

SFP PRESS RELEASE

Tobacco Products Directive enters into force: the start of a new stage for tobacco control in Europe

Brussels, 20 May 2016 – The Smoke Free Partnership welcomes the entry into force of the EU Tobacco Products Directive (TPD) that sets the EU on a course towards more effective prevention of smoking, especially among children and young people.

As of today, the TPD mandates that all new packets of cigarettes and roll-your-own tobacco manufactured for the EU market carry mandatory graphic warnings covering at least 65% of the front and the back to illustrate the health damage of tobacco use. Tobacco packs will also have to observe minimum size requirements, and slim packs will disappear from the EU market. The TPD provides for transitional periods (of up to one year, depending on the Member State) to allow existing stock packaged according to the previous regulations to be exhausted.

In addition, all tobacco products with characterising flavours will be banned, with the exception of menthol cigarettes which are still allowed on the market until May 2020. These measures are proven to be effective in reducing the attractiveness and appeal of tobacco products and are expected to reduce the uptake of smoking, particularly among young people, 70% of whom report to have started smoking before their 18th birthday.

The TPD also allows Member States to implement stronger measures, such as plain standardised packaging and point of sale display bans. The UK and France implement plain packaging as of today; in Ireland implementation is imminent; and Slovenia has recently notified this measure. Other governments are also considering implementing plain packaging including Finland, Hungary, Belgium and Norway. Point of sale display restrictions are also in force in a number of European Countries, including the UK, Ireland, Croatia, Finland, Iceland and Norway.

On 19 May 2016, the UK High Court delivered its judgment on the case brought forward by tobacco companies against plain packaging. The Court rejected each and every one of their claims, noting in particular the unique deadliness of the product and the historical abuse of evidence conducted by the tobacco industry.

Florence Berteletti, SFP Director, stated: *“The Tobacco Products Directive withstood three legal challenges in the EU Court of Justice. The tobacco industry sued countries who adopted plain packaging measures; point of sale display bans were attacked in courts as well. Yet, through aggressive lobbying or legal challenges, tobacco control stands undefeated. After years of fighting tobacco industry attempts to block, amend or delay tobacco control legislation, we are delighted to see this day we have been working for. With the TPD in force, it is only a matter of time before we see the effects of this legislation through a decrease in smoking uptake in children and young people, the main targets of the tobacco industry’s marketing.”*

The Smoke Free Partnership looks forward to the start of a new era for Public Health where at long last tobacco products, by looking and tasting like tobacco products rather than glamorous and sweet items, will no longer seduce children and young people to start smoking in the European Union. We will continue to monitor the TPD transposition and implementation in EU Member States, as well as report on the impact of the policies on smoking prevention and public health.

Note to editors:

Contact: Anca Toma Friedlaender, SFP Senior Policy Advisor, +32 (0)2 430 7358,
anca.toma@smokefreepartnership.eu

Background on the TPD

1. Key measures in the Directive

The TPD imposes a number of new or updated regulations. Except where an additional transitional period exists, the TPD will come into effect on 20th May 2016 and will:

- Update the health warnings, including general, information and picture warnings, on packages of tobacco. Combined (picture and text) health warnings must cover 65% of the front and back of cigarette and roll-your-own tobacco packages. The Directive also sets minimum dimensions for warnings and eliminates small packages for cigarettes and roll-your own tobacco, e.g. “slim” packages for slim cigarettes.
- The TPD also allows Member States to go further, through, for example, implementing standardised packaging legislation, as is the case in the UK, France and Ireland.
- Set minimum contents for unit packs. Cigarette packs must contain at least 20 cigarettes and roll your own (hand rolled) tobacco packs must weigh at least 30 grams.
- Prohibit cigarettes and roll-your-own tobacco with characterising flavours, including but not limited to fruit, spice, herbs, alcohol, candy, or vanilla. There is an additional transition period for the prohibition of menthol flavour in cigarettes until 20th May 2020.
- Ban certain promotional and misleading descriptors on packaging of tobacco products such as “lite”, “natural” and “organic”.
- Introduce EU-wide tracking and tracing to combat illicit trade of tobacco products, following an additional transitional period.
- Allow Member States to either prohibit cross-border distance sales of tobacco products, or introduce a registration scheme for businesses engaged in such sales.
- Require the tobacco industry to submit detailed reports to the Member States about the ingredients used in tobacco products.
- Require manufacturers to notify novel tobacco products in electronic form six months before the intended placing on the EU market.
- Strengthen reporting requirements for tobacco products.
- Introduce new labelling and reporting requirements for novel tobacco products and herbal products for smoking.
- Set out safety and quality requirements for **electronic cigarettes** and allow Member States to classify electronic cigarettes as medicinal products

Additional transitional periods

Menthol cigarettes will be given an additional four year phase-out period before they are banned outright on **20 May 2020**. (See Article 7 of the [Directive](#) for more information).

EU-wide tracking and tracing will apply to cigarettes and hand-rolling tobacco **from 20 May 2019** and to all other tobacco products from **20 May 2024**. (See Article 15 of the [Directive](#) for more information).

2. TPD transposition status

As of 20 May 2016, SFP noted that 8 Member States have notified full transposition of the TPD; 13 more had notified transposition of certain measures. In the rest of the Member States, the transposition process is ongoing and SFP expects it to be completed in the shortest delays.

3. Legal challenges

Jurisdiction	Measure being challenged	Cases	Status
European Court of Justice	Tobacco Products Directive	<i>PMI & BAT v UK</i> ¹ : PMI and BAT sought to obtain the invalidity of the TPD for lack of an appropriate legal basis, or alternatively the invalidity of various provisions of the Directive on the basis of proportionality, subsidiarity or fundamental rights.	Decision of 4 May 2016: The TPD stands
European Court of Justice	Tobacco Products Directive	<i>Totally Wicked v UK</i> ² : an electronic cigarette company sought to obtain the invalidity of Article 20 TPD.	Decision of 4 May 2016: The TPD stands
European Court of Justice	Tobacco Products Directive	<i>Poland v European Parliament & Council</i> ³ : Poland sought to obtain the invalidity of Article 7 TPD on the basis that the way in it forbids menthol cigarettes would specially affect its economy because of its position as a producer, going against the principle of proportionality.	Decision of 4 May 2016: The TPD stands
Ireland	Plain Packaging	<i>Japan Tobacco International v. Ireland</i> ⁴ : JTI has brought proceedings against Ireland before the Commercial Court order to contest the competence of the Irish government to adopt plain packaging measures, on the basis of the invalidity of the TPD . On July 7 2015, the Commercial Court rejected the State's application to defer the case before the ECJ, considering that it was too close to the UK challenge already being heard ⁵ (see <i>PMI & BAT v UK</i>	On hold until resolution of case C-547/14 (PMI v UK) in the EU court

¹ [C-547/14](#), *Philip Morris Brands SARL, Philip Morris Limited, British American Tobacco UK v Secretary of State for Health*, Reference for a preliminary ruling from the High Court of Justice, Queen's Bench Division (Administrative Court) (England and Wales) (United Kingdom) made on 1 December 2014

² [C-477/14](#), *Pillbox 38 (UK) Limited, trading as 'Totally Wicked' v Secretary of State for Health*, Reference for a preliminary ruling from High Court of Justice Queen's Bench Division (Administrative Court) (England and Wales) (United Kingdom) made on 27 October 2014

³ [C-358/14](#), *Republic of Poland v European Parliament and Council of the European Union*, Action brought on 22 July 2014

⁴ *JTI Ireland Ltd v Minister for Health & Ors*, Action brought on 30/03/2015

⁵ <http://www.rte.ie/news/2015/0707/713270-tobacco-firm/>

		above).	
UK		<i>PMI, Imperial, JTI and BAT v UK</i> ⁶ : PMI and BAT (joined by Imperial and JTI) have filed legal objections before the English High Court to the plain packaging measures introduced by the UK government, claiming billions of pounds in compensation for loss of property in the form of trademarks, as well as for violation of EU intellectual property law. Hearings on the case were held in December 2015 and a decision is awaited in May 2016 ⁷	Judgment of 19 May 2015: the national regulations were upheld
Court of Justice of the European Free Trade Area States	Point of Sale Display Ban	<i>Phillip Morris v Norway</i> ⁸ : case brought before the EFTA Court on the basis of the EEA Agreement ⁹ . On 12 September 2011, the EFTA Court gave the first decision by an international court on the legality of visual display bans of tobacco products with trade rules. Whilst it concluded that the measure constituted an obstacle to the free movement of goods, it nevertheless considered that it was suitable for the protection of public health “ <i>as by its nature it seems likely to limit, at least in the long run, the consumption of tobacco products</i> ”, and that it was therefore justified.	Ended: Norway won
World Trade Organisation Dispute Settlement System	Plain Packaging	<i>Australia – Tobacco Plain Packaging</i> : Several complaints have been made against Australia’s plain packaging laws by Ukraine, Honduras, Dominican Republic, Cuba and Indonesia. These States argue that Australia’s plain packaging legislation violates various WTO trade agreements, such as GATT, TBT and TRIPS. It has been reported that PMI and BAT are providing support to Dominican Republic, Ukraine and Honduras respectively. Ukraine withdrew from this case in June 2015. Decisions in the other cases are expected “not before the first half of 2016” ¹⁰	Ongoing

⁶ CO/2322/2015 The Queen on the application of British American Tobacco Uk Limited v Secretary Of State For Health
CO/2323/2015 The Queen on the application of Philip Morris Brands Sarl v Secretary Of State For Health
CO/2352/2015 The Queen on the application of JT International Sa v Secretary Of State For Health
CO/2601/2015 The Queen on the application of Imperial Tobacco Limited v Secretary Of State For Health

⁷ <http://washpost.bloomberg.com/Story?docId=1376-O31UTE6K50Y301-5VTH16A04V3CBJUIPKKG496T48>

⁸ [EFTA Court, Case E-16/10, Philip Morris Norway v Staten v/Helse- og omsorgsdepartementet](#), 12 September 2011

⁹ [The Agreement on the European Economic Area](#), which entered into force on 1 January 1994, brings together the EU Member States and the three EEA EFTA States — Iceland, Liechtenstein and Norway — in a single market, referred to as the "Internal Market".

¹⁰ https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds467_e.htm

<p>Bilateral Investment Treaty Investor-State Dispute Settlement</p>	<p>Plain Packaging</p>	<p><i>Philip Morris Asia v Australia</i>: Philip Morris has brought a claim under the Australia – China (Hong Kong, Special Administrative Region) bilateral investment treaty at the Permanent Court of Arbitration. They argued that plain packaging indirectly expropriates property rights, including trademarks and goodwill, and violates the obligation to provide fair and equitable treatment because it is unreasonable and arbitrary. Australia has challenged the jurisdiction of the tribunal. On 18 December 2015 the Tribunal dismissed the case¹¹</p>	<p>Ended: Australia won</p>
<p>Bilateral Investment Treaty Investor-State Dispute Settlement</p>	<p>Graphic health warnings (80% of packet) and prohibition on brand variants</p>	<p><i>PMI v Uruguay</i>¹²: three subsidiaries of PMI filed for arbitration on 19 February 2010 with the World Bank’s International Centre for the Settlement of Investment Disputes (ICSID) on the basis of the Switzerland – Uruguay BIT, claiming that Uruguay has expropriated its intellectual property without compensation; has failed to treat its investment fairly and equitably; and has unreasonably impaired the use of its investment. A Tribunal was convened in March 2011 and proceedings are ongoing.</p>	<p>Ongoing</p>

¹¹ <https://www.ag.gov.au/tobaccoplainpackaging>

¹² <https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/casedetail.aspx?CaseNo=ARB/10/7&tab=PRO>