The European Parliament had the right to impose the ban in 1992. He said in his preliminary opinion, ahead of the court’s decision this summer, that the ban has been challenged on the basis of human rights arguments in legal challenges in other jurisdictions, and that a ban contravenes the right to health.

Swedish Match, a snus manufacturer, initiated the challenge against the ban; the NNA joined the case as a third party intervener in the public interest.

The case was referred to the European Court of Justice (ECJ). On 12 April 2018 the ECJ Advocate General submitted an opinion to the court that the ban on snus was proportionate. The final ruling from the ECJ is expected later in 2018.

Snus – a safe(r) nicotine delivery system

• Low tech, cheap;
• Free-labeled to remote toxins;
• Compared with e-cigarettes, several decades of epidemiological research;
• No inhalation = no respiratory risk (resp. diseases a/c for e-cigarettes due to inhaled nicotine);
• Not associated with premature mortality, diabetes, pancreatitis and other cancers, harm reduction;
• For evidence see safety tab below.

Snus protects against smoking and tobacco-related mortality. Diego G. Granato, Lars Ramström: Sweden has the lowest rate of deaths attributable to smoking in the EU (according to WHO data). Lars Ramström (GFN 2017, and evidence to ECJ) estimates that if snus were available in the EU it is likely that 40,000-50,000 deaths a year would have been averted.

The NNA is a small UK consumer advocacy organisation that campaigns for tobacco harm reduction. It believes that a wide range of reduced harm nicotine products should be available as options for smokers to help switch from smoking.

The sale of snus is banned throughout the EU, except for in Sweden. The NNA argues that the evidence shows that snus protects against smoking, that smokers deserve safer alternatives, and that a ban contravenes the right to health. Swedish Match, a snus manufacturer, initiated the challenge against the ban; the NNA joined the case as a third party intervener in the public interest.

The case was referred to the European Court of Justice (ECJ). On 12 April 2018 the ECJ Advocate General submitted an opinion to the court that the ban on snus was proportionate. The final ruling from the ECJ is expected later in 2018.

Snus – evidence for safety

• No overall association [with snus] is seen for oropharyngeal cancer
• No overall association, with any health outcome
• No statistically significant RR for any health outcome
• No evidence of a RR greater than one for any health outcome
• While for snus or snuff we did not find sufficient evidence to support a link
• Snus is not associated with oral health problems
• Snus is not associated with diabetes
• Snus is not associated with pancreatic cancer
• Snus is not associated with oropharyngeal cancer
• Snus is not associated with diabetes
• Snus is not associated with pancreatic cancer
• Snus is not associated with oropharyngeal cancer
• Snus is not associated with diabetes

Objections to the SM and NNA cases

The case was opposed by:

• Finland, Hungary, Norway, UK, European Commission,swiper’s nation and European Parliament.

Their arguments focused on proportionality and whether the ban was manifestly disproportionate:

• The principle of proportionality requires that measures should not exceed the limits of what is appropriate and necessary in order to attain the legitimate objectives pursued by the Union measures.

• A ban is only manifestly inappropriate when judicially reasonable information is not available at the time of the adoption of the rule.

Main objections to the case:

• The Advocate General has already made the decision to ban is within the legislature’s margin of appreciation.

• Snus is harmful and addictive.

• It is a threat to young people.

• The ban on snus is proportionate.

Implications

We will likely lose the case, but we have set important precedents:

• This is the first time a bad tobacco control law has been challenged on the basis of human rights.

• There is basis for using the human rights arguments in legal challenges in other jurisdictions.

• We have introduced human rights thinking into tobacco harm reduction.