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HELSE- OG OMSORGSDEPARTEMENT**
The Royal Ministry of Health and Care Services

Below is the proposal of the Ministry of Health and Care Services to introduce a ban on the visible display of tobacco products at points of sale in Act No. 14 of 9 March 1973 relating to Prevention of the Harmful Effects of Tobacco (the Tobacco Act), as well as certain other amendments to the Act and Regulations No. 989 of 15 December 1995 on the prohibition of advertising of tobacco products etc. (the Tobacco Advertising Regulations).

1. BAN ON THE VISIBLE DISPLAY OF TOBACCO PRODUCTS AT POINTS OF SALE

1.1. Background

The Government's aim, as set forth in *Norway's National Strategy for Tobacco Control 2006-2010*, is to halve the daily smoking prevalence among young people by 2010, from 24% in 2005, and to halt the increase in the use of smokeless tobacco. As one of several specific actions the strategic plan mentions that a proposal should be considered to ban the visual display of tobacco products at retail outlets as a measure to make tobacco products less accessible.

The Directorate for Health and Social Affairs was tasked by the Ministry in 2006 to study such a proposal. The Directorate concluded that such a ban would have the effect of reducing the advertising function of tobacco packaging. In the Directorate's view, this would have a particularly beneficial preventive effect on young people who neither smoke, nor use smokeless tobacco, as well as on persons who are trying to quit/have quit smoking or using smokeless tobacco.

Iceland, Thailand and parts of Canada and Australia have introduced various degrees of bans on displaying tobacco products at points of sale. Such a ban is also being introduced in Ireland.

The health hazards of smoking are well-known. In Norway it is estimated that around 6,700 deaths each year are caused by smoking-related illness. In addition, approx. 350-550 persons die from passive smoking each year. Among women aged between 40 and 70 smoking was responsible for 26% of deaths, and the comparable figure for men was 40%. Tobacco use is the single factor that is preventable and has the biggest influence on the health of every one of us.

With regard to smokeless tobacco, the authorities have applied the precautionary principle pending sufficient documentation of its effects on health. In 2004 the WHO-affiliated International Agency for Research on Cancer (IARC) classified smokeless tobacco and tobacco-specific nitrosamines as human carcinogens. The same conclusion appeared in SCENIHR's preliminary report on the dangers to health of smokeless tobacco from June 2007. The number of smokeless tobacco users has risen sharply in recent years. The proportion of men aged 16-44 who use smokeless tobacco daily or occasionally is now approx. 26% (approx. 17% daily users). For now, few women use smokeless tobacco every day.

The Tobacco Act contains restrictions in the form of advertising bans, age limits, labelling requirements and smoking bans. However, there are few restrictions on the actual sale of tobacco products in Norway. Despite extensive tobacco-prevention measures in Norway since the beginning of the 1970s, the proportion of daily smokers in the 16-24 age group remains

relatively high, around 20%. In addition, around 17% of those in this age group smoke occasionally. Therefore, if the Government's goal to halve the smoking prevalence of young people by 2010 is to be reached, further measures are necessary. Restrictive measures that make tobacco products less accessible may help to prevent the children and young people of today becoming the next generation of adults addicted to tobacco.

It has been claimed that smoking is a paediatric disease owing to the fact that most smokers start smoking as teenagers, become addicted to nicotine and have problems beating their addictions as adults. This is supported by the fact that over half of smokers start smoking before turning eighteen.

Therefore, the Ministry proposes introducing a new ban on the visible display of tobacco products and smoking accessories at points of sale. Its chief aim is to reduce the prevalence of smoking and use of smokeless tobacco among children and young people in order to protect them from the extremely harmful effects of tobacco use. A reduction in the number of children and young people who start smoking and using smokeless tobacco will lead in the future to a further reduction in the adult prevalence of smoking and use of smokeless tobacco. This measure will also help to reduce the temptation for persons trying to quit or who have already quit smoking or using smokeless tobacco.

1.2. Purpose and rationale

Today, tobacco products are primarily sold in grocery stores, convenience stores and petrol stations. As a rule, these products are displayed prominently near the cash registers or checkout areas. There is no complete list of sales outlets for tobacco products. The number of sales outlets for tobacco in Norway is assumed to be between 15,000 and 18,000.

It is the view of the Directorate for Health and Social Affairs that today's prominent displaying of tobacco products at points of sale has a considerable advertising effect. The design, packaging and placement of tobacco products in sales outlets functions as an advertising medium. For that reason the Directorate believes that a ban on visible placement will be an appropriate and effective tobacco-prevention measure, particularly regarding young people.

Studies have shown that adolescent smoking is affected by presentations of how common tobacco use is. The widespread availability of sales outlets of tobacco products, as well as the tobacco products' conspicuous placement near the cash registers, contributes to the notion among children and adolescents that tobacco use is less dangerous and more common than it is in reality.

Earlier secret tobacco industry documents make clear that the industry uses packaging as part of its marketing to various consumer categories. Careful studies are done of possible package designs to ensure that they communicate a message of reduced risk, quality or taste, for example.

In its report the Directorate for Health and Social Affairs refers to the fact that mandating neutral tobacco packaging was one of the measures considered in the literature review *En gjennomgang av forskningslitteraturen om tiltak for å redusere røyking blant ungdom (A review of research literature on measures to reduce smoking among adolescents)*, IS-1037, Lund and Rise, 2002. The Directorate believes that a ban on the visible display of tobacco products at points of sale could have some of the same effect as mandating neutral tobacco packaging. The effect of both of these measures would be to reduce the advertising function of tobacco packaging.

In Iceland, the visible display of tobacco products at points of sale was banned in 2001. In a decision of 6 April 2006, the Supreme Court of Iceland ruled that the same principles apply for tobacco products as for other products displayed at a point of sale, namely that such a display is an implicit statement to customers that the product is available and at the same time an implicit encouragement to buy it. The court concluded further that even if there might be grounds to introduce restrictions on displaying tobacco products in places where other products were also for sale, this did not apply to speciality shops. The reason was that customers of speciality shops seek out these shops precisely to obtain information about tobacco products before purchasing them.

In March 2002 the Canadian province of Saskatchewan introduced a ban on the visible display of tobacco products in places accessible to minors. Price placards were also covered by the ban. Although the legislation was subject to legal challenges by the tobacco industry, including contentions that the ban was a violation of their freedom of expression, the courts ruled against the industry.

In Ireland, too, the government was sued by the tobacco industry in 2004 for passing laws restricting *inter alia* the display of tobacco products in retail outlets. However, the industry chose to withdraw the suit at the end of January 2007. At the end of 2006 Irish authorities published a research report on the relationship between children or young people and tobacco. The report showed that children are more readily influenced than adults by tobacco advertising, including at retail outlets.

1.3. The chief content of the proposal in detail

The Ministry proposes adding a new provision to the Tobacco Act banning the visible display of tobacco products at points of sale (new Section 4). Although all types of tobacco products are covered, tobacconist shops are exempted from the ban. Tobacconist shops are retail outlets that primarily sell tobacco products and smoking accessories. There are currently very few such businesses in Norway.

Information regarding selection and price will continue to be available in the form of a neutrally designed price list at the point of sale. This is specified in the new Section 4 third paragraph.

Smoking accessories will also be covered by the ban. Considered to be smoking accessories are e.g. cigarette papers, cigar humidors, ashtrays, cigarette cutters, holders, cigarette rollers and hookahs (shisa or water pipes). In the same way as displays of actual tobacco products, display of such products may encourage people to purchase tobacco.

As a consequence of the new ban on visible display the current exemptions in Section 8 (5) and Section 9 second paragraph of the Tobacco Advertising Regulations need to be repealed. Furthermore, the Ministry proposes that the current prohibition of sales from vending machines in Section 5 of the Act be amended to make it clear that the ban only applies to self-service vending machines, i.e. vending machines that can be operated without the assistance of staff on the premises (new Section 7). Vending machines operated by cards purchased at the cash register or checkout for dispensing tobacco products to consumers are not covered by the ban. The new provision also makes it clear that the vending machine cards must have a neutral appearance (new Section 7 second paragraph).

The practical consequence of the ban is that retail outlets will have to remove or cover tobacco products to render them invisible to customers. This can be done by placing the tobacco products under the counter, in closed containers above the counter, in closed cabinets or drawers or behind sliding doors, shutters or curtains that are closed.

1.4. Compliance monitoring and sanctions

Currently it is the Directorate for Health and Social Affairs which monitors compliance with the advertising ban. For monitoring compliance with the new ban on visible display of tobacco products at points of sale, however, on-site inspection of each sales outlet will be the most practical means of control. The Ministry is currently preparing a report on the monitoring of compliance with the ban on the sale of tobacco product to persons under the age of 18. As the Ministry believes that these compliance-monitoring issues should be viewed together, the Ministry will return to this matter. The Ministry intends to bolster its compliance-monitoring efforts, but proposes for the time being that the Directorate be given responsibility also for monitoring compliance with the ban on the visible display of tobacco products at points of sale.

The Directorate is authorized to order corrective actions and to impose coercive fines if the advertising ban in Section 2 of the Tobacco Act or the labelling provisions of Section 3 of the Act are contravened. For that reason the most appropriate solution with regard to the question of sanctions appears to be to broaden Section 8 of the Tobacco Act also to include contraventions of the ban on the visual display of tobacco products at points of sale.

1.5. Financial consequences

For the retail outlets the proposal may mean some minor non-recurring expenses connected with a new placement of tobacco products in the shops. Most retail outlets will be able to cover products or install shelves, cages, sliding doors, etc., easily so that the products are no longer visible to consumers. However, these expenses will vary considerably depending on the size of the retail outlet and its system for selling tobacco. Some grocery chains have introduced vending machines for the sale of products including tobacco. For these outlets the amendments to the Act will result in minimal or no costs.

No detailed regulation is being proposed of how the tobacco products are to be placed at points of sale. It will be up to the retail outlet itself to organize their placement in an appropriate manner, so long as the placement of the tobacco products meets the criteria of being invisible to consumers.

In the Ministry's view, a transitional period of between three to six months will give the retail industry sufficient time to comply with the new ban.

No appreciable decline is expected in the sale of tobacco products in the short run. In the longer term, however, it is expected that the percentage of minors who start smoking or using smokeless tobacco will be reduced. However, the loss in sales for the industry will be counterbalanced by the resultant health gains, for individuals and for society as a whole. A reduction in sales of tobacco products will be profitable for the economy as a whole.

2. CERTAIN OTHER AMENDMENTS TO THE ACT AND REGULATIONS

2.1. Advertising of smoking accessories

Section 2 of the Tobacco Act begins as follows: *“All forms of advertising of tobacco products are prohibited. The same applies to pipes, cigarette paper and cigarette rollers”*.

The Directorate for Health and Social Affairs constantly receives enquiries from members of the public who ask whether the ban affects products other than those specifically mentioned in Section 2 second sentence. As the Act is currently worded, it is difficult to understand why advertising for the products pipes, cigarette paper and cigarette rollers is covered by the tobacco advertising ban, while products employed just as much in connection with the use of tobacco products are not covered.

Section 9 second paragraph of the Tobacco Advertising Regulations, which contains an exemption from the advertising ban for displays in shops, covers other smoking accessories such as holders and ashtrays. To avoid doubts on interpretation, the Ministry proposes that Section 2 of the Tobacco Act be broadened to include other smoking accessories as well. This will mean that all products primarily intended to be used with tobacco products are covered by the advertising ban. Boxes of matches and lighters will not be covered by the ban.

2.2. Prohibition against the free distribution of tobacco products to consumers

Section 2 fifth paragraph of the Tobacco Act states: *“All forms of free distribution of tobacco products are prohibited”*.

The Directorate for Health and Social Affairs has dealt with several cases where the tobacco industry has distributed tobacco products free to its own employees, retired employees, soldiers, employees in the food and beverage service industry, etc. In the Ministry’s view there is no doubt that free distribution of tobacco products may serve to increase the prevalence of tobacco-related harm to health. Distribution of this sort may lead to an increase in the number of smokers and to higher daily use. This arrangement may also affect the employees’ families, friends and other who may indirectly obtain access to cigarettes. This arrangement appears to be especially worrying with regard to younger workers who have not started to smoke and/or for whom smoking has not yet become an established habit. Arrangements like this may also make it harder for smokers to quit or reduce their use.

For that reason the Ministry proposes that the current ban on free distribution in Section 2 fifth paragraph be clarified so that it covers distribution of tobacco products to current and retired employees as well as making tobacco products available at no charge for use on the premises of the manufacturer. The current prohibition in Section 2 fifth paragraph is to be moved to a separate provision (new Section 5) and the wording clarified.

2.3. Prohibition against special discounts

In continuation of the proposal above to clarify the ban on distributing tobacco products, in the Ministry’s view the use of special discounts on the sale of tobacco products should also be prohibited.

The Directorate for Health and Social Affairs has learned that tobacco products are sold at reduced prices to employees of some of the larger grocery chains. Given the serious harm to health connected with the use of tobacco, this practice is, in the Ministry's view, quite undesirable. The purpose of the Tobacco Act is to limit the harm to health caused by the use of tobacco. Research shows that adolescents are particularly price-sensitive and can easily become addicted to nicotine. In the view of the Directorate it is particularly unwelcome if the sale of tobacco products to employees at reduced prices results in tobacco products becoming even more accessible to young persons who work for the large grocery/convenience store chains.

The Directorate has also learned that tobacco products have been used as loss-leaders by some grocery chains. According to the definition of advertising in Section 4 no. 2 of the Tobacco Advertising Regulations, low-price advertising is to be regarded as unlawful tobacco advertising. However, as long as the lower price is not advertised, there is no ban on using special discounts on the sale of tobacco products. By way of comparison, the Alcohol Act contains a comparable provision prohibiting special discounts on the sale of alcoholic beverages. If a ban on the use of special discounts on the sale of tobacco products is not introduced at the same time as the ban on distribution of tobacco products is clarified, the ban on distribution can easily be subverted by offering tobacco products at a token price.

In view of this the Ministry proposes adding a new provision to the Tobacco Act that bans the use of special discounts on sales of tobacco products to consumers (new Section 6).