



TOBACCO PRODUCTS DIRECTIVE

Submission by Stephen Hoffman on behalf of The Freedom Association

Introduction

The position of the Freedom Association on many of the measures proposed in the revised EU-wide Tobacco Products Directive can be explained by David Nuttall MP for Bury North. On the subject David commented:

“This is another area where the EU appears to be intent on interfering in peoples’ lives. The manner in which legal products are advertised should be left up to each individual nation state. I believe citizens should be free to decide for themselves whether or not they wish to purchase tobacco products and they should be able to see what products a shop has available. The EU’s proposals are just another extension of the “nanny state” or in this case the “nanny Euro super-state”.

Do you agree with the problem definition?

No.

The problem with the definition is that it only concentrates on the negatives of cross-border tobacco sales through the Internet and only looks at the problem of tobacco control from the eyes of health officials. It ignores the fact that these sales of tobacco bring significant amounts of money into the economy. It also ignores the fact that if the government tries to enact more regulations on the sale of cross-border tobacco or even bans it; it will lead to a rise in illegal smugglers and cross-border sales going into the hands of some very dangerous illegal groups. In fact, this has already happened with such sales from Ireland to other countries. This is because, since the tobacco display ban has been in place in Ireland, there has been a rise in tobacco smuggling activity from groups like the IRA that have been enjoying the profits. Thus the definition seems to miss the point completely when it says there are insufficient health warnings on tobacco sold cross border or over the Internet and compliance issues.

The problem definition should be changed to:

“Across the EU there have been moves to legislate against tobacco being sold across the border and since this has happened there has been a rise in contraband tobacco sales. To combat this we are looking at reducing regulation sensibly so that the illegal market in tobacco is undermined.”

The problem definition also only mentions plans in member states like the UK to introduce tobacco display bans. It doesn’t give examples of where tobacco display bans have been introduced and the effect of them. If there is going to be a constructive debate about how the problem is going to be solved, the consequences of the Tobacco Display Ban in Canada and Ireland need to be looked at.

In your opinion what option addresses the problem most effectively?

No Change.



There is no evidence for a policy to make further changes to tobacco legislation across the EU. If there is more change the right of an adult to walk into a shop and choose the type of tobacco they would like to purchase is not under threat in the EU.

Rather than rushing into making changes in the Tobacco Product Directive we need to first think carefully about the consequences of any change in the law. The best option is to not go any further on restricting tobacco. By doing this it minimises the chances of the government making bad laws that will damage economic growth in the EU and individual freedom.

The Freedom Association also strongly believes in national sovereignty. Often when new EU directives are introduced national sovereignty is undermined. Thus the Freedom Association backs the option of no change in this area. This is because at the moment member states retain the competence to make decisions on access to tobacco products. We have concerns that, if some of the suggestions in the consultation document are included, the EU will be legislating beyond its powers undermining national sovereignty in the process. We believe that the EU has no legal power to harmonise health policy across member states. With this in mind, the ambitions of the European Union in the consultation document need to be scaled back.

The Freedom Association does not think that removing branding from all cigarettes should be introduced. If plain packaging were introduced across the EU, it would make it harder for consumers to choose between reputable and illegal brands as they would all look the same. Retailers such as the Freechoice Stores group in Australia believe that generic packaging will be much more confusing for staff and consumers, and also far easier to counterfeit than current packaging (<http://www.plain-packaging.com/Templates/RetailersTemplate.aspx>).

Furthermore if plain packaging is introduced, the European Commission, through member states' government, would be restricting a person's right to choose, an essential caveat for the free market to flourish. It also implies consumers are not capable of making rational decisions. However adults, when they buy products, do make informed decisions and do not need the government to make decisions for them. Moreover visual aids play a large role, especially in small shops, in enticing people to buy cigarettes. In small shops cigarette sales make up a large amount of revenue as well as leading to knock on sales in their sales in the confectionary and newspaper sections. Plain branding could push this revenue stream at a risk.

Apart from Australia, no other country has introduced plain packaging for tobacco products suggesting that many countries do not see it as a viable option. A UK Department of Health document describes the impact of plain packaging on total tobacco consumption as "speculative and in 1994 a standing committee on health of the Canadian parliament said there was no evidence that plain packaging will reduce tobacco consumption (http://www.plain-packaging.com/Templates/Blank_NoEvidence.aspx). Clearly then the proposals are not backed up by rigorous research.

Another idea that was floated in the Tobacco Products Directives was a ban on tobacco vending machines. This is another area where the law should stay as it is. If a ban were introduced, cafes and pubs owners could have a source of revenue taken away from them due to the government intervening in the free market.

Everyone now knows that cigarettes are harmful for your health and in all EU countries there are already advertisements and warnings that smoking is bad for you. Thus no further legislation is needed. Prohibition has never worked in the past and it's not about to now. It is important that no unnecessarily restrictive regulations are implemented. Such regulations are designed to



denormalise a legal product and will threaten jobs and small businesses, as well as inconveniencing millions of law-abiding consumers throughout Europe. The persecution of adults making their own choice to smoke by government meddling cannot afford to go any further. Consequently suggestions to toughen up tobacco laws when it comes to sale and display should not be included. It is worrying that the consultation document on the directive did not include these concerns. I hope from the numerous submissions the EU receives from organisations and individuals that they do not ignore individual liberty when framing the legislation.

Do you have any additional specific comments?

In the section of the report called "Access" it only looks into access to tobacco products as a public health matter. It completely ignores that tobacco sales contribute a lot to the economy.

Furthermore it ignores that it is widely accepted that 33% of retailers' profit, in particular corner shops, comes from tobacco sales (<http://www.bigbrotherwatch.org.uk/home/2010/11/smoking-and-the-nanny-state.html>). This does not include profits made from other products bought by the person buying tobacco. Often consumers will buy other products such as confectionery. If tobacco was not made readily available in these shops, either through a complete display ban or reduced marketing, then the flow of traffic to retail shops is likely to decrease. Larger supermarkets can get round it due to economies of scale and the vast array of products they sell. Thus independent retailers would face unfair competition from supermarkets. Additionally there would be a strong regulatory burden if access to tobacco products changed. If marketing were reduced, time and money would be needed to change the marketing of the product and in building cabinets to hide the tobacco in as well as training staff to use it.

Small newsagents are already losing revenue due to the worldwide recession. In 2009, a report revealed that more than one newsagent a day was closing in the UK (<http://www.philip-davies.org.uk/newsshow.aspx?id=12&ref=1300>). A change in tobacco display laws will make this worse. The evidence is shown from Canada where, since the tobacco display ban has been in place, 15% of all small retailers have gone out of business (<http://www.iea.org.uk/files/upld-book517pdf?.pdf>).

Additionally there is the question of individual freedom. It should be up to a shop owner to decide on the appearance of his shop and how he wants to market tobacco. A cherished value that shouldn't be undermined is that an owner has the right to use or permit a legal product on private property. It is not the role of the state, as they do not control the shop. Consequently Phillip Davies, MP for Shipley is correct to say, "This smacks of the Nanny State all over again. These proposals are simply not evidence-based, will increase counterfeit products and confuse consumers."

In general, independent retailers have little confidence in legislation aimed at restricting the sale of tobacco. A study in Scotland by the Tobacco Retailers Alliance highlighted that 56% of shopkeepers believed a display ban would increase contraband sales (<http://www.bbc.co.uk/news/uk-scotland-11076046>). Therefore the proposed legislation is a threat to individual freedom and bureaucratic. Also shopkeepers have little confidence with regards to enforcement. Considering this, perhaps the Tobacco Products Directive should stop trying to reduce marketing on tobacco. If greater restrictions and bans are put on cigarettes, people will seek cheaper alternative routes, which tend to be illegal.

Unlike Canada, the EU cannot pretend that they had little evidence on what would be the effects of introducing such legislation. The EU has plenty of evidence from Canada that there has been a



significantly negative impact on independent retailers, a rise in contraband sales and a negligent effect on health.

The last word on the dangers of this proposed legislation comes from Mike Weatherley MP for Hove and Portslade. He has said, "I am a committed anti-smoker. I firmly believe any measures that could help to reduce smoking are to be encouraged. However, I was recently invited to meet small shop owners in my constituency and was shocked by how worried they were about the proposed Tobacco Display Ban legislation. It is estimated that such retailers would need to sell £20,000 worth of extra products to offset the cost of implementation. There is a worry that many will close and thus play into the hands of the major supermarkets. I am convinced that the ban in these small retail shops would overall be detrimental and of no net benefit to a campaign to reduce smoking."

Do you recommend any additional option that would effectively address the problem?

The EU should encourage member states to be less draconian when it comes to tobacco display. There is the belief across Europe that government knows best. However, as the success of privatisation across the world has highlighted, often they do not. When it comes to suggestions in the EU Tobacco Products Directive, it is all about the government controlling the marketing of tobacco, what goes into a cigarette and whether a so-called free individual can see a cigarette packet. The directive needs to change its focus away from this.

In the UK a tobacco display ban will be introduced in 2011 and the compliance costs could be at least £33 million and a government impact assessment that is probably underestimating figures says to implement the ban would cost the average retailer £1000 (<http://www.velvetgloveironfist.com/pdfs/thedarkmarket.pdf>). It was also calculated, by Patrick Basham, if a similar situation took place as happened in Canada, 2,600 independent retailers in the UK could close (<http://www.iea.org.uk/files/upld-book517pdf?.pdf>). Multiply that cost by 27 member states and that is a significant loss of money and diversity of shops that member states could do without. At a time when many EU member states are facing an economic downturn choosing option 3c in the consultation document would only make a bad economic situation disastrous.

Display bans have not led to a lower prevalence in smoking. For example, 6 months after the display ban in Ireland, a survey of 4033 people found that 33% of the population had taken up or continued to smoke. This is the highest smoking rate recorded in the past 11 years in Ireland according to "EU'S HELP FOR A LIFE WITHOUT TOBACCO" campaign. <http://www.independent.ie/national-news/smoking-rate-soars-up-to-one-third-despite-ban-1923543.html>. Thus all the evidence against tobacco display bans highlights it is an ineffective policy that does not improve public health and has the unintended consequence of damaging small retailers.

We also need to listen to a wider range of people. At present the only voices we hear are from public health bodies like ASH (Action on Smoking and Health) who are often funded by the government and have an interest in pushing for harsher laws when it comes to the availability, display and sale of tobacco. For example in the UK the taxpayer spent £142,000 in 2009 and



£191,000 to ASH (<http://conservativehome.blogs.com/platform/2010/10/simon-clark.html>). This figure does not include salaries and campaigns of, the various Smoke Free quangos; stop smoking advisors, to nicotine replacement therapies such as patches and gum. The EU should look into introducing legislation in the Tobacco Products Directive to put in restrictions on the amount that tobacco control bodies can receive from the government.

Those who do not take the line of groups like ASH are told that they are in the pay of the tobacco lobby. Speaking for the Freedom Association, I can honestly say there is not a scintilla of truth to it. To tackle this problem the EU should set guidelines in the EU Tobacco Products directive urging governments to include stakeholders from businesses and members of the general public in discussions, rather than just groups in favour of tobacco control. The debate would then become more balanced and legislation better thought out. At the moment free speech is damaged by the fact that often only voices in favour of tobacco control are heard.

If the directive does not look into these additional options, responsible shop owners who have the interests of their customers at heart will be restricted from selling tobacco. Therefore increasingly tobacco consumers especially teenagers will go to alternative less controlled suppliers who do not have the interests of the customers at heart. These alternative suppliers will have no qualms about mixing tobacco with other more dangerous products and will use their proceeds for crime.

