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## *Tobacco and the Law: Litigation as a Public Health Tool*

*Report on a WHO Seminar  
Skövde, Sweden, 2-4 June 1994*

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## Target 17

### Tobacco, alcohol and psychoactive drugs

By the year 2000, the health-damaging consumption of dependence-producing substances such as alcohol, tobacco and psychoactive drugs should have been significantly reduced in all Member States.

#### TOBACCO AND THE LAW: LITIGATION AS A PUBLIC HEALTH TOOL

The Fourth WHO Seminar for a Tobacco-free Europe was organized in Skövde, Sweden on 2-4 June, with the support of several Swedish authorities and organizations. It was attended by 70 people including representatives from 30 countries and 21 national and international organizations working in health. The purpose of the Seminar was to strengthen and promote the implementation of the WHO Action Plan for a Tobacco-free Europe. The Seminar focused on using tobacco control laws and litigation as public health tools. It provided a forum in which national civil servants, international scientists and advocates from leading international organizations could share their experience and ideas.

The Seminar showed that the use of litigation against tobacco is a method that can achieve great results and should be incorporated into the development of tobacco control. The use of litigation is complex and requires legal expertise, persistence, and financing. The challenge is to adapt the experience gained in different cases for use in other countries. The Seminar recommended the pooling of current experience in tobacco litigation to promote implementation of tobacco legislation and to defend the current achievements.

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## Introduction

The Fourth WHO Seminar for a Tobacco-Free Europe was held in Skövde, Sweden, on 2-4 June 1994. Previous seminars were held in Vienna (1993), Budapest (1992) and Copenhagen (1991). These international meetings are organized as part of the WHO *Action Plan for a Tobacco-Free Europe*. The plan was launched in Madrid in 1988 at the first European Conference on Tobacco Policy. The principal aim of this plan is to encourage international and national public health advocates to initiate projects to promote tobacco-free environments. The seminars help to coordinate an international public health response by bringing together national civil servants, international scientists and advocates from leading nongovernmental organizations.

The success achieved in improving international co-operation in this field is reflected in the range of participants attending the WHO seminars. At the 1994 Skövde meeting, 30 European states sent delegates. Also present at this year's seminar were representatives of 15 other organizations such as International Union against Cancer, International Union for Health Promotion and Education, BASP, and WHO collaborating centres and WHO staff (see Appendix).

The Fourth Seminar for a Tobacco-Free Europe gave an update on the implementation of the Action Plan for a Tobacco-Free Europe and provided opportunities to increase skills for improved programme results: alliance building, funding of tobacco control, mass media skills, and ideas for more effective World No-Tobacco days. Cooperation, coordination and the sharing of information and experience are crucial in working towards common goals in the promotion of nonsmoking.

Regional and local authorities can initiate tobacco control measures without waiting for national support, as the hosts of the conference demonstrated. Dr Kristina Pellmer, on behalf of Skaraborg County, and Dr Bengt Wramner of the City of Skövde described their success in reducing tobacco consumption and establishing smoke-free areas.

Particular focus of the Seminar was placed on using the law as a public health tool to combat tobacco. All developed countries have a variety of legislative controls on the tobacco trade. However, ineffective law enforcement presents a significant obstacle for policy implementation. While tobacco companies use their international networks and experience to deal with the increasing number of controls, there has been insufficient coordination among national authorities and law enforcement agencies. This is in spite of the wealth of experience across many countries of successfully implementing, defending and ensuring compliance with tobacco control legislation. The sharing of national experience in this area is crucial and gatherings such as this year's seminar will help to pool knowledge and pre-empt many of the problems encountered in this difficult area.

WHO has launched initiatives on litigation as a step in building international networks and sharing expertise in this field. Last year the WHO Regional Office for Europe initiated a "Tobacco Litigation" project to address the problems of enforcing tobacco control legislation and aid those involved in litigation by producing a book on litigation and creating an international network of lawyers.

## Update on the Action Plan for a Tobacco-free Europe

A combined approach to substance abuse was advocated by Mr Cees Goos, Coordinator at the Alcohol, Drugs and Tobacco Unit of the Regional Office. Similarities between substances lend themselves to integration, yet this approach is not widespread. WHO is promoting this new approach at the Regional Office where separate alcohol, drugs and tobacco programmes teamed up in 1993 and WHO Headquarters followed in May 1994. Mr Goos also noted that there are of course times when separate programmes for each substance are necessary.

Dr Tapani Piha described the progress of the Action Plan. Quoting comments made by a cigarette company official, he stated that even the tobacco industry recognizes the success of the tobacco control movement. *"The opposition is better organized these days. They select arguments and issues which are designed to be particularly difficult to handle by the industry."*

The World Health Organization has recommended legislation as an important method to promote nonsmoking. The tobacco industry has now been forced into a retreat in which legal means are the only remaining defence. Furthermore, traditional industry arguments - disputing evidence of health damage caused by tobacco products and claiming economic benefits of tobacco trade - are no longer effective.

The persuasive argument for the economic benefits of tobacco control should be promoted with continued vigour. Cigarette production is now highly automated and employs very few people. It therefore follows that if people can be persuaded to spend their cigarette money elsewhere, additional employment and economic activity could be created in the process. This is an argument that could have particular relevance to the countries of central and eastern Europe who are struggling to develop their own economies while coping with a growing market presence of the international tobacco industry.

Professor Witold Zatonski spoke of the particular need for action against the tobacco epidemic in central and eastern Europe. There are currently two tobacco wars in progress here, "one for markets, and one for health". The alarming statistics clearly illustrate the massive scale of the problem facing this part of Europe.

The global perspective on the tobacco epidemic was described by Mr Neil Collishaw from WHO Headquarters. As he pointed out, although progress is being made in the developed world in reducing tobacco consumption there has been little change in global consumption. This is because the epidemic is accelerating among developing countries as tobacco companies redirect their marketing strategies to these regions. However, WHO efforts in countries such as Mongolia have already led to total bans on tobacco advertising.

## Law and litigation

### Advocacy for legislation

The need for clear objectives, patience and persistence throughout all stages of a campaign for tobacco control legislation was emphasized by Mr Paul Nordgren. After a long struggle, a well-planned campaign strategy prevailed in Sweden. Selecting key arguments to be used throughout the campaign and delegating responsibility were essential elements of success.

The Swedish campaign resulted in a strong tobacco control legislation enacted in 1993-94, along the lines advocated by WHO.

Examples from the Czech Republic and Slovenia showed that when encountering opposition you should never give up, seek help, involve people and above all, motivate multisectoral support.

## Developing laws

A model tobacco control law was presented by Mr Neil Collishaw. Legislation can target a variety of areas: advertising, labelling and reporting, protection from involuntary exposure to tobacco smoke, sale to minors, and tobacco taxation. When developing *enforceable* legislation, it is necessary to be realistic and put yourself in your opponent's shoes: "how would *you* combat your own legislation?". The Finnish experience showed that the tobacco industry will exploit loopholes in the law. However, responses from health advocates brought about legislative amendments to the advertising ban to follow the changes in industry marketing techniques.

## Enforcing and defending the law

The Hungarian example illustrated that simply introducing laws is not sufficient; effective enforcement is most important. Mr Philippe Boucher of France stressed that pursuing *all* infringements of advertising bans through the courts is an effective and necessary, albeit lengthy, method of enforcement. Counteracting industry disinformation is another important strategy in winning the war against tobacco. Publicizing the facts, such as the success of the French advertising ban (90% of advertising expenditure was eliminated in the first year), is one such way.

Mr Robin Croft underscored the need for enforcement of the ban on sales to underage children. Previously controversial "sting" operations, where children are used to test a vendor's adherence to the law, were adopted by enforcement authorities in Liverpool after demonstrated efficacy in curtailing the illegal sale of fireworks to minors. This is the first example of large-scale enforcement of laws prohibiting tobacco sales to underage children. Other authorities in the United Kingdom and elsewhere are now exploring similar possibilities.

Polish and Italian successes illustrated that visible public support is also an essential enforcement tool. Finally, legal precedents from the West are a vital resource, particularly in eastern Europe where health advocates have little support in the courts and the media. The Dutch Foundation on Smoking and Health (StiVoRo) case in the Netherlands provides an excellent example of how the tobacco industry's traditional defence of disputing the medical evidence (concerning passive smoke) is no longer effective.

A panel consisting of Mr Luk Joosens, Dr Galina Tkachenko, Dr Matti Rajala, Dr Mateja Kozuh-Novak, and Mr Carl-Olof Ifvasson recognized that success in western courts is not being mirrored in central and eastern European countries where the whole issue of tobacco does not yet have the same impact in the courts or the media.

## Personal litigation and the tobacco industry

The tobacco industry has resorted to legal action to reduce the effectiveness of those organizations and individuals who are succeeding in nonsmoking promotion. Personal lawsuits filed by the industry have failed for a couple of reasons. Mr Stephen Woodward was

sued over his claims that passive smoking was dangerous. The Australian courts determined that an individual representing an organization could not be sued personally.

In 1989, Swedish authorities published a booklet on tobacco advertising. As a consequence, the authorities, Ms Margaretha Haglund and Mr Paul Nordgren were accused of showing impartiality and exceeding their role as civil servants. The Justice Ombudsman ruled, however, that the governmental authorities had a constitutional right to express their opinions about tobacco advertising and other public health issues.

If unable to avoid litigation, defend yourself vigorously, know the laws of your country well, do not exaggerate any claims you make about smoking or the tobacco industry, and use the publicity. This will attract support from others.

## The role of the European Union

Caroline Naett of BASP described the European Union (EU) decision making process and the variety of directives that relate to tobacco in areas such as labelling, tar levels, taxation, etc. The EU directives can be interpreted by member states, providing the possibility for strengthening legislation regarding tobacco. In practice, legal questions may only be solved case by case in the European Court of Justice. However, a clear contradiction still exists between the EU policy of subsidizing tobacco production, and its health campaigns aimed at reducing the incidence of smoking related illness.

## The working groups

In addition to traditional working groups, skills building workshops were organized by leading agencies in tobacco control. The skills building workshops are listed here, together with the organizers of each group in parentheses:

- How to get the message across: media training (Health Education Authority, London)
- Organizing World No Tobacco Days (WHO Headquarters)
- Tobacco control in Russian speaking countries (Sklodowska-Curie Cancer Center, Warsaw)
- Advocacy for tobacco control legislation (National Institute for Public Health, Stockholm)
- Tobacco litigation as a public health tool (WHO Regional Office for Europe)
- Tobacco taxation and smuggling (BASP/WHO Regional Office for Europe).

A summary of the main conclusions and recommendations made in the working groups and skills building workshops is included in the Appendix of this report.

## Conclusions and recommendations

The seminar played a crucial role in invigorating international efforts to promote nonsmoking. The format of presentations, working groups, and informal discussions allowed participants to learn more about many important aspects of tobacco control, to share experiences and expertise, and to build international networks. Central and eastern Europe was highlighted as a priority area for future action and appeal to the World Bank for support of tobacco control efforts was made on behalf of this region.

Law and litigation were emphasized as important tools in promoting public health. Before attempting to introduce new tobacco control legislation it is important to see how *existing* legislation could be used. Moreover, any law will only work effectively if it is enforced with appropriate sanctions. International cooperation is essential in developing tobacco control legislation.

In the field of tobacco litigation there is also an urgent need for more international cooperation and pooling of experience. With this aim, the seminar recommended setting up an international network of lawyers who work in this field, the production of a WHO publication on litigation, and researching the possibility of launching a series of test cases across Europe to raise awareness of using litigation to promote nonsmoking and smoke-free environments.

Labelling and packaging of tobacco products emerged as an essential measure in tobacco control. Further action is clearly needed in Europe and participants called for measures to pressure the European Union into strengthening its existing directive on the labelling of tobacco products and following the example set by Canada.

Continued work is also needed in central and eastern Europe to change public misconceptions of tobacco economics and increase awareness of health risks. To achieve this result, partnerships with industries other than tobacco could provide public health advocates with better marketing techniques, funding, and powerful name recognition. A decline in spending on tobacco products would in turn benefit other industries. Discussions on this topic led to the creation of an informal action committee to initiate a joint plan with the cosmetic industry, within a year, to promote smoking cessation for women in both eastern and western Europe.

World No-Tobacco Days were seen as a particularly successful way of promoting the nonsmoking message. Several recommendations were made to encourage future action and ensure the success of the 1995 World No-Tobacco Day with the theme "economics of tobacco control".

Other important recommendations included the necessity of reliable information about smoking prevalence, the development of a standard WHO questionnaire, and methods to enable the comparison of results. The Seminar emphasized the need to formulate an Action Plan to address women and tobacco issues.

The participants of the Seminar decided to send a letter to the President of the Russian Federation, Mr Boris Yeltsin, to urge him to give higher priority to health issues, particularly the increasing and overwhelming damage caused by tobacco products. Initiatives such as this one are due in large part to the efforts of Dr Tapani Piha, who is now returning to his home country. Well deserved applause was given to Dr Piha for his five years of commitment to the Action Plan. Finally, Professor Witold Zatonski welcomed the participants to the Fifth Seminar for a Tobacco-free Europe to be held in Warsaw in October 1995.

## Appendices

### Appendix 1. List of Selected Working Papers

EUR/ICP/TOH 034/2	Scope and purpose
EUR/ICP/TOH 034/3	Provisional agenda
EUR/ICP/TOH 034/4	Provisional programme

#### Action Plan for a Tobacco-free Europe

EUR/ICP/TOH 034/14	Alcohol, Drugs and Tobacco (Gees Coos)
EUR/ICP/TOH 034/6	Update on the Action Plan for a tobacco-free Europe 1992-1995 (Tapani Piha)
EUR/ICP/TOH 034/8	The Challenge of Central and Eastern Europe. Results of WHO tobacco or health missions.
EUR/ICP/TOH 034	The economics of a tobacco-free society. A report on a WHO Seminar, Vienna, 11-13 March 1993.
ICP/TOH 018/A	<i>Setting up a health promotion foundation. A practical Guide.</i>
ICP/HSC 644(T)	<i>Working for tobacco-free cities. A multi-city action plan.</i>
	The media and tobacco: getting the health message across. A WHO advisory kit and video 1994.

#### Tobacco litigation

	Tobacco litigation. A project plan proposal
	<i>Legislative action to combat the world tobacco epidemic. Second edition.</i> By Ruth Roemer. World Health Organization 1993.
EUR/ICP/TOH 034/9	A suggested model of a tobacco products control law (Neil E. Collishaw)
EUR/ICP/TOH 034/10	The lawsuit of the tobacco industry versus the Dutch Foundation on Smoking and Health (Roger de Jong and Hélène Cox)
EUR/ICP/TOH 034/11	1993 European Court of Justice case on the size of tobacco health warnings
EUR/ICP/TOH 034/12	Local ordinances on involuntary smoking in Bologna (Elizabeth Tamang)
EUR/ICP/TOH 034/13	Enforcing the advertising ban (Johan Bärlund and Antero Heloma)
	Irish tobacco legislation (Anna May Harkin)
	How to prevent sales to minors (Robin Croft)
	A proposal for a new tobacco control law in Iceland.
	Tobacco control in EU (Caroline Naett)

#### Miscellaneous

	Tobacco or Health in European countries: Country reports. 1993
	Tobacco or Health action by organizations: Reports 1993
	A set of overhead originals on the Action Plan for a Tobacco-free Europe and countries of central and eastern Europe
	A set of overhead originals on tobacco control legislation
	A letter to President Boris Yeltsin titled: "Please stop all forms of tobacco advertising and promotion now!"

## Appendix 2. List of main recommendations of working groups

### How to label tobacco products

#### Labelling is important because:

- It directly addresses the consumer.
- It is the most widespread non-smoking advertisement and the cheapest.
- It provides basic consumer information.
- It is a reflection of the concern for public health

#### We endorse the recommendations of the international agencies that warnings should:

- Cover 25% or more of each surface area (side and back).
- Rotate on both sides.
- Should be printed in black on a white background (framed).
- Regular revision and strengthening of warnings.
- No attribution.
- Minimum standard warning
- Indication of tar and nicotine and carbon monoxide content.

#### Monitoring of compliance (e.g. Ireland)

- Revision of health warnings by an independent commission.
- Designing warnings targeted at young people
- Rotating warnings with regard to content.

### How to get the medical and other health professions to spearhead the campaign

#### Barriers

- Lack of information
- Lack of training in health skills, promotion/education.
- Lack of initiative.
- Lack of motivation

#### International solutions

- Support from health /medical organisations.
- Provide information
- Building international networks.
- Make use of well established organisations.
- Make them counterparts in the campaign.
- Show the effects of interventions.
- Make them aware of their key conditions.

#### Proposals for the future

- Put smoking prevention/cessation on the curriculum for students.
- Encourage research.
- Build alliances
- Introduce into primary health care programme.

## How to advocate tobacco control in central and eastern Europe

### Existing problems in most countries

- Lack of comprehensive legislation
- No formulated tobacco policy
- No effective health education

### Proposals for the future

- Need to encourage tobacco control activists, national medical associations and voluntary groups.
- International assistance.
- Develop education systems, national smoking control and prevention programmes.
- Appeal to World Bank to support national tobacco control programmes.

## How to get others to help: building alliances

### Identify issues of common interest

- Best alliance combination is "win-win".

### Consider level of alliances

- International, governments and NGO's
- National, governments and NGO's
- Organisational, units and individuals
- Use networks to learn from experience of others

### Recognise potential difficulties

- Issues of ownership
- Issues of jealousy
- Consider position of "opponents" and those threatened by objectives

## How to get money: funding options for tobacco control

- Solutions must be national. International opportunities limited and unreliable.
- Health tax on tobacco products is the "ideal solution".
- Discourage tax on advertising which could encourage Governments to maintain advertising.
- Model examples include the Australian Health Foundations financial support from tobacco tax and Californian tobacco tax funding of entire tobacco control programme.
- If governments oppose a specific health tax on tobacco they should still be responsible for funding national tobacco control activities.
- Private sources generally insufficient to fund anti-tobacco activities nationally.

## How to organize the 1995 World No-Tobacco Day

- Begin planning now for 31 May 1995.
- WHO materials are a supplement to national activities not the centre-piece.
- Studies on the economics of tobacco (the theme for 1995) should be carried out and results reported publicly on World No-Tobacco Day, 1995.
- Each country should organise a series of promotional events throughout the year on the economics on tobacco control.
- Funds should be sought and found to conduct studies at the international level. Results of such studies should be announced on World No-Tobacco Day. Examples include study of the world-wide costs and benefits of tobacco production and use in co-operation with the World Bank.
- Encourage public health workers to develop activities *throughout* the remaining year up to May 1995.

## Tobacco litigation as a public health tool

- Important to look at how *existing* legislation can be use to control tobacco.
- Effective enforcement of laws and effective sanctions.
- Important to set up an international network of lawyers experienced in tobacco litigation.
- Comparative study of European legislation on product liability.
- Launching test cases throughout Europe to increase awareness of litigation possibilities.
- Co-ordination of international activities should be initiated at the Paris Conference in October 1994.
- Support for the WHO publication on litigation.

## Tobacco taxation and smuggling

- Tax stamps to clearly identify legal packages
- Warning labels should be appropriate to the intended destination.
- Clear marking of country of origin.
- Levy and enforce fines on street vendors.
- Research on possibilities of control of international shipments.
- Encourage police and customs to enforce tobacco trafficking as vigorously as those of the illicit drug trade.
- Harmonise prices,
  - tax systems should set *minimum* not maximum rates.
  - tax systems should make tobacco products less affordable.
  - taxes on tobacco products should increase yearly at higher rates than inflation.
  - a minimum level of taxation in real terms, not percentage, should be set.
  - a proportion of tobacco taxes should be allocated to campaigns against tobacco.
  - tobacco products should not be included in calculations of the consumer price index.

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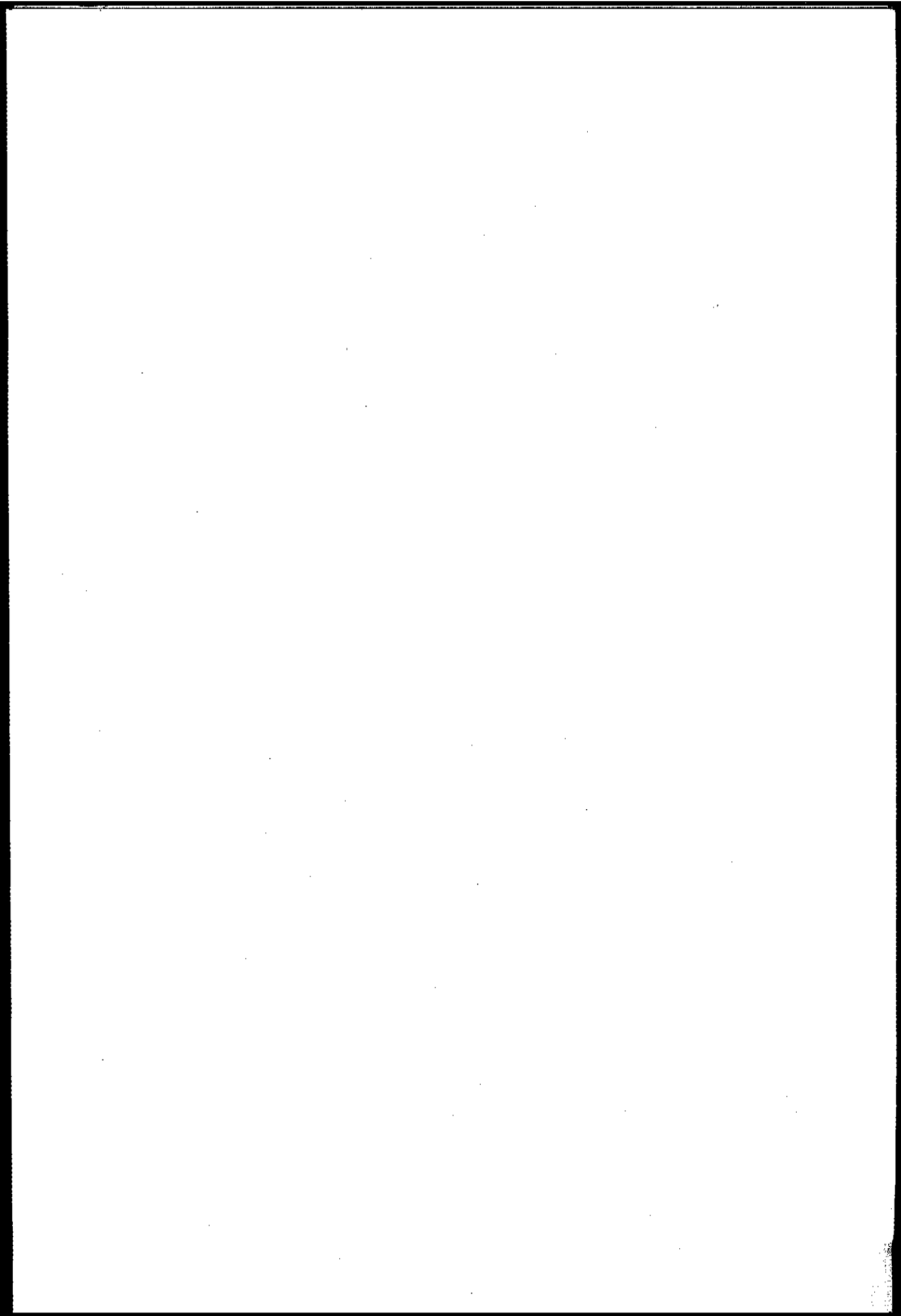
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## **Tobacco and the law**

The World Health Organization (WHO) has recommended legislation as an important method to promote nonsmoking and smoke-free environments. A recommended *tobacco control law* covers a variety of areas, such as tobacco advertising, the labelling and packaging of products, protection from involuntary exposure to tobacco smoke, sale to minors, organization of nonsmoking promotion, and tobacco taxation.

While all developed countries have a variety of legislative controls on the tobacco trade, effective law enforcement presents a significant challenge for policy implementation. Tobacco companies use their international networks to deal with the increasing number of laws, but there has been insufficient coordination between national health authorities and law enforcement agencies.

Tobacco control legislation in such areas as advertising and labelling can succeed if it is well thought out. Many countries have a wealth of experience with successfully implementing, defending and ensuring compliance with tobacco control legislation. International cooperation is essential to help countries, particularly those in central and eastern Europe, to draw up effective legislation.

## **Tobacco litigation**

The increasing evidence of the unique health damage caused by tobacco products has forced the tobacco industry to retreat to legal and procedural defence of its marketing opportunities. While the law is a useful tool for advocates of nonsmoking, it is also being used against them. The industry has sued health authorities and organizations for exceeding their competence to control the tobacco trade. The industry has also attempted to limit the freedom and duty of authorities to inform the population about the health effects of tobacco smoke.

The campaign to promote nonsmoking and smoke-free environments is now shifting to the courtroom, as the tobacco industry comes under increasing pressure. *Tobacco litigation* will be a major issue in all countries. The Fourth WHO Seminar for a Tobacco-free Europe recommended setting up an international network of lawyers who work in this field and the production of a WHO publication on litigation and law enforcement.