

Legality of European ban on tobacco advertising questioned

Rory Watson *Brussels*

The joy of antismoking campaigners at the prospect of clearer health warnings on cigarette packets was tempered this week by doubts over the legality of a comprehensive ban on tobacco advertising and sponsorship across the European Union.

Under this initiative, cigarette manufacturers would have to set aside 35% of the front of each packet and 45% of the back to warn smokers of the risks they are running. The percentages are considerably higher than the 4% currently required in the United Kingdom.

In addition, terms such as "low tar," "mild," and "light" would have to be removed, and details of all 200 chemicals used in tobacco would need to be made publicly available.

The draft legislation, which was approved by the European

parliament on 14 June, must now be endorsed by EU governments and is likely to be finalised by the end of the year, paving the way for introduction of the new measures in 2003.

However, attempts to force manufacturers to follow Canada's example and place graphic pictures on packets highlighting the dangers of smoking were narrowly rejected by MEPs, as were efforts to end the 1000 million euros of subsidies given by the European Union to tobacco producers every year.

Although unhappy with the planned restrictions, the tobacco industry drew a large measure of comfort just 24 hours after the European parliament's decision, when a senior legal adviser at the European Court of Justice challenged antismoking legislation agreed two years earlier.

The advocate general, Nial Fennelly, maintained that the EU decision to phase out tobacco advertising by 2002 and sponsorship of major international sporting events by 2006, could not be justified and should be annulled.

He specifically challenged the legal justification given for the measure that it was intended to complete the internal market by harmonising laws which hinder trade. He reasoned that a measure, such as a ban, whose sole effect was to prohibit an economic activity and did not remove barriers to trade could not be said to advance the interests of the internal market and should be annulled.

His advice to the European Court's judges was warmly received by the German government and the four British tobacco companies, including Imperial Tobacco, which had brought the case. They had argued that the ban was really on public health grounds, which requires unanimous government approval and not the majority vote needed for the internal market. □

European Court of Justice likely to annul ban

Clare Dyer *legal correspondent, BMJ*

The European Court of Justice is likely to follow the advocate general's opinion—that the EU antismoking legislation is illegal—and annul the ban. It follows his advice in 80% of cases. But that will not stop the UK government introducing a ban of its own.

The Labour party committed itself in its election manifesto to a ban before the next election. Public health minister Yvette Cooper said the government would await the full judgment of the Luxembourg court but in the meantime would press ahead with drafting legislation.

This is likely to be greeted by further legal challenges from the tobacco companies, which opposed the EU directive. □

MPs want a tobacco regulatory authority

Mark Silvert *BMJ*

Tougher controls over the tobacco industry, including the creation of a tobacco regulatory authority, were recommended by members of the House of Commons health committee in its second report on the health risks of smoking last week.

"Tobacco industries have run rings around governments for years," said David Hinchliffe, the committee's chairman. He said that with six million people dead in the United Kingdom as a result of smoking since 1950, it was time to get to grips with the problem.

The committee believes that a tobacco regulatory authority with access to high quality scientific advice would be the appropriate body to advise the government on the evidence on the health risks of smoking and passive smoking.

The report calls for cigarette packets to carry stronger health

warnings, including messages that smoking could cause impotence. It wants an end to the current voluntary agreements with the industry.

The MPs also urged the Department of Trade and Industry to investigate claims linking a tobacco firm to large scale cigarette smuggling. The committee said that criminal proceedings should be considered against British American Tobacco (BAT) if the allegations against them proved to be true.

The committee also urged the government to protect non-smokers from the effects of other people's smoke. "In our view, voluntary agreements on passive smoking cannot yet be said to be really delivering smoke-free environments to all those who want them." The report emphasised that any real improvement with regard to smoke-free zones probably owed more to market forces than to any government action.

The committee recommended that nicotine should be regarded as similar to drugs such as heroin and cocaine when antismoking strategies were produced. The report encouraged the use of "proof of age" cards to stop tobacco prod-

ucts being sold to children.

Other recommendations included banning shopkeepers found guilty of selling cigarettes to under 16s from selling any tobacco products; making nicotine replacement therapies available on prescription for a total of six weeks; and making tobacco companies list the additives in tobacco on packets.

Amanda Sandford of the pressure group Action on Smoking and Health said, "We

are delighted with the report. It is comprehensive and quite rightly severely critical of the tobacco industry. We hope this will now be a springboard for real control over the tobacco industry."

The Tobacco Industry and the Health Risks of Smoking (second report) is available from the Stationery Office, price £11.50, or can be accessed at www.parliament.uk/commons/hsecom/htm. □



MPs want cigarette packets to carry warnings that smoking can cause impotence—as they do in Canada (above)