Joint annual meeting SSC/SSCS-SSP 2016
Lausanne, 16 June 2016

Public health perspective of the WHO Framework Convention and the proposed new tobacco law

Pascal Diethelm
President, OxyRomandie
“Of the 57 million global deaths in 2008, 36 million, or 63%, were due to NCDs, principally cardiovascular diseases, diabetes, cancers and chronic respiratory diseases.”
Most NCDs are preventable

“A large percentage of NCDs are preventable through the reduction of their four main behavioural risk factors: tobacco use, physical inactivity, harmful use of alcohol and unhealthy diet.”
Tobacco is a main risk factor for NCDs

“**Tobacco:** Almost 6 million people die from tobacco use each year, both from direct tobacco use and second-hand smoke. ... Smoking is estimated to cause about 71% of lung cancer, 42% of chronic respiratory disease and nearly 10% of cardiovascular disease.”
Tobacco use: a risk factor for all major NCDs

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<th>Tobacco Use</th>
<th>Unhealthy diets</th>
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Political Declaration of the High-level Meeting of the General Assembly on the Prevention and Control of Non-communicable Diseases

We, Heads of State and Government and representatives of States and Governments, assembled at the United Nations from 19 to 20 September 2011, to address the prevention and control of non-communicable diseases worldwide, with a particular focus on developmental and other challenges and social and economic impacts, particularly for developing countries,

1. Acknowledge that the global burden and threat of non-communicable diseases constitutes one of the major challenges for development in the twenty-first century, which undermines social and economic development throughout the world, and threatens the achievement of internationally agreed development goals;

34. Recognize that prevention must be the cornerstone of the global response to non-communicable diseases;

35. Recognize also the critical importance of reducing the level of exposure of individuals and populations to the common modifiable risk factors for non-communicable diseases, namely, tobacco use, unhealthy diet, physical inactivity, and the harmful use of alcohol, and their determinants, while at the same time strengthening the capacity of individuals and populations to make healthier choices and follow lifestyle patterns that foster good health;

38. Recognize the fundamental conflict of interest between the tobacco industry and public health;
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34. Recognize that prevention must be the cornerstone of the global response to non-communicable diseases and that no progress can be achieved unless effective strategies are put in place to stem the tide of exposure of people to risk factors for non-communicable diseases, as well as the impact of diet, physical activity and tobacco use.

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In May 2013, the World Health Assembly adopts the WHO Global NCD Action Plan.

**Overall Target:** A 25% relative reduction in risk of premature mortality from cardiovascular diseases, cancer, diabetes, or chronic respiratory diseases by 2025.
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NCD Action Plan

8 Global Targets by 2025

- **Tobacco Use**: 30% reduction
- **Physical Inactivity**: 10% reduction
- **Raised Blood Pressure**: 25% reduction
- **Diabetes/Obesity**: 0% increase
- **Harmful Use of Alcohol**: 10% reduction
- **Salt/Sodium Intake**: 30% reduction
- **Essential Medicines and Basic Technologies**: 80% availability
- **Prevent Heart Attack and Stroke**: 50% of eligible people receiving drug therapy and counselling.
NCD Action Plan

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- **80% availability of essential medicines and basic technologies to treat CVD and other NCDs**
- **50% of eligible people receiving drug therapy and counseling to prevent heart attack and stroke**
OBJECTIVE 3

TOBACCO USE

Implement WHO FCTC (see paragraph 36). Parties to the WHO FCTC are required to implement all obligations under the treaty in full; all Member States that are not Parties are encouraged to look to the WHO FCTC as the foundational instrument in global tobacco control.

Reduce affordability of tobacco products by increasing tobacco excise taxes

Create by law completely smoke-free environments in all indoor workplaces, public places and public transport

Warn people of the dangers of tobacco and tobacco smoke through effective health warnings and mass media campaigns

Ban all forms of tobacco advertising, promotion and sponsorship
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May 2003 - The WHA adopts the Framework Convention for Tobacco Control
Framework Convention on Tobacco Control (FCTC)

First international treaty negotiated under WHO

Objective:

“To protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.”
The WHO Framework Convention

The WHO/FCTC is the most rapidly-embraced international treaty in UN history.
The WHO Framework Convention

Number of Parties: 180
Over 90% of the world’s population is covered

FCTC Eurasia Map:
In green: Countries which have ratified the WHO/FCTC
In yellow: Countries which have not ratified
The WHO Framework Convention

- Articles 3-5: establish the objective, guiding principles and general obligations engendered by the treaty
- Articles 6-14: demand-side reduction measures
- Articles 15-17: supply-side reduction measures
- Article 18: protection of the environment
- Article 19: liability
- Articles 20-22: cooperation and communication
The WHO Framework Convention

Adopted guidelines

• Article 5.3 - Protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry
• Article 6 - Price and tax measures to reduce the demand for tobacco
• Article 8 - Protection from exposure to tobacco smoke
• Article 9 and 10 - Regulation of the contents of tobacco products and regulation of tobacco product disclosures
• Article 11 - Packaging and labelling of tobacco products
• Article 12 - Education, communication, training and public awareness
• Article 13 - Tobacco advertising, promotion and sponsorship
• Article 14 - Demand reduction measures concerning tobacco dependence and cessation
Article 13 - Tobacco advertising, promotion and sponsorship

1. Parties recognize that a comprehensive ban on advertising, promotion and sponsorship would reduce the consumption of tobacco products.

2. Each Party shall, in accordance with its constitution or constitutional principles, undertake a comprehensive ban of all tobacco advertising, promotion and sponsorship. (…)
The WHO Framework Convention

Guidelines for implementation of 13
(Tobacco advertising, promotion and sponsorship)

3. The following principles apply:
3. The following principles apply:

(a) It is well documented that tobacco advertising, promotion and sponsorship increase tobacco use and that comprehensive bans on tobacco advertising, promotion.
3. The following principles apply:

(b) An effective ban on tobacco advertising, promotion and sponsorship should ... be comprehensive and applicable to all tobacco advertising, promotion and sponsorship.
3. The following principles apply: (c) … a comprehensive ban on all tobacco advertising, promotion and sponsorship applies to all forms of commercial communication, recommendation or action and all forms of contribution to any event, activity or individual with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.
The case of Switzerland
Sadly, Switzerland is the black sheep of tobacco control for obvious reasons…
Switzerland is a global sanctuary for the three major tobacco multinationals
Switzerland pays a high public health price for its “privileged” relationship with the tobacco industry.

In Switzerland, smoking reduces considerably the number of years of life without disability.

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Source: Défi addictions – Fondements d’une approche durable de la politique des addictions en Suisse, Berne, 2010
Switzerland pays a high public health price for its “privileged” relationship with the tobacco industry

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Source: Défi addictions – Fondements d’une approche durable de la politique des addictions en Suisse, Berne, 2010
Switzerland pays a high public health price for its “privileged” relationship with the tobacco industry.

Tobacco mortality and morbidity are high in Switzerland.

**Mortality:**
- 9’500 deaths/year
- 26 deaths/day
- 15% of total deaths

**Morbidity:**
- 300’000+ persons with diseases linked to tobacco

(Based on CDC estimate – probably a gross underestimate considering that 400’000 people are afflicted with COPD)
Switzerland pays a high public health price for its “privileged” relationship with the tobacco industry.
Switzerland pays a high public health price for its “privileged” relationship with the tobacco industry.

Given such an alarming situation, one would presume that Switzerland has every motivation to apply with determination the recommendations of WHO’s Global NCD Plan of Action.

Let’s see…
NCD Action Plan

OBJECTIVE 3

TOBACCO USE

→ Implement WHO FCTC (see paragraph 36). Parties to the WHO FCTC are required to implement all obligations under the treaty in full; all Member States that are not Parties are encouraged to look to the WHO FCTC as the foundational instrument in global tobacco control.

→ Reduce affordability of tobacco products by increasing tobacco excise taxes.

→ Create by law completely smoke-free environments in all indoor workplaces, public places and public transport.

→ Warn people of the dangers of tobacco and tobacco smoke through effective health warnings and mass media campaigns.

→ Ban all forms of tobacco advertising, promotion and sponsorship.
Switzerland has signed (12 years ago) but **not** ratified the FCTC.

→ Implement WHO FCTC (see paragraph 36). Parties to the WHO FCTC are required to implement all obligations under the treaty in full; all Member States that are not Parties are encouraged to look to the WHO FCTC as the foundational instrument in global tobacco control.

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→ **Warn people of the dangers of tobacco and tobacco smoke through effective health warnings and mass media campaigns**

→ **Ban all forms of tobacco advertising, promotion and sponsorship**
In the last 10 years, there has been several price increases of tobacco products in Switzerland. However none of them was large enough to have a significant effect on demand.

Reduce affordability of tobacco products by increasing tobacco excise taxes

Create by law completely smoke-free environments in all indoor workplaces, public places and public transport

Warn people of the dangers of tobacco and tobacco smoke through effective health warnings and mass media campaigns

Ban all forms of tobacco advertising, promotion and sponsorship
For its federal passive smoking law (2008), Switzerland adopted the “Spanish model” which is full of exceptions, with dedicated smoking rooms (“fumoirs”) in which service is allowed and small establishments in which smoking is permitted. Spain abandoned the “Spanish model” in 2010 and adopted a strict passive smoking law which effectively protects its population. Switzerland is the only country still applying the Spanish model.

- Create by law completely smoke-free environments in all indoor workplaces, public places and public transport
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Health warnings on cigarette packs with images on the back side are known to be ineffective. Prevention campaigns run by the Federal Office of Public Health are incomprehensible, mostly ineffective and certainly not the best way of using money attributed to prevention.
Health warnings on cigarette packs with images on the back side are known to be ineffective. Prevention campaigns run by the Federal Office of Public Health are incomprehensible, useless and a waste of money attributed to prevention.
With Indonesia, Switzerland is one of the most lax countries in the world with respect to tobacco advertising, promotion and sponsorship.
### Tobacco Control Scale 2013 – Category: Advertising bans

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Is the proposed tobacco product law going to remedy the situation?
Is the proposed tobacco product law going to remedy the situation?

Let’s have a look.
An important review of the state of knowledge
NCI Monograph 19 (656 pages)

Available at: http://cancercontrol.cancer.gov/brp/TCRB/monographs/19/
The Nested Relationships among Advertising, Marketing Communications, Consumer Marketing, and Stakeholder Marketing in Tobacco Promotion

1. Mass Media Advertising
   - Television
   - Cinema
   - Billboards
   - Radio
   - Press
   - Internet
   - Product placement
   - Brand stretching
   - Loyalty schemes
   - Free samples
   - Pricing
   - Relationship building
   - Distribution
   - Packaging
   - Media training
   - Corporate social responsibility

2. Other Marketing Communications
   - Sponsorship
   - Point-of-sale promotions
   - Merchandising

3. Consumer Marketing
   - Scientific seminars
   - Youth prevention
   - Product design
   - Health warnings

4. Stakeholder Marketing
LPTab
New proposed federal law on tobacco products
(Project)
2 Le Conseil fédéral peut fixer quelles sont les données relatives à ces constatations qui doivent être notifiées à l’autorité cantonale compétente et à l’OFSF.

Chapitre 3 Restrictions à la publicité, à la promotion et au parrainage

Art. 14 Publicité

1 La publicité pour les produits du tabac ainsi que pour les objets qui forment une unité fonctionnelle avec un produit du tabac est interdite:
   a. sous les formes suivantes:
      1. elle s’adresse spécialement aux mineurs,
      2. elle suggère un quelconque effet bénéfique des produits du tabac sur la santé ou associe les produits du tabac à un sentiment positif,
      3. elle est faite au moyen de comparaisons de prix ou de promesses de cadeaux ou d’autres avantages;
   b. sur les supports suivants:
      1. sur les objets qui n’ont aucun rapport avec les produits du tabac,
      2. dans et sur les véhicules des transports publics,
      3. dans les journaux, magazines et autres publications de la presse écrite,
      4. sur les panneaux publicitaires et toutes les autres formes d’affichage extérieur visible depuis le domaine public,
      5. à la radio et à la télévision, conformément aux dispositions de la loi fédérale du 24 mars 2006 sur la radio et la télévision (LRTV),
      6. dans les contenus distribués sous forme imprimée ou diffusés par voie électronique, notamment sur Internet et par le biais de jeux électroniques, sont exclus les envois ou les messages adressés directement à des consommateurs majeurs,
      7. dans les spots et autres annonces publicitaires diffusés dans les cinémas;
   c. dans les lieux suivants:
      1. dans et sur les bâtiments ou parties de bâtiments destinés à des usages publics et sur l’aire qui en dépend,
      2. sur les places de sport et lors de manifestations sportives,
      3. dans les lieux fréquentés principalement par des mineurs et lors de manifestations auxquelles participent principalement des mineurs.

2 Les interdictions prévues à l’al. 1 ne visent pas:
   a. les publications de la presse écrite étrangère qui ne sont pas destinées principalement au marché suisse;
   b. la publicité destinée aux professionnels de la branche.

3 L’interdiction prévue à l’al. 1, let. c, ch. 1, ne concerne pas la publicité à l’intérieur du point de vente.

Art. 15 Promotion

1 La promotion de produits du tabac ainsi que d’objets qui forment une unité fonctionnelle avec un produit du tabac est interdite si elle prend la forme:
   a. d’une distribution gratuite;
   b. d’un rabais limité dans le temps et dans l’espace;
   c. d’un rabais offert à un cercle de personnes déterminé, ou
   d. de la distribution de cadeaux ou de prix.

2 Les interdictions prévues à l’al. 1 ne visent pas la promotion destinée aux professionnels de la branche.

Art. 16 Parrainage

1 Par parrainage on entend toute forme de contribution à une activité, à un événement ou fournie à des personnes, ayant pour but ou effet direct ou indirect d’encourager la consommation de produits du tabac ou l’achat d’objets qui forment une unité fonctionnelle avec un produit du tabac.

2 Il est interdit de parrainer:
   a. des activités ou événements qui se déroulent en Suisse mais qui présentent un caractère international du fait:
      1. qu’ils se déroulent partiellement à l’étranger, ou
      2. qu’ils déploient d’autres effets transfrontières;
   b. des personnes qui se produisent dans le cadre d’activités ou d’événements visés à la let. a;
   c. des émissions à la radio et à la télévision, conformément aux dispositions de la LRTV.

3 Il est interdit d’accepter un quelconque avantage provenant d’un parrainage visé à l’al. 2.

Art. 17 Mise en garde dans le cadre de la publicité et du parrainage

1 La publicité pour des produits du tabac ainsi que pour des objets qui forment une unité fonctionnelle avec un produit du tabac et l’indication d’un parrainage doivent être accompagnées d’une mise en garde.

2 Le Conseil fédéral détermine quelle mise en garde doit figurer sur les publicités et sur les indications de parrainage. Il règle l’emplacement, la taille et la langue de la mise en garde, il peut prévoir des exceptions pour certaines indications de parrainage.
**LPTab** New proposed federal law on tobacco products (Project)

<table>
<thead>
<tr>
<th>Publicité et promotion</th>
<th>Présent (LDAI)</th>
<th>Futur (LPTab)</th>
<th>Allemagne</th>
<th>France</th>
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<tbody>
<tr>
<td>Publicité en faveur du tabac à la radio/TV</td>
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<tr>
<td>Publicité en faveur du tabac qui s'adresse spécialement aux jeunes</td>
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<td>Remise de produits promotionnels gratuits (T-shirts, etc.) aux jeunes</td>
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<td>Remise d'échantillons gratuits</td>
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<td>Distributeurs automatiques</td>
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**LPTab** New proposed federal law on tobacco products (Project)

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<th>Publicité et promotion</th>
<th>Présent (LDAI)</th>
<th>Futur (LPTab)</th>
<th>Allemagne</th>
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<td>Publicité en faveur du tabac qui s'adresse spécialement aux jeunes</td>
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<td>Remise de produits promotionnels gratuits (T-shirts, etc.) aux jeunes</td>
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<td>Remise d'échantillons gratuits</td>
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Tobacco Control Scale 2013 – Category: advertising bans
Of all the marketing techniques studied by the “Observatoire des stratégies marketing pour les produits du tabac” (Cipret-VD), only one will be banned by the new law.
Of all the marketing techniques studied by the “Observatoire des stratégies marketing pour les produits du tabac” (Cipret-VD), only one will be banned by the new law.
This law is full of holes!
The proposed new law does not ban tobacco advertising. It merely *regulates* tobacco advertising in a way which is favorable to the tobacco industry:

- by helping phasing out traditional forms of advertising (which are becoming obsolete);
- by protecting the right for tobacco companies to use new marketing methods for the promotion their products.

This will increase the capacity of tobacco companies to attract young new customers, allowing them to make full use of the new marketing techniques they have developed over recent years and which are far more effective than older methods.


Source: Below the Line-Marketing – Schlagwort, Konzept oder gelebte Strategie? Eine Studie zu Below the Line-Marketing durchgeführt vom Marktforschungsinstitut GfK Switzerland AGi im Auftrag von Compresso AG)

It is written in every marketing textbook: The importance of marketing and communications for companies' success has increased significantly in the last 10 years. (...)

“Using unconventional communication channels and measures we reach the target groups directly and personally. *Below the Line* communication is not perceived by the consumer as publicity. *Below the Line* communication includes promotion teams, event marketing, sponsorship, promotions at the point of sale, product placement, direct marketing, sales promotion, public relations, trade shows, viral marketing, sensation marketing, guerrilla marketing, buzz marketing, ambush marketing, ambient media, etc.”
(Traditional advertising)
ABOVE THE LINE (ATL)

BELOW THE LINE (BTL)
(Modern marketing)
ABOVE THE LINE (ATL)

(advertising in mass media, printed press, radio, TV, billboards)

BELOW THE LINE (BTL)

(advertising using other methods, such as POS advertising, mailings, SMS, social media on Internet, vending machines, events, sponsorship, etc.)
A good law is one which clearly states the principle which motivates it and leaves implementation details to the government and compatibility issues with superior law to jurisprudence.

This is possible. For example…

Art 2, al. 1: Any propaganda or advertising, direct or indirect, in favour of tobacco or tobacco products and any free distribution are forbidden.

Art 2, al. 3 Any sponsorship operation is forbidden when its purpose or effect is propaganda or advertising, direct or indirect, in favour of tobacco or tobacco products.
Contrary to what is commonly believed, the level of smoking is much higher in Switzerland than in France.

Number of cigarettes consumed per habitant 15-75/year:

- France: 1’347
- Switzerland: 1’527
Art. 13 Advertising, promotion and sponsorship

Tobacco advertising, tobacco promotion and tobacco sponsorship are illicit.
Is this illusory?
Is this illusory?

Not at all!
There is a very good precedent.
Federal law on drugs and medical devices (LPTh)

Art. 32 Illicit advertising

2 Is illicit advertising aimed at the public for drugs
   a. which are only available on prescription
   b. Which are frequently used abusively or which can create dependency or addiction
Is this difficult?

No!

It’s simply requires political will and the desire by politicians to work for the common good rather than the narrow toxic interests of the tobacco companies
It’s requires an evolution of the minds. A societal paradigm shift. In Switzerland, such processes usually take a long time.

Remember, this was not a long time ago:
Switzerland of the past and Switzerland of the future
Thank you!