous element.

We thank you for the opportunity to comment and hope that you can agree with our reasoning. We are at your disposal for any explanations or information on our comments.

Kind regards

SwissHoldings
Office

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Manager