

Worldwide news and comment

SWITZERLAND: GOVERNMENT THINKS PREVENTING YOUTH-FOCUSED TOBACCO ADVERTISING 'GOES MUCH TOO FAR'

In a recent message to parliament, the Swiss Government has rejected a popular initiative aimed at protecting children and youth against exposure to tobacco advertising, arguing that such protection would threaten the economic interests of the tobacco industry. In the message, the government restated its policy to only support tobacco advertising restrictions that are “acceptable to the tobacco industry”.

The popular initiative is an instrument of direct democracy that allows citizens to propose changes to the Swiss constitution, provided 100 000 signatures were collected in their support. The initiative “Yes to the protection of children and youth against tobacco advertising” was launched by the major Swiss public health organizations, under the leadership of Hans Stöckli, who is currently the President of the Council of States (Switzerland’s Senate). The initiative aims at making two small changes to the Swiss federal constitution.

The first change (italicised) includes additional wording to Article 41: “The Confederation and the cantons undertake, in addition to individual responsibility and private initiative, to ensure that [...] children and young people are encouraged to become independent and socially responsible persons and are supported in their social, cultural and political integration *and that their health is promoted.*” The second change makes the following addition (shown in italics) to Article 118 Health protection: “Within the limits of its powers, the Confederation shall take measures to protect health. It shall legislate on: [...] the control of communicable diseases, widespread diseases and particularly dangerous diseases of humans and animals; *in particular, it shall prohibit all forms of advertising for tobacco products that reach children and young people.*”

All articles written by Marita Hefler and John Baker unless otherwise attributed. Ideas and items for News Analysis should be sent to tcnewsanalysis@gmail.com.

The intent of the promoters of the initiative is that these minor constitutional amendments would provide the legal basis for the adoption of legislation that bans all forms of tobacco advertising for products that reach children and young people, such as in theatres, on posters and billboards, in magazines and on the internet, and at the point of sale. This would also include ending the promotion of tobacco products and the event sponsorship by the tobacco industry. Swiss research indicates nearly 57% of young people aged 24 to 25 years reported receiving a tobacco-related promotional gift. Only tobacco advertising exclusively targeting adults would still be permitted.

The initiative by the Swiss health organizations expresses their exasperation with the systematic opposition, over the years, of both chambers of parliament against any form of effective tobacco control legislation.

In 2014, Switzerland adopted a new law on foodstuffs, with the aim of making it compatible with EU legislation. Tobacco products, which were treated as foodstuff until then, were excluded from the new law, as they are not considered as food in the EU law. Switzerland thus needed a law specifically dedicated to tobacco products. The government produced its first draft tobacco products law (TPL) in the same year. Although the draft law was very weak, keeping Switzerland at the bottom of the Tobacco Control Scale in Europe rating for advertising bans, both chambers of parliament rejected it, asking the government to submit a new, weaker draft law. The arguments were that “the law goes much too far as it interferes with the principles of the market economy” and that “there is no evidence to date that a general ban on advertising will reduce tobacco consumption.”

The government then submitted a watered-down draft to parliament (with no restriction on tobacco advertising in newspapers, at the point of sale, with no sponsorship ban etc.), which was still opposed by economic circles and their parliamentary proxies. At the time of writing, the new draft law is still being debated. It has been slightly amended by the Council of States, with the arguable claim that it is now compliant with the WHO’s Framework Convention on Tobacco Control (FCTC). Nevertheless, even with those new changes, Switzerland would still be at the last place of the Tobacco Control Scale in Europe for advertising bans. The draft law will be deliberated by the Swiss National Council in 2021.

The popular initiative is a civil society response to the inaptitude of the political

process to adopt strict tobacco control legislation. According to a 2015 report, approximately two-thirds of the Swiss public supported banning tobacco advertising in all locations except at the point of sale, while 58% supported a comprehensive advertising ban.

The annual costs of smoking in Switzerland are estimated to be around CHF 5 billion (approximately 5.394 billion USD), far exceeding the revenues derived from tobacco taxes. The Swiss government has been blocked by parliament from increasing tobacco taxes since 2014. Approximately 32% of young people aged 15 to 25 years old in Switzerland smoke, and 27% of adults smoke. Tobacco use is responsible for approximately 15% of all preventable deaths in Switzerland.

If Switzerland wants to ratify the FCTC, it should adopt comprehensive tobacco advertising and sponsorship bans, increase taxes on tobacco products, and implement strong measures to protect its tobacco control policy from the interference of the tobacco industry, which is its main problem today.

Pascal Diethelm

OxyRomandie, Switzerland
pascal@diethelm.me

US: CALIFORNIA PASSES LAW PROHIBITING MENTHOL & FLAVOURED TOBACCO PRODUCTS

California has become the second U.S. state to pass comprehensive legislation to prohibit the retail sale of menthol and flavoured tobacco products from January 1 2021. The prohibition includes pen-style electronic cigarette (e-cigarette) pods, tank-based e-cigarette systems, menthol cigarettes and chewing tobacco; however premium cigars and hookah tobacco are exempt.

Similar legislation was proposed in May 2019, however it was retracted after significant amendments led health advocates to withdraw their support. The state Senate voted again in August 2020 and gave final approval to Senator Jerry Hill (D-San Mateo), who stated the approval is “a huge win for our kids and the health of our communities throughout California.” California Governor Gavin Newsom signed the bill into law through a Zoom ceremony with health advocates.

This legislation is in response to the tobacco industry targeting flavoured tobacco products to young people and to people of colour. A study undertaken by the Centers for Disease Control and Prevention in 2018 found that 49% of middle school students and 67% of high

school students who used tobacco products in the last 30 days had used flavoured tobacco products. More than half of youth smokers ages 12–17 years smoke menthol cigarettes, a higher rate than any other age group. Approximately 94% of African-American youth smokers use menthol tobacco products compared with 85% of African-American adult smokers. Phil Gardiner, co-chair of the national African American Tobacco Control Leadership Council, stated that “The tobacco industry has lured our kids into addiction for too long, using menthol and other flavours... By signing...the Governor sent a strong message to the tobacco industry that California’s kids are off-limits.”

In response to the proposed bill, the tobacco industry ran a campaign that called the proposal discriminatory toward Black and Latino adult smokers. Tobacco companies sent mailers to voters’ homes urging them to tell their state representatives to vote against the bill, and bought print, television and online advertising space. Advertisements accused the bill of being bad for communities, and claimed that menthol cigarettes were part of Black culture. Approximately 80% of menthol cigarettes sold are consumed by African-American smokers, which contributes to the 45 000 deaths from heart disease, lung cancer, stroke and other diseases caused by tobacco among this group each year.

San Francisco Supervisor Shamann Walton, said “Tobacco companies have been allowed to market their deadly products in our communities without regard for black lives and health for far too long. California’s lawmakers must join us and protect the next generation of black and brown lives from deadly nicotine addiction.”

In December 2019, the State of Massachusetts was the first to introduce a ban on the sale of flavoured and menthol tobacco products at nearly all tobacco retailers. Smokeless tobacco, cigars, pipe tobacco, hookah tobacco, electronic cigarettes and vapour products were included in the legislation and the ban came into effect on June 1 2020. Other states including New York and New Jersey have also banned flavoured e-cigarette products. In addition, 78 cities and counties in California, including Los Angeles County, had previously passed legislation to restrict sales of flavoured tobacco products. It is anticipated that other cities, counties and States in the U.S will enact similar legislation to that introduced in California and Massachusetts to protect young people and people of colour from the significant harms caused by tobacco use.

SPAIN: COVID-19 PROMPTS SMOKING REGULATION IN STREETS AND TERRACES

Spain has been heavily affected by the COVID-19 pandemic. From the first diagnosed case on January 31 this year to August 13, there were 337 334 cases, 129 009 hospitalizations and 28 605 deaths. After a growing number of daily cases of coronavirus across the country in recent weeks, Spain is going to regulate smoking in public outdoor spaces such as streets and terraces, based on the rationale that smoking can spread the virus.

Despite the Spanish tobacco control law already having a smoking ban in some outdoor areas, including schools, health-care campuses and children’s playgrounds, there is only a partial ban in terraces, based on overall coverage and the number of walls. Smoking in open public places is very common in Spain, where 24 of the adult population smokes. The national regulation of smoking in outdoor places follows the initiative from the regional Government of Galicia, announced on August 13. Prompted by this announcement, several other regional governments publicly indicated they were going to implement the measure. After an express meeting of the Council of the National Health System, the Minister of Health announced a smoking ban in outdoor public places if a two metre distance is not possible.

The significant impact of COVID-19 and new outbreaks in several regions of the country after the 100 day lockdown (between March 15 and June 21) partly explain this measure aimed at curbing the resurgent disease. Previous campaigns from both non-governmental organisations (NGOs) and scientific societies, together with a favourable anti-smoking social climate, also triggered its adoption.

In May, the Spanish Government made the use of face masks compulsory in streets and other outdoor spaces, and in all public indoor places where physical distancing of at least 1.5 metres is not possible. This requirement expanded the requirement to wear masks for all transport and workplaces, which had already been passed as part of the lockdown. Early in June 2020, the NGO “Nofumadores.org” launched the campaign “Smoke-free terraces, right now!” through the platform change.org which has collected almost 89 000 signatures to date.

At the same time, the working group on tobacco control of the Spanish Society of Epidemiology wrote a fact sheet and launched a press release pointing out the

higher risk of SARS-Cov-2 transmission due to smoking in outdoor public places, mainly because of the emission of droplets and their diffusion with smoke or other aerosols (in addition to the hand-mouth movements and manipulation of face masks, and the risk of relaxing of distancing). Following this policy brief recommendation, and statements from other scientific societies and professional associations (national committee on smoking prevention, society of public health, society of respiratory medicine, and the federation of physicians’ colleges) in early July the Ministry of Health recommended avoiding tobacco consumption in community and social settings. On July 30, the NGO “Nofumadores.org”, with 20 scientific societies, consumers organisations and health professional associations, including the European Network for Smoking and Tobacco Prevention and ASH United States, sent a manifesto to the Minister of Health requesting the urgent prohibition of smoking on terraces of hospitality premises, and all outdoor public places. These requests have been widely covered by the media and social networks.

While public health and tobacco control stakeholders welcome this step forward, a real and permanent ban of smoking in terraces and outdoor spaces has not been passed. The agreement of the Council of the National Health System on tobacco or other tobacco or similar products use states that smoking in the streets or in outdoor spaces is forbidden when a minimum two metre distance could not be achieved. Hence, smokers are allowed to remove their face mask while smoking in outdoor places whereas non-smoking people have to wear it, since the use of masks is mandatory in public places.

The Spanish regulation of smoking in outdoor spaces is consistent with the WHO statement on tobacco use and COVID-19, the risk for inhalation exposure to coronaviruses in microscopic respiratory droplets that could likely be enhanced by smoke and aerosols exhaled by smokers or users of other electronic devices, and that outdoor smoking bans have good acceptance and support by the population. Governments in other jurisdictions should take note of the Spanish experience to contribute to curbing the COVID-19 epidemic, prevent new outbreaks and potential new waves.

This is an edited version of an article first published on our website. The fully referenced article and complete author affiliations can be read at: <https://blogs.bmj.com/tc/2020/09/05/>

spain-covid-19-prompts-smoking-regulation-in-streets-and-terraces/.



Spain smoke-free signage Smoke-free signage at a cafe in Tarragona, Spain. Photo credit: Inés Raigón.

**Esteve Fernández
Cristina Martínez**

WHO Collaborating Center for Tobacco Control
Catalan Institute of Oncology, Spain
efernandez@iconcologia.net

AUSTRALIA: CHANGES TO NICOTINE PRODUCT REGULATION INCLUDING PRESCRIPTION REQUIREMENTS

A number of changes to the regulation of nicotine products are underway in Australia. These changes primarily affect non-therapeutic nicotine products, including nicotine vaping products and smokeless tobacco products, such as oral snuff and chewing tobacco.

An interim decision by the Australian Therapeutic Goods Administration (TGA), which is expected to be finalised in early 2021 and implemented from 1 June 2021, will remove the ‘dangerous poison’ (Schedule 7 of the Poisons Standard) classification for any nicotine products intended for human use. Industrial and agricultural products containing nicotine will still be classed as dangerous poisons.

The current “prescription only medicine” (Schedule 4) classification will be expanded to include nicotine products

for any human use, therapeutic or non-therapeutic, although it is unlikely that a health practitioner would prescribe nicotine for a non-therapeutic purpose as it would fall outside their scope of professional practice. Nicotine in smoking cessation aids that use transdermal or oral delivery, or in combustible tobacco products remain exempt from drugs and poisons scheduling and can continue to be sold in general retail outlets without a prescription.

Changes to importation of nicotine vaping products, announced in June, are expected to commence from 1 January 2021. All importers will require a permit from the Office of Drug Control, with strong penalties (fines of up to \$222,000) imposed for importing or attempting to import nicotine vaping products without a permit.

The changes continue the country’s relatively restrictive approach to regulating non-smoked nicotine products, compared with similar countries such as the United Kingdom, New Zealand, the United States, and Canada, where nicotine vaping products are sold as consumer goods.

The main impact of the scheduling change will be to reduce confusion on which schedule applies to nicotine vaping products. This should lead to a more consistent interpretation of the Poisons Standard with respect to nicotine across Australian states and territories. The ban on importation without a permit will have greater impact. Because there are no nicotine vaping products listed on the Australian Register of Therapeutic Goods, Australians with a medical prescription can only access them via one of four exemption pathways for accessing unapproved therapeutic goods: personal importation, the special access scheme (SAS), the authorised prescriber scheme (APS) and extemporaneous compounding. Without the personal importation option, patients will need to rely on health practitioners supplying their nicotine vaping products to them.

The government announced that a streamlined process would be set up to allow patients to obtain nicotine vaping

products via the SAS and APS pathways. The proposed regulatory changes may create a supply model that resembles current arrangements for medicinal cannabis in Australia. However, many questions remain about whether there will be an adequate prescription and supply network in place before the ban on personal importation commences. Australians who want to obtain nicotine vaping liquid will need to find an Australian medical practitioner who is willing to provide a prescription and organise the supply of nicotine vaping products via the SAS, APS or compounding pathways. Similarly, pharmacists will need to be willing to compound, or supply imported finished products via these pathways. As has been done for medicinal cannabis products, an approved product standard will be needed for nicotine vaping products.

It is unclear how the changes will impact Australians who use smokeless tobacco. Domestic sales of smokeless tobacco were banned federally in 1991 under the Trade Practices Act 1974, but personal importation of quantities not exceeding 1.5 kg is permitted, with larger quantities requiring a permit to import. It is unknown if the requirement for a medical prescription will be enforced for imported smokeless tobacco.

There are no proposed changes to the regulation of nicotine in cigarettes and other combustible tobacco products in Australia. These will remain exempt from TGA regulation and continue to be widely sold as a consumer product by general retailers, such as supermarkets, convenience stores and petrol stations, a situation that points to some obvious questions about regulatory coherence and consistency regarding products that cause harm.

Coral Gartner

University of Queensland, Australia
c.gartner@uq.edu.au

© Author(s) (or their employer(s)) 2020. No commercial re-use. See rights and permissions. Published by BMJ.



Tob Control 2020;**29**:601–603.
doi:10.1136/tobaccocontrol-2020-056285