

Smoke-free policy in Poland on the example of the implementation into national law of the European Parliament and Council Directive 2014/40 /EU of 3 April 2014 on the approximation of laws, regulations and administrative provisions of the Member States concerning the production, presentation and sale of tobacco and related products, and repealing Directive 2001/37/WE

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Poland in the 1980s was a country with the highest incidence of smoking tobacco products in Europe – 42%, therefore it became necessary to take urgent and effective measures to reduce the undoubtedly harmful to health smoking of tobacco products among millions of Poles. These actions over the past 20 years have brought huge success, as witnessed by a significant decline in smoking in Poland to 24% in 2015.

One of the important factors affecting the incidence of smoking among men and women all age groups, including children and youths, was the law of 1997 on protection of health against the consequences of tobacco use and tobacco products (*Journal of Laws*, Item 298, 2015), introducing, among others, a total ban on tobacco advertising. The development of this Act was a milestone for Polish smoke-free policies.

Another very important success was the amendment of the said Act, which took place in April 2010. This introduced a number of smoking bans, among others, in hospitals and other medical entities, organizational units within the education system, indoor plants work in means of public passenger transport, public transport stops, playgrounds and premises for catering-entertainment (outside the designated, separate places). With this solution, since 2010 Poland has significantly decreased exposure to tobacco smoke in public places. The largest — more than twice — the decrease in exposure was observed in the premises for catering-entertainment (from 36% to 14%).

Notwithstanding the foregoing, it should be noted, however, that in Poland smoking is still one of the main causes of death. Estimates are about 67 thousand cases per year. In addition, 33% of all deaths in men aged 35 years occur in connection with smoking, with 58% of deaths resulting from cancer caused by smoking tobacco. Lung cancer is the leading cause of death among cancers in both men and women in Poland. In addition, 94% of lung cancer cases among men and 74% among women are the result of smoking

tobacco. This means that every year Poland more than 15 thousand men and more than 5.5 thousand women die of cancer as a result related only from tobacco.

Given the above, the Ministry of Health with the utmost determination appeals for the implementation of legislation to protect citizens, including primarily non-smokers and children, from toxic tobacco smoke. In addition, the Ministry of Health strongly supports the position of the International Agency for Research on Cancer of the World Health Organization (International Agency for Research on Cancer), which provides that every dose of tobacco smoke is harmful.¹

In recent years in Poland, there have been new threats to public health in the form of electronic cigarettes. They are particularly dangerous for young people, because in Poland this kind of product is a real threat that causes the addiction of thousands of young people to a toxic substance – nicotine.

The results of available research clearly indicate that in Poland the percentage of people aged 15–19 who have ever attempted to use electronic cigarettes has increased significantly from 16.8% in 2010 to 62.1% in 2014. In addition, the percentage of young people currently using e-cigarettes has increased from 5.5% in 2010 to 29.9% in 2014; in addition, there are also the results of studies showing that in Poland the percentage of concurrent smoking of electronic cigarettes and regular cigarettes has increased from 3.6% in 2010 to 21.8% in 2014.

Alarming example which confirms the vast scale of this phenomenon are the results of research carried out by the Medical University of Lodz, indicating that more than 62% of young people aged 16 are currently using or have ever tried this type of product.

1. *Global Epidemic of Smoking Tobacco* – WHO report 2008. *The MPOWER package: Summary Report*, World Health Organization.

Dissemination of advertising. According to data from the report of a national survey on attitudes towards tobacco, carried out by TNS Poland for the Chief Sanitary Inspectorate in 2015, despite the current ban on tobacco advertising in Poland, every third smoker of tobacco products encounters the promotion and marketing cigarettes. This is due to the fact that the provisions on the prohibition of the advertising of tobacco products in Poland were widely violated by traders, by placing so-called 'Information about tobacco products' as a method of advertising these products at any point of sale of tobacco products. Therefore, only a total ban on advertising and promotion of tobacco products can cause a decrease in smoking, and protect people – especially the youth – against the aggressive marketing strategies of the tobacco industry. On the initiative of the Ministry of Health, as part of activities related to the implementation into national law, the provisions of the Directive of the European Parliament and of the Council 2014/40 / EU of 3 April 2014 were implemented. On the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products, and repealing Directive 2001/37 / EC (Acts office. EU L 127z 29/04/2014 p. 1), the decision was taken to delete the provisions of the Act on the protection of health against the consequences of tobacco use, and tobacco traders mentioned definition of 'information on tobacco products'. This action caused a backlash tobacco lobby which suggested that the introduction of a total ban on advertising tobacco products at points of sale contribute to the growth of the so-called 'Grey Zone'. It is explicitly noted that the Ministry of Health is of the opinion that the size of the 'grey economy' is not conditioned by attractive packaging or promotional materials, more interesting tobacco, but only by the price of these kinds of illegal products and their availability on the market.

The marketing efforts of tobacco companies and companies producing goods which are related to electronic cigarettes, produce adverse health effects which definitely hinder the activities carried out within the framework of prevention related to the promotion of reducing nicotine inhalation. Ubiquitous advertising at points of sale make such products become something which is normal, the same as all other consumer goods, which is unacceptable from the point of view of consumer health protection.

With this in mind, the consumer's right to information about tobacco products cannot be a value greater than the action to protect their health from toxic tobacco smoke.

Prohibition of smoking e-cigarettes. Given the high level of health protection, especially in relation to young people, it was also necessary to develop regulations to counter the sale of tobacco and related products – electronic cigarettes, to children and young people by adopting appropriate measures establishing and enforcing appropriate age restrictions. The consequence of these changes is also to amend, i.e. reduce the number of places where electronic cigarettes can be smoked; in particular, places where there are young people: schools and universities, or children's playgrounds, similar to the existing smoking bans, in accordance with Article 5 of the current law on the protection of health against the consequences of tobacco use and tobacco.

It is worth noting that Poland was among the fourteen Member States of the European Union which, on the occasion

of the implementation of the above-mentioned new tobacco directive, introduced objective non-smoking electronic cigarettes, similar to the existing bans on smoking tobacco products, thereby confirming its consistency in the activities related to the limitation of exposure of millions of Poles of the damaging effects of all goods directly linked to tobacco.

Framework Convention on the Reduction of Tobacco Control (FCTC). On 14 December 2006, Poland, bound by the provisions of the Framework Convention of the World Health Organization, constrained Tobacco Control (FCTC). It should be emphasized that the FCTC as an international agreement has been ratified by the law of 16 January 2007. A binding enforcement of this was signed in Geneva on 21 May 2003 (*Journal of Laws*, No. 74, Item 488, 2007), and a generally applicable law in accordance with Article. 87.1 of the Constitution.

The Ministry of Health, in principled approaches to the provisions of said Convention, in particular with regard to the provisions of Article 5, section 3, providing that: 'In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial interests and other vested interests of the tobacco industry, in accordance with national law.' Furthermore, in accordance with the guidelines of the World Health Organization, one of the guiding principles that should guide the States Parties to the Convention it is that there is a fundamental restorative to reconcile the conflict between the interests of the tobacco industry, and the interests of public health policy. It should also be noted that the relationship with government entities producing electronic cigarettes should be subject to the same restrictions as government relations with the tobacco industry, i.e., in accordance with the provisions of the said Convention.

During the proceedings, amendments to the law, tobacco lobby, and related products (electronic cigarettes) were discussed and repeated attempts were made to put pressure on the Ministry of Health to push through favourable regulations, stressing readiness to cooperate closely in work on the development of new provisions of the Act. It was suggested that the Ministry of Health promotes electronic cigarettes as an effective method of giving up smoking.

Another example of trying to block or significantly slow down work related to the introduction of restrictive legislation on tobacco products and electronic cigarettes, were a number of detailed comments to the bill (about 900 detailed comments, 35 detailed positions, different kinds of associations, companies, trade unions and companies associated with the tobacco industry). It is worth noting that the great majority of the comments concerned the regulations prohibiting smoking electronic cigarettes in public places, and the ban on their sale at a distance (e.g. via the Internet).

Bearing in mind that Poland is a party to the above-mentioned Convention, the only document that should be taken into consideration when developing national legislative solutions for products associated with tobacco products, are the guidelines of the World Health Organization relating to the regulation of the Electronic System for Delivering Nicotine, which includes electronic cigarettes. This document pays particular attention to Member States and when drafting national legislation on appropriate regulation of this kind of products, issues relating to, among others, the protection

of non-smokers and the young, taken into consideration to minimize the potential health risks associated with exposure to users and non-smokers.

In addition, it is worth noting that on 7–12 November 2016 there will take place in New Delhi the 7th Meeting of the Parties of the Framework Convention of the World Health Organization (WHO Framework Convention on Tobacco Control-FCTC). During this meeting, the WHO guidelines for regulating electronic cigarettes will be announced, and will undoubtedly serve as an effective argument for creating further restrictive national rules in this area.

Distance sales. Another issue that has been settled in Poland, on the occasion of the implementation of the said directive, are the provisions prohibiting sales at a distance, including cross-border sales of tobacco products and electronic cigarettes. The adopted directive is consistent with the principle of prudence regarding the use of a toxic, poisonous substance – nicotine. Moreover, such a solution will introduce significant limitations in the availability of electronic cigarettes and liquids filling minors. With this in mind, all sorts of proposals involving the registration of those making mail-order sales and the introduction of devices that verify the age of the customer, do not deserve acceptance because of the illusory control and inefficiency in reducing the possibility to purchase by unauthorized persons.

Through the implementation of the provisions concerning the ban on distance selling, Poland was also in the group of fourteen European Union Member States which have decided to introduce this type of solution. Undoubtedly, this is an example of the proper clarification of Member States' cooperation in the field of the protection of the health of young Europeans.

Adjustments resulting from the implementation of the directive. After more than two years work on the Act Amending the Act on the protection of health against the consequences of tobacco use and tobacco, it was signed on 11 August 2016 by the President of the Republic of Poland, and officially published on 24 August 2016.

The adopted regulations are another step towards the realization of an effective national smoke-free policy enabling Poland to be a country completely free from tobacco smoke. Finland is an example of a country which has taken effective actions in reducing nicotine addiction. It is the first country in the world which has announced that it will be completely free of tobacco in 2030 – the so-called 'Endgame'. Finland provides for the reduction of the proportion of smokers from the current 16% to a maximum of 5% in 2030.

The most important new regulations arising directly from the provisions of the Directive as implemented are:

- prohibiting the marketing of cigarettes with a characteristic flavour (except for menthol cigarettes, established in the Directive as a 6-year transition period, i.e. 2020);
- introduction of the obligation to affix to tobacco packaging health warnings occupying 65% of the external area of the package;
- obliging manufacturers or importers of tobacco products to provide a list of all ingredients used in the manufacture of tobacco products (the obligation applies to presenting a list of all additives used in a given year);
- increase reporting requirements for manufacturers and importers of tobacco products regarding additives

contained in the priority list, which will be developed by the European Commission;

- labeling for unit packaging of tobacco products to record the movements of these packages, so that the movement and origin of tobacco products can be tracked;
- mandating notification by manufacturers or importers (at the latest six months prior to the intended introduction to the national market) data on novel tobacco products and electronic cigarettes or containers;
- a ban on advertising and promotion of e-cigarettes or containers;
- the introduction of appropriate technical requirements for manufacturers and importers of electronic cigarettes or containers;
- a ban on cross-border sales of tobacco products.
- When working on the amendment of the law, Poland introduced the following regulations directly unrelated to the implemented provisions of the Directive:
 - ban on the sale of electronic cigarettes to adolescents under 18 years of age;
 - introduction of text warnings at the locations of sales on the prohibition of the sale of electronic cigarettes to persons under 18 years of age;
 - reduction in the smoking of electronic cigarette analogous to the current ban on smoking tobacco in public places;
 - a ban the sale of electronic cigarettes or containers to persons engaged in medical activities, schools and educational institutions, sports and recreational facilities, and vending machines;
 - a ban on cross-border sales of electronic cigarettes or containers at a distance (e.g. via the Internet).

It should also be noted that all proposed new regulations in the draft amendment to the Law amending the Law on the Protection of Health against the use of tobacco and tobacco products, including regulations on the prohibition of smoking electronic cigarettes in public places, have been unequivocally supported by the Members of the Public Health Committee of the Polish Academy of Sciences, the Office of the World Health Organization in Poland, members of the Board of the Polish Society of Cardio-Thoracic Surgeons, and representatives of the Council for Public Health.

Proposal for further action. Poland, through amending the above-mentioned anti-smoking law, has begun action to achieve the total elimination of smoking, both in relation to ordinary tobacco products and innovative tobacco products, as well as electronic cigarettes. All kinds of activities related to the reduction of exposure to tobacco smoke is one of the most important elements of an effective national health policy. Therefore, you must support both preventive as well as all legal solutions to help in the fight with the wider phenomenon of addiction.

It is worth noting that there is 'healthier' addiction because everyone's type results in a significant risk to human health (both mental and physical). It should be noted that there is and will be 'healthier' tobacco related products. With this in mind, do not promote any types of tobacco or related products, including electronic cigarettes, in the context of their being allegedly less harmful to health. Prevention of taking this kind of action will help in the perception of Poland as a country which submits to the interests of several companies over concern for the health and lives of millions of Poles.

The next step in the fight against the smoking of tobacco products in Poland should also be the introduction of plain packaging of tobacco products. It is worth noting that this kind of solution are being chosen by more and more European countries, i.e., France, UK, Ireland, Belgium, The Netherlands, Hungary and Slovenia. Moreover, on 4 May 2016, the European Court of Justice made it clear that Member States may maintain or establish additional requirements for aspects of the packaging of tobacco products unless they have been harmonized by the Directive tobacco.

Available test results clearly show that the effectiveness of pictorial warnings is much greater when placing them on simple, standardized packaging. This type of solution prevents the misleading of consumers because they do not receive conflicting messages arising from a positive brand image which is contrary to the health warning.

You should also consider further detailed arrangements for innovative tobacco products and electronic cigarettes, in particular with respect to additives with a characteristic aroma, because under the said judgment of the Court of Justice of the European Union, the main objective of such additives is to make the product attractive for consumers. With this in mind, reducing their attractiveness can contribute to reducing smoking and addiction in both new customers as well as consumers solids.

To sum up, it should be stressed again that the only appropriate action aimed at the public interest is to promote the cessation of smoking, as well as not smoking regular cigarettes, innovative tobacco products and products associated with electronic cigarettes.