

Tobacco control policy: the European dimension

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ABSTRACT – The Royal College of Physicians has long played an important role in the struggle against tobacco. As tobacco is a legally traded substance, its regulation increasingly takes place at a European level, where governments seek to balance concerns about public health and free trade. Consequently, it is essential that those seeking to reduce the toll of tobacco-related disease understand the nature of the debate at a European level, in particular the strategies being pursued by the tobacco industry to undermine efforts to promote public health. After describing the European legislative process, this paper explores the current European debates on advertising restrictions, warning labels and cigarette composition, bans on public smoking, taxation, alleged industry involvement in smuggling, and subsidies for tobacco producers. It concludes by examining areas where the College might take action.

KEY WORDS: advertising, Britain, European Union, tobacco, tobacco industry

Introduction

Smoking kills over 120,000 people in the UK a year, more than 13 people every hour¹. The cost to the National Health Service in 1997 was estimated at £1.7 billion². Fortunately, reducing the toll of premature death from smoking-related disease is a key element of the present British Government's health strategy. One of its first actions on assuming power in 1997 was to issue a white paper, *Smoking kills*³, setting out the scale of the challenge faced and the intended responses to it. The health ministries in each part of the UK seem to be committed to effective action, introducing policies that, for example, increase access to nicotine replacement therapy. Unfortunately, other commitments, such as the introduction of a ban on tobacco advertising and a progressive increase in tax on cigarettes, now seem to have been given a lower priority.

But policies on tobacco pursued by individual governments in Europe cannot be seen in isolation from those being pursued by the European Union (EU). Many aspects of the production, marketing and taxation of cigarettes are already regulated by European

law and although an attempt to introduce a Europe-wide ban on tobacco advertising was recently overturned by the European Court of Justice (ECJ), new legislation that takes account of the criticisms of the earlier law is currently being introduced.

The Royal College of Physicians has long played a major role in highlighting the burden of premature death from tobacco and in campaigning to reduce it^{4,5}. This paper, which has arisen from the College's European Working Group, seeks to inform the debate on opportunities for further action to reduce the toll of tobacco-related death in the UK by looking at the European context within which policies operate.

The European legislative process

Before looking in detail at individual policies, some explanation of European law, greatly simplified in the interests of brevity, are required. More detailed accounts are available elsewhere⁶.

In the field of tobacco control, policies have been initiated using two methods: directives, which are legally binding, and resolutions, which are not. Legislation is initiated and drafted by the European Commission, which consists of 20 commissioners supported by international civil servants. In most cases, draft laws must then be approved by both the Council of Ministers, which comprises the relevant minister from each member state, and the European Parliament, in a process known as co-decision. The co-decision process is used in most issues relating to tobacco control except tobacco subsidies. As an agricultural matter, these subsidies are decided by the Council alone, although the Parliament is consulted. The European Court of Justice controls the legality of decisions ensuring that the law is complied with by all member states in a uniform manner.

All European legislation must be based on Treaty of Rome provisions which are primarily concerned with promoting and regulating four freedoms of movement: of people, goods (such as cigarettes), services (such as advertising), and capital. However, recognising that the EU has a social as well as an economic role, the Treaty, whilst not permitting the passage of legislation that harmonises national laws for purely public health purposes, also specifies that the Community should promote a high level of human health in all its policies. Consequently, the

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Key Points

Tobacco control policies pursued by individual governments in Europe cannot be seen in isolation from those pursued by the European Union (EU) and organisations such as the Royal College of Physicians, that can contribute to the national policy process, must take account of this wider European dimension

Britain lags behind many of its European colleagues in terms of tobacco control and much of its current legislation has been driven by EU directives on advertising, labelling and taxation

The tobacco industry has actively sought to divert attention from the negative health impacts of both active and passive smoking, and to undermine tobacco control both at national and European levels; its strategies must be understood in order to develop effective policies

The recent annulment of the EU advertising ban and current challenges to the Tobacco Regulations Directive suggest that changes to the EU Treaty are needed if public health is to be more effectively regulated within Europe

Other areas where action is needed include a more proactive stance on the Framework Convention on Tobacco Control, an end to tobacco subsidies, a new advertising ban and progress on workplace and public smoking

EU has a legitimate role in responding to the challenges created by the trade in tobacco. It has mainly performed this role by passing tobacco control legislation under Article 100a (now Article 95), which enables the adoption of measures that facilitate the establishment of the internal market. The unique feature of European integration is that European law takes primacy over domestic law. Member states must incorporate directives into national law within a defined period; failure to do so means that the directive becomes legally enforceable in the state in question.

Advertising ban

In 1989, a directive banning tobacco advertising on television was introduced as part of a broader measure regulating trans-border television services⁷. Shortly afterwards, a complete advertising ban was advocated as an internal market measure, justified by the need to protect countries imposing bans from challenges that they were blocking legitimate movement of goods bearing advertisements. As an internal market measure, the proposal was subject to qualified majority voting, enabling several countries collectively to block it. For many years it was opposed by the UK, Germany and the Netherlands and to a lesser extent Greece and Denmark.

The election of a Labour Government in 1997 changed the position of the UK. This position was, however, soon plunged into controversy when it became known that the Government's agreement to an advertising ban was conditional on an exemption for Formula One motor racing, a condition that the media

linked to a large donation from a leading figure in that sport⁸. The UK's new stance did, however, make agreement on a ban possible, although Germany remained resolutely opposed, exerting strong pressure on other countries to support its position.

A generous interpretation of Germany's consistent hostility to action on tobacco is that this is a reaction to the Nazis' strong opposition to smoking⁹. However, there have been strong links between scientists working for the Verband der Cigaretteindustrie (German Trade Association) and German government officials. Indeed, in the early 1980s, Professor Ueberla, president of the Bundesgesundheitsamt (Federal Health Office) received research funds from the industry¹⁰. Recent research based on internal tobacco industry documents has also shown that Germany, along with the UK, was a consistent ally in the industry's strategy to prevent passage of the Advertising Directive, with contacts at the highest level forged between the German government and the tobacco industry¹¹. The UK's previous Conservative Government's links with the tobacco industry are illustrated by Margaret Thatcher's consultancy with Philip Morris, and Kenneth Clarke's deputy chairmanship of British American Tobacco¹².

In 1998, an EU Directive was finally passed by a qualified majority that would ban all forms of tobacco advertising and sponsorship within the European Union¹³. Soon afterwards, however, the German Government and four British tobacco companies challenged the Directive, arguing that it was illegal and violated several principles of Treaty Law. The European Court of Justice upheld the challenge and annulled the directive. It ruled that the Directive had exceeded its legal base as an internal market measure because it did not facilitate trade but prohibited it to an extent that was disproportionate to that needed to ensure the proper functioning of the internal market¹⁴. A replacement Directive has since been drafted¹⁵ but, heeding the ECJ ruling, the new Directive has been limited to measures that the Commission considers are the minimum needed to achieve the proper functioning of the internal market and is thus considerably weakened.

More important perhaps are the wider implications of the ECJ ruling, which illustrates clearly the legal subordination of public health to harmonisation of the single market in the European treaties. If followed to its logical limits, all EU consumer protection laws could in theory be challenged. Whilst this is unlikely, two more immediate issues are apparent¹⁶. First, the ruling noted that inclusion of the so-called safeguard clause (which allows member states to introduce their own more stringent legislation), meant that the Directive neither harmonised national rules nor removed distortions of competition. This has resulted in the perceived need to omit the safeguard clause from future legislation (it has, for example, now been omitted from the redrafted Directive) and concern that member states could in theory be challenged for implementing legislation that goes beyond that specified by the EU. Thus European law, which until now could only facilitate tobacco control by ensuring that member states with no tobacco control legislation met the European minimum standards whilst leaving others free to

initiate stronger legislation, may now hinder tobacco control at a national level. Second is the issue of proportionality. As long as Treaty provisions prevent the passage of legislation for purely public health purposes, the EU will always be faced with the dilemma that what is needed to protect public health may be considered disproportionate to that needed to protect the internal market. This potential conflict between trade and public health can only really be addressed by changing the Treaty.

So, in 2002, over 10 years since legislation was first proposed, Europe is still without a comprehensive advertising ban. In the light of the ECJ ruling, this is particularly important for countries, including the UK, that do not yet have comprehensive advertising bans in place.

Labelling and cigarette composition

In the late 1980s and early 1990s, the European Union issued a series of directives on labelling and tar yield. The labelling directives required all packs to display tar and nicotine yields and a clearly visible health warning covering at least 4% of the pack^{17,18}. The 1990 Tar Yield Directive limited the tar yield in cigarettes to 15 mg per cigarette from 1992, to be reduced to 12 mg from 1997¹⁹. These measures at first had far-reaching consequences but it gradually became apparent that there were weaknesses in the directives that the tobacco industry had sought to exploit. For example, while Directive 89/622 stipulated that health warnings should be clearly legible and printed on a contrasting background, a 1993 study found that most cigarette packs in Europe used gold lettering for the warnings which offered only minimal contrast^{20,21}. This finding, combined with suggestions that manufacturers used additives to increase the addictive effect of nicotine, make cigarettes easier to smoke, and more palatable to first-time users^{22,23}, plus growing evidence of the impact of larger health warnings, led to moves to strengthen the Directive.

In November 1999, following the recommendations of the High Level Cancer Experts Committee, the Commission agreed to update three existing directives on tobacco product design, manufacture and labelling. After considerable resistance in the Council of Ministers, particularly from Germany and Luxembourg, on 15 May 2001 the new Tobacco Regulation Directive was adopted²⁴. The main features of the new Directive are a reduction in maximum permissible tar yield from 12 to 10 mg and the establishment for the first time of maximum nicotine and carbon monoxide yields; an increase in the size and improvement in the specification of health warnings; the disclosure of ingredients and additives along with reasons for their use and evidence of their safety in both burnt and unburnt form; and a ban on misleading product descriptions such as 'light' or 'mild'. These requirements will apply to tobacco products marketed and manufactured in the EU, implying, although not explicitly stating, that they also cover products intended for export.

The ban on terms such as 'light' and 'ultra-light' is particularly important as evidence suggests that the industry's use of

these terms has misled customers²⁵. When smoking 'low tar' brands, smoker's actual tar exposure may be as high as when smoking conventional cigarettes. This is because machine-measured yields (those stated on the side of the pack) do not reflect smoker's real tar exposure, because smokers, addicted to nicotine, compensate for reduced nicotine yields by inhaling more deeply and more often. In addition, smokers tend to block the ventilation holes designed by the industry to reduce machine (but not actual) yields. Evidence also suggests that smokers believe there is some health benefit to smoking low tar brands and may therefore delay quitting or transfer to low tar brands rather than giving up²⁵.

Although due for implementation by 30 September 2002, a series of challenges to the Directive have since been issued and its future now looks uncertain. The German and Luxembourg delegations both made statements reserving their right to refer the matter to the ECJ^{26,27} and the German Government has since announced its plan to do so. Japan Tobacco International plans to take legal action on the basis that the EU decision is an infringement of its intellectual property (as Mild Seven, its leading brand, is a registered trademark)²⁸ and a violation of World Trade Organisation rules²⁹. Imperial Tobacco and British American Tobacco plan to challenge the Directive on the basis that, like the overturned advertising Directive, it exceeds EU jurisdiction³⁰.

Public and workplace smoking bans

Due to Treaty provisions, the EU is unable to legislate directly on smoking in public places, but can legislate, under health and safety at work provisions, against smoking in the workplace. Initial unsuccessful attempts to ban smoking in workplaces were made in 1983 during the development of the Asbestos Directive. In 1989, two further attempts were made to address public smoking. The first was made by the Council of Ministers, who, wary of the legal competence issues, produced a non-binding resolution that invited member states to implement policies on smoking in public places, using legislation or other methods³¹. In 1992 and 1996 the Commission reviewed the measures taken and concluded that the resolution had led to action³². In most member states regulations were indeed instituted shortly before or after adoption of the resolution although, despite the Commission's claims, cause and effect can only be guessed at. Currently, the UK remains the exception in having taken no legal measures and simply relying on a voluntary code of practice³². The second attempt was a directive on health and safety at work which required that 'in rest rooms and rest areas appropriate measures must be introduced for the protection of non-smokers against the discomfort caused by tobacco smoke'.

These modest efforts can be contrasted with the far more comprehensive measures in place in the USA and Australia to prevent exposure to environmental tobacco smoke (ETS)³³. Others have attributed this lack of action to the fact that fewer studies of the impact of ETS had been conducted in Europe³⁴, and the lesser threat of litigation^{35,36}. Over time, however, and largely since the release of internal industry documents, it has

become apparent that the ETS issue has stimulated a more intense response from the tobacco industry than any other topic.

The tobacco transnationals have in particular attempted to distort the scientific debate about the interpretation of second-hand smoke studies^{37,38,39}. In the mid-1990s, the industry arranged a series of adverts in newspapers across Europe comparing the risk of lung cancer from passive smoking with a variety of other apparent risks from everyday activities such as eating biscuits or drinking milk, thereby confusing the public^{40,41}. These adverts asked readers to request a copy of a report reviewing the evidence linking passive smoking to lung cancer risk and written by the European Working Group on Environmental Tobacco Smoke and Lung Cancer, a group receiving funding from the tobacco industry. Even this industry-funded report found an increased risk in its meta-analysis of the evidence but then attempted to discredit the findings by highlighting methodological concerns that would overestimate the risks, whilst failing to mention methodological factors that, according to leading epidemiologists, would underestimate the risks⁴⁰. Reports published in the medical literature continued to challenge the evidence but were written by scientists⁴², many of whom, it later became apparent, were funded by the tobacco industry⁴³.

The most notorious attempt to cloud the issue was the inter-industry programme to infiltrate and influence the largest European study on lung cancer in passive smokers, undertaken by the International Agency for Research on Cancer (IARC)³⁴. Philip Morris Corporate Services in Brussels voiced concern that the IARC study would become 'Europe's EPA', a reference to the 1992 US Environmental Protection Agency report that stimulated clean indoor air legislation in the US⁴⁴. The industry waged a three-pronged attack that cost over twice that spent by the IARC on the original study³⁷. They commissioned research, directed by firms of industry-funded lawyers, to contradict the IARC's findings⁴⁵. They selectively leaked the IARC study, presenting their own interpretation at a time when the paper was still under peer review and the authors were thus unable to respond in the media. The industry interpretation, that passive smoking does not cause cancer, was readily accepted by leading newspapers⁴⁶ and by the time the paper was finally published, the real findings received little attention. Finally, they lobbied politicians extensively to counteract its impact, even getting the European Commission to sponsor an industry-led seminar on good epidemiological practices and risk assessment³⁷.

This concerted activity by the tobacco industry may explain why the EU has yet to take any further action in this area, despite evidence of widespread public support⁴⁷.

Price, taxation and smuggling

Three directives on harmonisation of tobacco taxation came into force on 1 January 1993⁴⁸. They relate to the three principal forms of taxation on cigarettes: VAT, fixed specific excise duty (imposed as a fixed amount per 1,000 pieces or grams), and variable *ad valorem* excise duty (proportional to the final retail price). The *ad valorem* tax leads to price differentials between

cheaper and expensive brands, which increase in size as the level of *ad valorem* excise increases. Specific duties do not have this multiplier effect, and therefore reduce price differences and remove very cheap brands from the market. In general, the northern European tobacco-manufacturing countries favour specific taxes as these tend to benefit the exchequer. Others, including the southern tobacco-producing nations, favour *ad valorem* taxes, which, by protecting the lower price brands, ensure continued cultivation of low-priced home-grown tobaccos.

The directives were a compromise between those in favour of *ad valorem* taxation and those in favour of specific taxation. They stipulate that each member state should apply an overall excise duty (specific and *ad valorem* combined) of at least 57% of the final retail selling price of the price category most in demand. In addition, the minimum specified VAT rate was set at 13.04%. Countries were free to set the balance between the two types of *ad valorem* and specific taxation as long as the latter lay in the range 5–55%, as previously agreed in the *acquis communautaire*. As a result, whilst leading to price increases in a number of countries, these directives did not prevent the existence of large price differentials or excessively cheap brands.

In a 1995 review, the Commission expressed concern that the 57% rule had widened price differences between member states which were not in the interest of the internal market. It has been suggested that tobacco industry lobbying had fuelled these concerns and confused the Commission⁴⁹. Unable to agree a way forward on tobacco taxation, the Commission held an excise conference in July 1995. The industry journal, *Tobacco International*, described the conference as a 'triumph for the national industries', noting that 'while the Commission was in the process of formulating its proposals the industry could, and did, intervene – this time successfully'⁵⁰. As a result of this industry lobbying, and despite the fact that the price gap between the cheapest and most expensive country had reduced from 623% in January 1992 to 372% in September 1996⁴⁹, the taxation directive was revised in 1999. This gave member states greater flexibility in setting taxes and did little to reduce the differentials in prices within Europe⁵¹.

The Commission has expressed its desire to harmonise minimum levels of taxes further, taking into account the implications for health⁵². However, with member states falling broadly into two opposing camps as outlined above, it is unlikely that a unanimous decision can be reached on this issue.

The ongoing debate about price and taxation has heightened awareness amongst member state governments about cross-border shopping and smuggling, particularly as the European customs and transit arrangements, designed to promote international trade by road, have facilitated the movement of both legal and illegal goods⁵³. Cross-border shopping is the buying of duty-paid tobacco products in a neighbouring country for the buyer's own consumption and is legal under the provisions of the single market. The industry has argued that persisting price differentials would, with the removal of frontier controls in January 1993, lead to an increase in cross-border shopping. There is as yet, however, no evidence of a substantial increase⁵³.

The industry also argues that price differences create an incentive to smuggle cigarettes from low tax countries in southern Europe to the higher tax countries in the north. Yet, contrary to the industry's allegations, smuggling is more common in the southern and Eastern European countries where cheap cigarettes predominate, than in the UK, Norway, Sweden and Denmark where prices are much higher⁵⁴. Indeed, researchers suggest it is more strongly associated with the presence of organised crime, a culture of street selling and the complicity of the industry than the existence of price differentials⁵⁵. Smuggling can benefit the industry in a number of ways. It stimulates consumption through the sale of cheap cigarettes (the industry gains its normal profit regardless of whether cigarettes enter the legal or illegal market). It also enables the industry to penetrate new markets and allows them to argue for a reduction in tobacco taxation in order to reduce the incentive to smuggle. Such arguments have been successfully used elsewhere, for example in Canada where taxes were reduced in response to concerns about smuggling in the early 1990s. Predictably this led to both an increase in smoking rates among Canadians and a decline in revenue collected⁵³.

With approximately 7% of the western European and 13% of the Eastern European market appearing as contraband⁵⁶ and huge tobacco shipments around certain parts of Europe, Joossens argues that the scale of tobacco smuggling is such that it is likely that the industry is at least complicit in the process⁵⁶. Debate continues as to the exact extent of industry involvement. Kenneth Clarke has admitted that BAT supplies cigarettes knowing they could end up on the black market:

*Where any government is unwilling to act or their efforts are unsuccessful, we act, completely within the law, on the basis that our brands will be available alongside those of our competitors in the smuggled as well as the legitimate market*⁵⁷.

Yet internal industry documents suggest more direct involvement, with evidence submitted to the House of Commons Health Committee describing how:

*Smuggling ... has been BAT company policy since the late 1960s. Smuggling of BAT products evolved from an ad hoc activity into an organised and centrally managed system of law breaking. The company directors and managers who were involved were, on evidence that is plentifully available, fully aware that what they organised was unlawful in those countries where they placed smuggled products*⁵⁸.

Official investigations in different parts of the world have led to a series of court cases accusing tobacco companies of smuggling cigarettes⁵⁹. These include a case brought by the Commission, following a two-year investigation by the EU's anti-fraud unit, against two American tobacco companies in the US courts, in an attempt to recover billions of dollars of customs revenues lost through smuggling^{60,61}. The American judge ruled that the Commission had failed to make a convincing case that it (rather than the individual member states) had directly suffered injury as a result of the smuggling⁶². In August 2001, the EU therefore filed a new suit, this time jointly with ten of its member states.

Tobacco subsidies

A major criticism of the European Union has been that its agricultural policy, and specifically that on tobacco production, is diametrically opposed to the promotion of health and the work of the Europe against Cancer Programme. The payment of subsidies for tobacco production has been a long-running controversy⁶³. In the early 1990s, the EU spent about 1,000 million Euro on subsidies to tobacco producers but only about 1.5 million (0.15% of this amount) on smoking prevention⁶⁴. These figures have changed little since. In the face of sustained criticism, tobacco subsidies were subject to reform in 1992 but have nevertheless been an expensive failure⁶⁵. Soil and climate conditions in Europe mean that most tobacco grown in the EU is of varieties for which there is little commercial market. Almost all tobacco produced is 'sold' at minimal prices, often about 10% of the sum received in subsidies, to countries in Central and Eastern Europe and North Africa that have no effective policy restrictions on tar levels. It has had some small success in providing income for farmers. However, only about 55% of the total subsidy is available for support of agricultural incomes. It would therefore cost considerably less simply to give farmers the money earmarked for salary support without requiring them to produce a product that few want.

The European Court of Auditors has unsurprisingly described this bizarre state of affairs as 'a misuse of public funds'⁶⁶. But further attempts to reform the subsidies have been unsuccessful⁶⁷, as have those to reform the whole Common Agricultural Policy (CAP), despite the fact that, contrary to the reasons for its foundation, the CAP has for the last 20 years been paying farmers to produce less.

Although in April 2002 tobacco subsidies were renewed once again, other signs suggest that their end may be in sight. In May 2001, the Commission produced a communication on sustainable development⁶⁸. Amongst other things, it recommended a phasing out of tobacco subsidies, and the identification of alternative sources of income and economic activity for tobacco workers and growers. Accession of the Central and Eastern European countries with their heavily subsidised agriculture sectors, pressure from the World Trade Organisation and the review of the EU budget planned for summer 2002 should prove further catalysts for reform.

Preventive action and the framework convention on tobacco control

Although legislation forms the mainstay of the EU's role in tobacco control, it also takes a preventive approach⁶⁹. This is largely achieved through rather limited EU funding provided for tobacco control and tobacco control research initiatives. More recently, the EU has been playing a key role on behalf of its member states in negotiating the WHO's Framework Convention on Tobacco Control (FCTC), an international treaty on global tobacco control⁷⁰. In October 1999, the Commission received a mandate from the Council of Ministers to conduct negotiations for the FCTC on behalf of member states in fields

where the Community has competence. In agreeing this mandate, member states gave up considerable powers, as they are now unable to speak at the negotiations on any issue covered by EU law. For areas outside Community competence, the Presidency co-ordinates member states' positions and speaks on their behalf. As a result, common positions have to be agreed between all member states and the EU has found itself agreeing on the lowest common denominator, allowing countries who take weak stands on tobacco control to impose a weak EU position. Although the identity of these countries is widely suspected, lack of transparency in agreeing the EU stance enables member states to hide behind the European position and raises concerns about democratic accountability within Europe. Some member states, Ireland in particular, and many activists have been disillusioned by the stance taken, particularly as the EU is now increasingly speaking for the accession countries.

Action needed

The College has a long and distinguished involvement in the struggle against tobacco. The findings of this review have several possible implications for its future work on this issue.

It is apparent that tobacco control is no longer simply a national issue. The advent of the Single European Market, and the need to regulate it, has meant that many aspects of tobacco policy are now determined at a European level. As a consequence, anyone seeking to tackle smoking in Europe must engage in the debate at a European level. This is especially important for bodies such as the College that seek to reduce smoking in the UK, which stands out from European countries for its belief in voluntary agreements with the tobacco industry and its reluctance to adopt effective legislation. As a consequence, much of the UK legislation that has been enacted can be attributed to EU policies. Indeed, it is largely because of the long-standing opposition to stronger action by previous British governments, along with their German counterparts, that EU legislation remains relatively weak.

Those campaigning for stronger laws on tobacco at a European level have often complained, privately, about the lack of support that they have obtained from health professionals and their spokespersons. The important contribution that bodies such as the College, working if possible with the Scottish and Irish Colleges and with relevant organisations in other member states, can make towards tobacco policy in Europe cannot be overestimated, either in supporting or cajoling the government and in speaking up to reveal the half truths of the tobacco industry and its representative organisations. The industry is often represented via apparently independent groups that campaign for smokers' rights or claim to represent the hospitality industry, and has also set up what seem to be unlinked enterprises to recruit or retain smokers⁷¹. For this reason, the College should press for full disclosure of competing interests at all times when these issues are being discussed.

There are several issues on which action is now needed. Some have specific goals, such as an end to tobacco subsidies, bans on workplace (including bars and restaurants) smoking, and sup-

port for the new advertising ban. But there is also a need for more generic action. Perhaps the most immediate issue is the EU stance on the Framework Convention, where there is a real danger that a few states may impose an extremely weak European negotiating position that could seriously undermine the Treaty. A further issue, and one that now appears essential in light of the ECJ ruling on the Advertising Directive, is the need to ensure that the EU has a stronger legal basis for effective measures against smoking. This will require changes in the Treaty to ensure that public health and consumer protection can be regulated more effectively at European level. The College should press for this matter to be considered at the next Intergovernmental Conference on Treaty revision, scheduled for 2004.

Finally, this review shows clearly how any attempt to reduce tobacco consumption must take full account of the strategies adopted by the tobacco industry. These encompass links to smuggling, attempts to conceal and distort evidence and to confuse the public about the health impacts of active and passive smoking⁷². The forty million pages of internal industry documents made public as a result of litigation offer invaluable insight into industry tactics⁷³ which must be understood if appropriate public policy and legislative responses are to be developed⁷⁴. The American tobacco companies' documents are held in a depository in Minneapolis, Minnesota and are available on the Internet (www.tobaccoarchive.com) whilst those of the British-based company, British American Tobacco, are only available in an archive in Guildford, UK. The College, as it continues to promote action against tobacco, should encourage further research based on these documents, and in particular the BAT documents, which have to date received only limited attention⁷⁵.

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