

Spotlight on the Labelling and Packaging of Tobacco Products

Articles 11 and 13 of the FCTC

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Application of Articles 11 and 13 of the FCTC and their Guidelines in the Context of the Revision of the Tobacco Products Directive of 2001

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PACKS DESIGNED
TO ATTRACT YOUNG
PEOPLE AND WOMEN



PACK FROM IRELAND



PACK FROM GERMANY
FOR THE WORLD CUP



PACK FROM GERMANY
WITH A POEM

What is the World Health Organisation's Framework Convention on Tobacco Control (FCTC)?

The FCTC is the world's first international public health treaty. It aims to protect present and future generations from the devastating health, environmental and socio-economic consequences of tobacco consumption and exposure to tobacco smoke through the adoption of evidence-based policies and legally binding obligations. The Treaty has been ratified by 172 countries (known as Parties), including the European Union, who thus agreed to implement the Treaty.¹

What are the aims of Articles 11 and 13 of the FCTC and their Guidelines?

The aim of Article 11 of the FCTC is to make sure that consumers are adequately informed about the dangers of tobacco products through the use of health warnings and are not misled by the tobacco industry's advertising and promotional tactics. Article 13 of the FCTC requires Parties to implement a comprehensive ban on advertising, promotion and sponsorship of tobacco products (TAPS) within five years of ratification.

How were the guidelines on Articles 11 and 13 developed?

At the second Conference of the Parties of the FCTC (COP2) in July 2007 the Parties authorised work on the development of guidelines on Articles 11 and 13 (package warnings and tobacco advertising, sponsorship and promotion). The aim of the guidelines was to provide, in light of existing research and international experience, a practical guide on how to implement effective package warning labelling policies and bans on tobacco advertising, promotion and sponsorship. The guidelines were developed by the Parties themselves and were adopted unanimously at COP3 in November 2008 where over 160 were present.

What do the Guidelines on Articles 11 and 13 say?

The Article 11 Guidelines acknowledge that the adoption of large pictorial warnings on both sides of the pack in combination with plain, standardised packaging and quitline numbers is the best way to inform consumers. Pictorial warnings are pictures illustrating the health risks of tobacco use. Plain packaging measures consist of removing the logo and putting the name of the brand in a prescribed font in order to remove the attractiveness of the logo and the brand imagery. Standardised packaging measures regulate the material, shape and size of the pack in order to avoid the design of fun and attractive packs.

GUIDELINES ON ARTICLE 13 OF THE FCTC – PARAGRAPH 16, PLAIN PACKAGING

"The effect of advertising or promotion on packaging can be eliminated by requiring plain packaging: ...two...contrasting colours...; nothing other than a brand name, a product name and/or manufacturer's name, ...without any logos or other features apart from health warning, tax stamps and other government-mandated information or markings; prescribed font style and size; and standardised shape, size and materials. There should be no advertising or promotion inside or attached to the package or on individual cigarettes or other tobacco products."



MOCK EU PACK WITH INSERT



The Article 13 Guidelines set out a broad definition of tobacco advertising, promotion and sponsorship that includes corporate social responsibility and packaging. It states that "tobacco advertising and promotion...also include...promotional packaging and product design features." Therefore it recommends the adoption of plain, standardised packaging in order to effectively implement such a comprehensive ban.

What is the relationship between the revision of the Tobacco Products Directive (2001/37/EC)² and Articles 11 and 13?

The Tobacco Products Directive (TPD) was adopted in 2001, before the EU ratified the FCTC. As a result, the current TPD is not in line with Articles 11 and 13 and their guidelines. The TPD is currently being revised. This constitutes a unique opportunity for the EU to implement Articles 11 and 13 through the introduction of large mandatory pictorial warnings on both sides and plain standardised packaging. The adoption of such measures at EU level would be binding on the 27 Member States and would bring them into line with the 41 countries and jurisdictions that have already finalised requirements for pictorial warnings.³ In adopting plain, standardised packaging the EU could regain its role as a global tobacco control leader.

What is happening in other parts of the world with pictorial warnings and standardised packaging?

Many countries are moving forward with new tobacco packaging and labelling plans around the world.

- The **Australian** government has announced that all tobacco must be sold in plain packaging from July 1, 2012 and that existing graphic health warnings will be updated and expanded to cover 75% of the front and 90% of the back of packs.
- **Canada**, which was the first country to require pictorial warnings, will have warnings covering 75% of the front and back of the pack in 2012.
- **Uruguay** has adopted pictorial warnings covering 80% of the front and the back of the pack. **Brazil, Mexico, Paraguay, Venezuela** have pictorial warnings.
- In Asia, **Singapore** was among the first countries in the world to implement pictorial health warnings on cigarette packs in 2004, followed by **Thailand** (2005), **Brunei** (2008) and **Malaysia** (2009).

Why is the package so important?

The tobacco industry has always used the packaging of tobacco products as a powerful advertising and marketing tool. Since the adoption of a ban on advertising in most EU countries, the tobacco industry has relied heavily on the packaging of tobacco products for promotion. A Philip Morris executive has acknowledged that "our final communication vehicle with our smoker is the pack itself. In the absence of any other marketing messages, our packaging... is the sole communicator of our brand essence."⁴

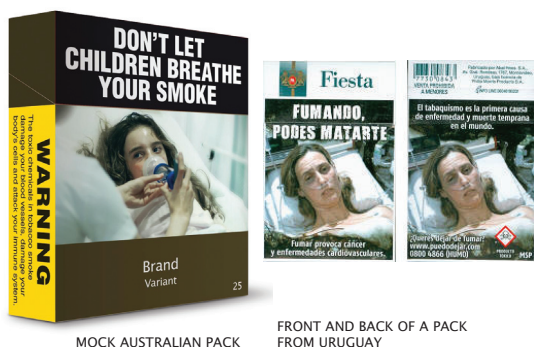
1 As of 29 October 2010. WHO, Updated Status of the WHO FCTC: Ratification and Accession by country. See http://www.fctc.org/images/stories/ratification_latest_Saint%20Vincent%20and%20Grenadines.pdf

2 Directive on the Manufacture, Presentation and Sale of Tobacco Products (2001/37/EC)

3 Canadian Cancer Society, Cigarette Package Health Warnings: International Status Report – (October 2010). In addition, Ukraine and the Islands of Guernsey and Jersey have since finalised requirements.

What is the evidence that mandatory pictorial warnings work?

Rather than being used as a marketing tool by the tobacco industry, tobacco packages can be used by governments to efficiently and effectively communicate the dangers of tobacco use to the general public. Evidence shows that one of the best ways to raise awareness of the dangers of tobacco is through the adoption of large mandatory pictorial warnings on the front and back of the pack. These are much more likely to draw attention and result in greater information processing than text warnings only.⁵ In addition, smokers are more likely to recall larger warnings than smaller ones, and tend to equate the size of the warning with the magnitude of the risks of tobacco use. A Canadian survey found that picture warnings appear to be especially effective among young people: more than 90% of young people agree that graphic warnings have provided them with important information about the health effects of tobacco use, are accurate and make smoking less attractive.⁶⁻⁷ There is also evidence that pictures on both sides of the pack have a greater impact than on one side only.⁸ This is why it is crucial that large pictorial warnings are on the front and the back of the pack.



ADOLESCENTS PERCEIVED EFFECTIVENESS OF THE PROPOSED EUROPEAN GRAPHIC TOBACCO WARNING LABELS⁹

"...Non-smoking adolescents rated the suggested EU graphic labels as more effective in preventing them from smoking in comparison to the existing EU text-only warnings... younger (smoking) adolescents were found to... perceive graphic warning labels as a more effective means of preventing them from smoking."

What is the evidence that plain, standardised packaging works?

Evidence shows that for enhanced effectiveness, pictorial warnings must be combined with plain, standardised packaging. This is to ensure that consumers do not get distracted or confused by contradictory brand imagery carefully devised by the tobacco industry and making the product look safe and attractive. As the Sambrook report points out, "evidence shows that removing the colour, brand imagery and logos from packages reduces the attractiveness and appeal of the packaging and enhances the ability to communicate the health warning to the consumer."¹⁰ Standardised packaging has also been recognised by the multinational financial services company Citigroup as being the "biggest regulatory threat to the industry, as packaging is

TRACHTENBERG (FORBES MAGAZINE, 1987)¹²

"... when we offered them Marlboros at half price – in generic brown boxes – only 21% were interested, even though we assured them that each package was... identical (except from the different packaging) to what they normally bought at their local tobacconist.... How to account for the difference? Simple. Smokers put their cigarettes in and out of their pockets 20 to 25 times a day. The package makes a statement. The consumer is expressing how he wants to be seen by others."

the most important way tobacco companies have to communicate with the consumer and differentiate their products."¹¹

Does the public support the introduction of pictorial warnings? Yes.

According to the Eurobarometer published in May 2010, 75% of Europeans are in favour of mandatory pictorial warnings, and 54% are in favour of plain packaging.¹³

Who opposes this measure?

The tobacco industry is the principal opponent of these measures. The efforts employed by the tobacco industry to oppose these measures are enormous, including funding and using retailers' associations to campaign against such measures. The tobacco industry is also relentlessly lobbying policy makers at national and European level disseminating flawed legal and economic arguments to them.

What are the main arguments and tactics of the industry?

One of the tobacco industry's main arguments is that plain, standardised packs will increase illicit trade and result in job and financial losses in the retail sector. They also use the threat of potential litigation if plain, standardised packaging is adopted. None of their arguments are evidence-based.

One of their tactics is to try to delay the process of the revision of the Tobacco Products Directive, so that the measures do not go through the co-decision procedure before the elections of the new European Parliament in mid-2014.

Would plain, standardised packaging increase illicit trade? No.

The tobacco industry argues that standardised packaging would increase counterfeiting of cigarettes.¹⁴ However, standardised packaging will always be coupled with pictorial warnings. There is no evidence that large pictorial warnings and standardised packaging would make counterfeiting easier. Given the very low manufacturing cost per pack of certain types of illicit cigarettes (in some instances sold to smugglers at 14 euro cents a packet¹⁵), it is difficult to argue that plain packaging would decrease the price of such products.¹⁶ In addition, studies have shown that the pack had no impact on the decision to buy illicit tobacco, which is driven by availability and price of such products.¹⁷

Would the adoption of such measures create loss in the retail sector? No.

The retail sector is different across Europe, so this kind of statement is difficult to justify. Most retailers do not exclusively sell tobacco products; also, smoking

4 Hult M. Marketing issues corporate affairs conference May 27, 1994—Manila. 27 May 1994. Philip Morris. Bates No. 2504015017/5042, <http://legacy.library.ucsf.edu/tid/jga42e00>.

5 V. White, B. Webster, M. Wakefield, Do graphic health warning labels have an impact on adolescents' smoking related beliefs and behaviours? Addiction Abingdon, 2008; D. Hammond, G. Fong, P. McDonald, K. Brown, R. Cameron, Showing leads to doing: graphic cigarette warning labels are an effective public health policy, European Journal of Public Health (2006).

6 International Union Against Tuberculosis and Lung Disease, Tobacco Packaging and Labelling, Technical Guide, p.8, 2008.

7 Health Canada. The health effects of tobacco and health warning messages on cigarette packages - survey of adults and adults smokers: Wave 9 surveys. Prepared by Environments Research Group; January, 2005.

8 Sambrook Research International, A review of the science base to support the development of health warnings for tobacco packages, May 2009, p. 46

9 Study conducted on 574 adolescent from Greece, C. I Vardavas, G. Connolly, K. Karamanolis, A. Kafatos Adolescents perceived effectiveness of the proposed European graphic tobacco warning labels European Journal Of Public Health (2009) Volume: 19, Issue: 2, p. 212-217

10 Sambrook Research International, A review of the science base to support the development of health warnings for tobacco packages, May 2009, p. 147-148

11 Citigroup - Tobacco-Australia Plans to Introduce Generic Packaging, - Pan-Europe Tobacco (Citi), 28 April 2010

12 Trachtenberg, J A, Here's one tough cowboy. Forbes Magazine (9th February 1987),

13 http://ec.europa.eu/health/tobacco/docs/ebs332_en.pdf, p.96.

14 It is important to note that there are different kinds of illicit trade and that counterfeiting is not the main cause of illicit trade in Europe and in the world. Illicit trade includes large scale organised smuggling, small scale smuggling (or bootlegging) and illicit manufacturing (or counterfeiting).

15 Shleynov R, Candea S, Campbell D, et al. Made to be Smuggled. Russian Contraband Cigarettes 'Flooding' EU. Washington: Center of Public Integrity, 2008, Available at: <http://www.publicintegrity.org/investigations/tobacco/articles/entry/763/> (19 January 2011, date last accessed).

16 C. Moodie, G. Hastings, L. Joossens Young adult smokers' perceptions of illicit tobacco and the possible impact of plain packaging on purchase behaviour, European Journal of Public Health, 26 March 2011, p.1.

17 Id.

rates have been declining in most European countries in recent decades and shops have adjusted to this. Finally, studies have shown that when people spend less on smoking, they use their money on other products.¹⁸

Do large pictorial warnings and plain, standardised packaging violate international intellectual property law? No.

The tobacco industry has argued that the adoption of plain, standardised packaging measures would violate intellectual property law and would result in costly litigation. However, these measures are in compliance with international intellectual property law (i.e. the World Trade Organisation's Treaty on Trade Related Aspects of Intellectual Property "TRIPS") and EU law.¹⁹ The basic purpose of intellectual property law is to prevent the use of a trademark by a person who does not own this trademark.²⁰ If plain, standardised packaging measures were to be adopted, the owners of trademarks would still own their trademarks and be protected against unauthorised use. Plain, standardised packaging measures merely regulate the use of logos or colours for general interest and public health purposes, which are specifically allowed under both international intellectual property law^{21,22} and EU law.²³

This was reaffirmed in the Punta Del Este Declaration, which was unanimously adopted in November 2010 at the Fourth Conference of the Parties of the FCTC (COP4) and which states that "Parties may adopt measures to protect public health, including regulating the exercise of intellectual property rights in accordance with national public health policies, provided that such measures are consistent with the TRIPS Agreement."²⁴ Since plain, standardised packaging measures would be consistent with the TRIPS Agreement and seek to protect public health, such measures are legally feasible and can be adopted.

Do large pictorial warnings and plain, standardised packaging violate international trade agreements? No.

Such measures are in compliance with international trade regulations set out by the World Trade Organization (WTO). Indeed, they satisfy the requirements of public health exceptions provided under both the WTO's General Agreement on Tariffs and Trade (GATT) and the WTO Agreement on Technical Barriers to Trade (TBT).²⁵

How much would it cost the EU and Member States to implement mandatory pictorial warnings and plain, standardised packaging measures? Nothing.

The EU and Member States would not incur any costs for the implementation of these measures. All costs would be borne by the tobacco industry. Thus, these are very cost-efficient measures that would not be charged to the taxpayer. The tobacco companies assert that the costs would be prohibitive, but they are constantly redesigning their packaging so this argument does not hold.

What is the process for the Revision of the TPD?

The Commission is currently working on a legislative proposal for the revision of the TPD, which will be released at the beginning of 2012. The proposal will then go through the co-decision procedure (European Parliament and Council). The revised TPD should be adopted by 2014.²⁶

What can the European Commission do to ensure the effective implementation of Articles 11 and 13 and their Guidelines at EU level?

The Commission has the competence to include mandatory pictorial warnings and plain, standardised packaging in its proposal for a revised TPD. The European Union is a Party to the FCTC in its own right. Accordingly, the Commission should ensure that the proposal it adopts is consistent with EU commitments as a Party to the Treaty and its Guidelines as well as state of the art global tobacco control policy.

What can the European Parliament do to ensure the effective implementation of Articles 11 and 13 and their Guidelines at EU level?

As the directly elected institution of the EU, the European Parliament and its Members (MEPs) should remind and encourage their national governments to effectively implement Articles 11 and 13 and their Guidelines on behalf of all EU citizens, bearing in mind the strength of public support for mandatory pictorial warning measures and plain and standardised packaging. The Parliament will play a decisive role in the adoption of any Commission proposal to revise the TPD. It is therefore crucial that MEPs actively support the adoption of such measures.

What can Member States do to ensure the effective implementation of Articles 11 and 13 and their Guidelines at EU level?

To ensure the implementation of Articles 11 and 13 and their Guidelines at EU level, Member States have to voice their support for the adoption of mandatory pictorial warnings and plain, standardised packaging at EU level. Member States can also influence the process by adopting pictorial warning measures at the national level. This indirectly supports their adoption at EU level. Finally, France,²⁷ Finland,²⁸ Belgium²⁹ and the UK³⁰ have expressed their interest in plain, standardised packaging, which gives a clear message to the EU that such measures would have support if adopted at EU level.

- 18 D. Buck, M. Raw, C. Godfrey, M. Sutton, Tobacco and Jobs: the impact of reducing consumption on employment in the UK, Working Paper, Center for Health Economics, University of York (1995)
- 19 McGrady B., TRIPS and Trade-marks: the Case of Tobacco, World Trade Review (2004).
- 20 Katz J, Dearden R., Plain Packaging and International Health Treaties, in: Luik J, ed. Plain packaging and the marketing of Cigarettes. Oxfordshire: Admap Publications 1998.
- 21 See Articles 8.1 and 20 of the World Trade Organisation's Treaty on Trade Related Aspects of Intellectual Property
- 22 McGrady B., TRIPS and Trade-marks: the Case of Tobacco, World Trade Review (2004), p. 69
- 23 Case C-491-01; R. (on the application of British American Tobacco (Investments) Ltd) v. Secretary of State for Health, 10 December 2002.
- 24 Article 4, Punta Del Este Declaration, on the Implementation of WHO FCTC, 19 November 2010.
- 25 See Art. XX(b) GATT and Thailand - Restrictions on Importation of and Internal Taxes on Cigarettes, Report of the Panel adopted on 7 November 1990 (BISD 37S/2000) at para 21-35.
- 26 See Smoke Free Partnership's Briefing on the Revision of the TPD at http://www.smokefreepartnership.eu/IMG/pdf/Briefing_on_the_Revision_of_the_2001_Tobacco_Products_Directive.pdf
- 27 December 10, 2010, Proposition de Loi No. 3005 Proposition de loi visant à l'instauration d'un paquet de cigarettes neutre et standardisé, (Bill aiming to establish plain and standardized packaging for cigarettes)
- 28 Finland Ministry of Social Affairs and Health, "Minister Risikko conveyed a letter regarding plain packaging of tobacco products to EU Commissioner for Health" October 12, 2009 (news release), <http://www.stm.fi/en/pressreleases/webnews/view/1524699#en>
- 29 Le 19 avril 2011 Proposition de loi modifiant la loi du 24 janvier 1977 relative à la protection de la santé des consommateurs en ce qui concerne les denrées alimentaires et les autres produits et visant à l'instauration d'un paquet de cigarettes neutre (April 19, 2011 Bill aiming to amend the law of January 24, 1977 on the health protection of consumers in relation to food and other products and to establish plain packaging of cigarettes).
- 30 March 9, 2011, Healthy Lives, Healthy People: A Tobacco Control Plan for England, p.22, http://www.dh.gov.uk/prod_consum_dh/groups/dh_digitalassets/documents/digitalasset/dh_124960.pdf



The **Smoke Free Partnership (SFP)** is a strategic, independent and flexible partnership between the European Respiratory Society, Cancer Research UK and the European Heart Network. It aims to promote tobacco control advocacy and policy research at EU and national levels in collaboration with other EU health organisations and EU tobacco control networks.

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