

Children's Rights and Tobacco Control in Germany

Written Statement to the UN Committee on the Rights of the Child

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Federal Republic of Germany

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This statement is presented by

Berlin Working Group on Environment and Development (BLUE 21 e.V.) / Unfairtobacco

as well as

Action on Smoking and Health (US), Deutsches Kinderhilfswerk (German Children's Fund), European Network for Smoking and Tobacco Prevention (ENSP), FACT e.V. – Women Against Tobacco, Friedensband, German Cancer Research Center (DKFZ), German Centre for Addiction Issues (DHS), German Lung Foundation, German NCD Alliance DANK, German Network for Tobacco free Healthcare Services (DNRfK), German Respiratory Society (DGP), German Society of Pediatric Allergology (GPA), Health Care Plus, Institute for Therapy and Health Research (IFT Nord), Kindernothilfe (Supporting Children in Need), Smokefree Partnership (SFP), Vivantes Hospital.

Tobacco consumption in Germany

Articles 3, 6 & 24: Best interest of the child & rights to life and health

In September 2020, the German government has passed an incremental ban on billboard and cinema advertising for tobacco, heated tobacco products and e-cigarettes.¹ We welcome the government's progress in this area. However, the ban is far from being comprehensive, does not comply with obligations under Article 13 of the WHO Framework Convention on Tobacco Control (WHO FCTC)² and inadequately protects children from tobacco advertising, promotion and sponsorship: Advertising at the point of sale and outside specialised tobacco shops as well as promotional activities and sponsorship of national events like concerts and festivals remain allowed. This means that it is impossible to go shopping in a grocery store without seeing tobacco advertising that is traditionally placed in the most prominent location: the checkout area. A child cannot accompany its parents or buy a bottle of juice on its own without being exposed to tobacco advertising.

The tobacco industry currently spends €190 to 250 million on tobacco advertising, promotion and sponsorship in Germany per year.³ Already now, before the ban, about 60% of this budget is

1 Zweites Gesetz zur Änderung des Tabakerzeugnisgesetzes, Bundesgesetzblatt Teil I, Nr. 48 (28. Oktober 2020): 2229.

2 World Health Organization (WHO) 2003: WHO Framework Convention on Tobacco Control (FCTC), Geneva: WHO, apps.who.int/iris/bitstream/10665/42811/1/9241591013.pdf?ua=1
WHO 2008: Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship), Geneva: WHO, www.who.int/fctc/guidelines/article_13.pdf.

3 Die Drogenbeauftragte der Bundesregierung 2019: Drogen- und Suchtbericht der Bundesregierung 2019, Berlin: Bundesministerium für Gesundheit, www.bundesgesundheitsministerium.de/service/publikationen/drogen-und-sucht/details.html?bmg%5Bpubid%5D=3344

Die Drogenbeauftragte der Bundesregierung 2020: Jahresbericht 2020, Berlin: Bundesministerium für Gesundheit, www.drogenbeauftragte.de/assets/user_upload/DSB_2020_final_bf.pdf

Deutsches Krebsforschungszentrum (DKFZ) 2020: Tabakatlas Deutschland 2020, Heidelberg: DKFZ, Pabst Science Publishers, www.dkfz.de/de/tabakkontrolle/download/Publikationen/sonstVeroeffentlichungen/Tabakatlas-Deutschland-2020.pdf?m=1606813115&.

allocated to activities like promotion that will not be covered by the ban⁴ and there will likely be an increase of funds in these areas (budget reallocation).⁵ Therefore, it is to be expected that children increasingly will be exposed to promotional activities of the tobacco industry.

Furthermore, the ban is implemented in incremental steps: From 2021 onwards, advertising for tobacco products, heated tobacco products and e-cigarettes is banned in cinemas, except for movies restricted to adult viewers. Billboard advertising will be banned from 2022 for cigarettes, from 2023 for heated tobacco products and from 2024 for e-cigarettes.⁶ This means that children will continue to be exposed to billboard advertising for tobacco products for one more year and for heated tobacco products and e-cigarettes for up to three years.

Raising tobacco taxes by 10% annually is the single most effective tobacco control measure, but the current government has explicitly ruled out raising taxes. Tobacco tax increases have proven particularly effective in preventing children and adolescents from starting to smoke and helping socio-economically disadvantaged people to quit smoking.⁷ By incentivising parents to quit smoking, this measure could help to alleviate socio-economic disparities regarding second-hand smoke exposure of children and adolescents that we described in our May 2020 report. Besides that, increasing tobacco taxes increases government revenues and could help to raise funds for healthcare and social welfare services during the Covid-19 pandemic.

In November 2020, the Tobacco Industry Interference Index exposed tobacco companies' influence on policy-making processes in Germany, including on the issues of tobacco advertising and taxation. The government's protection of public health policy-making from tobacco industry influence is inadequate, even though this is required by Article 5.3 of the WHO FCTC.⁸ This is one of the reasons why Germany lacks key tobacco control measures and comes last in a ranking of 36 countries in the European Region.⁹

Recommendations

The undersigned organisations recommend that the UN Committee calls on the German federal government to:

- Close gaps in the **tobacco advertising ban** (comprehensive ban on point-of-sale advertising, promotion and sponsorship),
- **Regularly raise tobacco taxes to increase prices** and

4 DKFZ 2020: Tabakatlas Deutschland 2020.

5 WHO 2008: Guidelines for implementation of Article 13 of the WHO Framework Convention on Tobacco Control (Tobacco advertising, promotion and sponsorship).

DKFZ 2020: Aus der Wissenschaft - für die Politik: Werbung verführt zum Rauchen - umfassendes Tabakwerbeverbot ist überfällig, Heidelberg: DKFZ, www.dkfz.de/de/tabakkontrolle/download/Publikationen/AdWfP/AdWfP_2020_Werbung-verfuehrt-zum-Rauchen.pdf?m=1590764189&.

6 Zweites Gesetz zur Änderung des Tabakerzeugnisgesetzes, Bundesgesetzblatt Teil I, Nr. 48 (28. Oktober 2020): 2229

7 WHO 2010: WHO technical manual on tobacco tax administration, Geneva: WHO, www.who.int/tobacco/publications/tax_administration/en/

DKFZ 2020: Tabakatlas Deutschland 2020.

8 Laura Graen 2020: Tobacco Industry Interference Index Germany 2020, Berlin, globaltobaccoindex.org/country/DE.
Mary Assunta 2020: Global Tobacco Industry Interference Index 2020, Bangkok: Global Center for Good Governance in Tobacco Control, globaltobaccoindex.org.

9 Luk Joossens, Ariadna Feliu and Esteve Fernandez 2020: The Tobacco Control Scale 2019 in Europe. Brussels: Association of European Cancer Leagues, Catalan Institute of Oncology, www.tobaccocontrolscale.org/TCS2019.pdf.

- develop a **comprehensive tobacco control strategy** to implement the WHO FCTC to advance the children's rights to life and health as well as the best interest of the child, as required by CRC General Comments No. 15 and 16.

Child labour in tobacco supply chains – extraterritorial obligations CRC Article 32

There is new video footage of child labour in tobacco growing in Zambia and Bangladesh, two tobacco trading partners of Germany:

- The Impact of Tobacco Production on Children's Rights in Zambia
www.youtube.com/watch?v=IDsXn_0kJLs
- Cost of Tobacco Farming – Depriving Children from Education (Bangladesh)
www.youtube.com/watch?v=IYisGnnVqeE

Tobacco accounts for 17% of all exports from Zambia to Germany and Germany is the fifth largest importer of tobacco from Bangladesh.¹⁰

In December 2020, thousands of children and adults working in the supply chains of two British tobacco companies have filed a lawsuit at the British High Court. They allege that the tobacco companies are liable in negligence and have been unjustly enriched.¹¹ In Germany, such a case would not be possible due to the lack of a human rights due diligence law. Currently, a supply chain law is discussed in Germany and 75% of the population is backing this law.¹² While the Federal Ministry for Economic Cooperation and Development (BMZ) and the Federal Ministry of Labour and Social Affairs (BMAS) strongly support this law, the Federal Minister for Economic Affairs and Energy still blocks the bill.¹³

Recommendation

The undersigned organisations recommend that the UN Committee calls on the German federal government to

- introduce a **due diligence law (Lieferkettengesetz)** which is suitable to hold companies accountable for children's rights violations in their global supply chains, as required by CRC General Comment No. 16.

10 Observatory of Economic Complexity 2021: What does Zambia export to Germany? (2018), oec.world/en/visualize/tree_map/hs92/export/zmb/deu/show/2018/.

Observatory of Economic Complexity 2021: Where does Bangladesh export Raw Tobacco to? (2018), oec.world/en/visualize/tree_map/hs92/export/bgd/show/42401/2018/.

11 Leigh Day 2020: Claim against tobacco giants by poverty stricken farmers in Malawi, www.leighday.co.uk/News/Press-releases-2020/December-2020/Claim-against-tobacco-giants-by-poverty-stricken-f.

12 Initiative Lieferkettengesetz 2020: Pressemitteilung vom 15.09.2020, lieferkettengesetz.de/pressemitteilung/umfrage-drei-viertel-der-bevolkerung-fur-lieferkettengesetz/

13 Sarah Lawton 2020: German labour ministry ramps up pressure for supply chain law, in Euractiv 7.10.2020, www.euractiv.com/section/economy-jobs/news/german-labour-ministry-ramps-up-pressure-for-supply-chain-law/.
Redaktionsnetzwerk Deutschland 2020: Lieferkettengesetz auf 2021 vertagt: Merkel und Scholz sollen Streit klären, in Business & Human Rights Resource Centre 17.12.2020, www.business-humanrights.org/de/neuste-meldungen/lieferkettengesetz-merkel-und-scholz-m%C3%Bcssen-streit-kl%C3%A4ren/.

Epd 2021: Bundesregierung ringt weiter um ein Lieferkettengesetz, in Welt-Sichten 13.01.2021, www.welt-sichten.org/nachrichten/38487/bundesregierung-ringt-weiter-um-ein-lieferkettengesetz.

Tobias Schwab 2021: Streit über Lieferkettengesetz: Menschenrechte? Das hat Zeit, in Frankfurter Rundschau 14.01.2021, www.fr.de/wirtschaft/lieferkettengesetz-streit-bundestag-menschenrechte-das-hat-zeit-90167616.html