Tobacco Industry Political Influence during the Implementation Phase of EU Legislation

Research conducted by an interdisciplinary group of researchers from the Universities of Maastricht and Aston has examined tobacco industry influence during the implementation phase of health policy. The findings highlight how tobacco industry interests exploit ambiguously worded legislation to weaken health policy outcomes and draw attention to the policy risks associated with government-industry interactions during policy implementation. The study underlines the importance of national governments taking a proactive role in stipulating technical specifications concerning the new Tobacco Product Directive (TPD) (2014/40/EU) and considering the implications of tobacco industry information carefully, even when such information may be provided in good faith.

Research Findings in Context

Health warnings on tobacco product packaging are amongst the most direct means of communicating smoking’s health risks. EU Member States are currently in the process of implementing new EU legislation (2014/40/EU), which requires large picture and text health warnings on tobacco packaging, into their national laws. The EU legislation reflects international developments in public health policy which have seen many countries introduce legislation requiring more prominent and effective health warnings in line with the World Health Organization Framework Convention on Tobacco Control (FCTC). The researchers looked at the Dutch government’s implementation of textual health warnings following an earlier TPD (2001/37/EC) with a view to exploring the policy risks associated with government-industry interactions in the implementation of current EU legislation.

The earlier Directive required cigarette packaging to contain a warning label covering 30% of the front of the package and 40% of the back of the package. The research focused on a seemingly minor
provision in the Directive concerning the positioning of a black border around the warning text aimed at safeguarding its prominence to smokers. The wording of the provision was ambiguous, permitting two different interpretations: one with the border being included in and the other with the border excluded from the prescribed surface percentages. Fifteen Member States, including the Netherlands, interpreted the provision to mean that the border should be included in the surface percentages; making the text warnings appreciably smaller than would have been the case if the border had been excluded (see Figure 1). As the first EU Member State to introduce the new warnings, the decision of the Dutch government provided a potential precedent for other Member States to follow.

Figure 1: actual Dutch health warning with border ‘included’ (left), approximation of Dutch health warning with border ‘excluded’ (right)

Key Findings

The study examines how industry actors sought to use the ambiguity in the legislation to shape the Dutch government’s decision. It identifies four techniques used to persuade health officials into choosing the industry’s preferred implementation option of including the border in the prescribed surface percentages of the health warnings.

- First, tobacco manufacturers’ associations sought to set the agenda for implementation by proactively preparing mock packages and work drawings and by starting preparations on packaging redesign early on. This technique was underpinned by efforts to control the pace of
negotiations, which centred on giving the Health Ministry short deadlines to respond to delivered technical specifications.

- Second, they endeavoured to facilitate acceptance of their interpretation by emphasising the importance of expediency and threatening to withdraw an earlier voluntary offer of cooperating with the Health Ministry’s suggested fast-track implementation of the labelling section of the TPD. This capitalised on public officials’ professional interest in moving forward quickly with public health measures.

- Third, they sought to preserve the essentially private nature of negotiations over implementation by seeking to discourage communication between the Dutch Health Ministry and the European Commission, when the Health Ministry expressed the need for advice. Industry actors did so by arguing that another policymaking venue (the European Court of Justice) had ultimate responsibility on this matter. Although technically correct, the industry’s reaction is consistent with insider political strategies that aim to “contain” negotiations in order to optimise control over outcomes. This approach was reinforced by efforts to portray the European Commission as having taken an opposing view to the Dutch Health Ministry at a Council Working Party meeting, even though the Commission’s statements applied to an earlier, abandoned version of the TPD proposal.

- Finally, tobacco manufacturers’ associations emphasised the additional compliance costs associated with contesting their interpretation of the TPD with a view to highlighting the litigation risks (to the state) of acting independently and the extra costs this might incur.

**Policy Implications**

The findings illustrate the difficulties that policymakers face in limiting industry interference in health policy by restricting government-industry interactions in accordance with FCTC Article 5.3, which aims to protect public health policy from commercial and other vested interests of the tobacco industry. Providing industry access to policymakers is often an unavoidable part of implementing health measures that require changes to product specifications; a process which is difficult to manage through legal instruments alone. This point is underlined by Recommendation 2.1 of the Guidelines for Implementation for Article 5.3 of the FCTC, which specifies that parties should interact with the tobacco industry “*only when and to the extent strictly necessary*” to enable them to effectively regulate the tobacco industry and tobacco products.” The risks of such interactions are intensified by the fact that the practical implications of what appear to be relatively technical considerations are not always apparent to policymakers. As Parties to the FCTC introduce restrictions on industry lobbying, the implementation phase is likely to become an increasingly
important administrative milieu for corporate political influence, carrying distinctive risks for policy formation due to the co-operative dynamic that may emerge.

**Methodology**

The researchers analysed Dutch government documents made publicly available via Freedom of Information Act requests which are online available in the Legacy Tobacco Documents Library (LTDL) (http://legacy.library.ucsf.edu/). The information found in these documents was set against information obtained from other documents from the LTDL, interviews with key informants and secondary data sources such as publicly available government documents, scientific literature, and news articles, obtained through Google searches, government websites, and LexisNexis. Interviews were conducted with key informants involved in tobacco related issues in the Netherlands during the period 2001-2002 and included tobacco industry representatives, Health Ministry officers, health organisation professionals and academic experts on health warnings.

**Contact the researchers**

Jessamina L.Y. Lie: CAPHRI, Maastricht University, Maastricht, the Netherlands  
Email: J.Lie@maastrichtuniversity.nl

Marc C. Willemsen: CAPHRI, Maastricht University, Maastricht, the Netherlands  
Email: marc.willemsen@maastrichtuniversity.nl

Nanne K. de Vries: CAPHRI, Maastricht University, Maastricht, the Netherlands  
Email: nanne.devries@maastrichtuniversity.nl

Gary Fooks: School of Languages and Social Sciences, Aston University, Birmingham, United Kingdom  
Email: g.fooks@aston.ac.uk

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