



Brussels, 22 August 2019

To: Miroslav Toman, Minister of Agriculture of the Czech Republic

CC:

Ministry of Agriculture
 Ministry of Industry and Trade
 Ministry of Health
 Members of the Committee on Health Care of Chamber of Deputies
 Members of the Committee on Economic Affairs of Chamber of Deputies
 Members of the Committee on Agriculture of Chamber of Deputies
 Members of the Committee on Health and Social Policy of Senate
 Members of the Committee on National Economy, Agriculture and Transport of Senate
 Permanent Representation of the Czech Republic to the European Union

Re: Plain packaging of tobacco products

Dear Minister,

I am writing to you on behalf of the **Smoke Free Partnership, representing a Coalition of over 45 organisations from across Europe**, who are working together to promote effective evidence-based tobacco control policies and the implementation of the WHO Framework Convention on Tobacco Control (FCTC).

First, we would like to express our congratulations for the success of the recently adopted smoke-free legislation. Smoke free policies have enormous benefits to public health by protecting children and young people from second hand smoke, as well as de-normalising tobacco use for future generations, without any evidence of negative economic impact from countries where smoking bans have been in place for many years.

We are writing to you to address concerns regarding the aggressive lobbying of the tobacco industry against plain packaging in the Czech Republic. As experience in other European countries shows, tobacco manufacturers put enormous resources in trying to block, delay or weaken this policy measure.

In this letter, we address some misconceptions and concerns raised by the tobacco industry in the Czech Republic in order to prevent the introduction of tobacco control measures such as plain standardised packaging. These tactics have been utilised by the tobacco industry also in Australia, the United Kingdom, Ireland, Slovenia, Norway and France. Despite these false but vocal arguments, these countries along with Hungary, Belgium, the Netherlands and many others around the globe¹ have implemented or are in the process of adopting plain packaging for tobacco.

Firstly, **the tobacco industry claims that plain standardised packaging is not effective in reducing smoking. That is false.** Plain standardised packaging is scientifically proven to reduce the appeal of tobacco products, particularly to children and young people, increase the effectiveness of health warnings, and reduces tobacco products' ability to mislead consumers.² In Australia, where this measure has been in force for 7 years, follow-up studies have shown that plain packaging has contributed to reducing the number of people who started smoking, but also to increasing the number of individuals who attempt to quit smoking, and discourages people from relapsing.^{3 4 5} In France, one year after the introduction of plain packaging, a 20% drop in young people experimenting with tobacco was reported, and the perception of smoking as dangerous amongst young people has increased dramatically⁶. **In short, plain packaging works as intended.**

Secondly, **the tobacco industry claims that standardised packaging infringes its commercial or intellectual property rights. That is also false.** The tobacco industry's legal arguments against plain packaging have been invalidated time and time again by legal experts and courts alike.^{7 8} The European Court of Justice has ruled that **plain packaging, and its underlying principle of protecting public health**

¹ <https://www.fctc.org/the-canadian-cancer-society-international-tobacco-packaging-report/>

² University of Stirling: **Plain Tobacco Packaging: A Systematic Review**, available at http://phrc.lshtm.ac.uk/papers/PHRC_006_Final_Report.pdf

³ **Tobacco Plain Packaging: Post-implementation Review – Department of Health** (2016) <https://ris.pmc.gov.au/sites/default/files/posts/2016/02/Tobacco-Plain-Packaging-PIR.pdf>

⁴ **WHO Plain Packaging of Tobacco Products: Evidence, Design and Implementation**, available at http://apps.who.int/iris/bitstream/handle/10665/207478/9789241565226_eng.pdf;jsessionid=4CDCFF0344592398FFA1E40E58074FB1?sequence=1

⁵ **Medical Journal of Australia: Association between tobacco plain packaging and Quitline calls: a population-based, interrupted time-series analysis**, available at <https://www.mja.com.au/journal/2014/200/1/association-between-tobacco-plain-packaging-and-quitline-calls-population-based>

⁶ <https://cnct.fr/actualites/efficacite-paquet-neutre-prouvee/>

⁷ WHO Regional Office for Europe, **Tobacco Control Playbook : Governments can enact tobacco control public health measures without infringing the tobacco industry's commercial rights**, available at <https://tobaccoplaybook.net/en/008-commercial-rights.html>

⁸ <https://apps.who.int/iris/bitstream/handle/10665/275277/WHO-NMH-PND-NAC-18.9-eng.pdf?ua=1>

is compatible with the EU Tobacco Products Directive (TPD) and the broader principles of EU law, including freedom of expression, intellectual property rights, and the freedom to conduct business.⁹

In the UK, the judgment in the tobacco industry's case against plain packaging pointed towards the **remarkable lack of credibility of the industry's claims and evidence** brought against the measure.¹⁰ Furthermore, the High Court of Australia has dismissed claims that standardised packaging infringes intellectual property rights and ruled that the government is permitted to amend laws with regards to intellectual property rights in order to protect public health.¹¹ Tobacco companies will still maintain full rights to their logos and brand imagery but will no longer be able to use these marketing tools on cigarette packages. Finally, the industry's argument that plain packaging would infringe trademarks was put forward to the World Trade Organisation (WTO) and rejected by its Tribunal¹². **The WTO has stated already 8 years ago that there is no conflict between the FCTC, whose guidelines recommend plain packaging, and international trade law**¹³. Furthermore, Parties to the FCTC reiterated their commitment to "safeguarding regulatory space for public health objectives, including tobacco control policies, when entering into trade and investment agreements".¹⁴

Finally, **the tobacco industry claims that plain standardised packaging has been in force for too little time to be proven. That is also false.** Seven years after the implementation of plain packaging, Australia has been able to evaluate the initial impacts of the legislation as described above. In France, one year after the implementation of a comprehensive legislative package including plain packaging, a steep decline in smoking has been registered. UK, Ireland, France, New Zealand and Norway have all introduced plain packaging and Hungary, Slovenia, Belgium, The Netherlands, Canada, Saudi Arabia, Turkey, Israel, Thailand and Uruguay have adopted it; and others are currently considering its implementation. At the moment, 14 countries worldwide have adopted plain packaging rules and 15 more are working on them. In these countries, plain packaging is part of a long term comprehensive tobacco control strategy, where economic operators and consumers have had a predictable timeframe for its implementation as part of the government's effort and strategy to reduce tobacco use.

Since evidence and case-law converge in supporting plain packaging as a measure to implement the FCTC and to uphold public health we urge the Czech Republic to reject false claims of the tobacco industry and join other countries in Europe and beyond in moving towards stronger tobacco control policies including plain standardised packaging.

⁹ **Judgement of the European Court of Justice (Second Chamber)** of 4 May 2016, in case C-547/14, PMI and others vs The Queen, available at <http://curia.europa.eu/juris/liste.jsf?num=C-547/14>

¹⁰ **The High Court Judgment**, available in full at: www.judiciary.gov.uk/wp-content/uploads/2016/05/bat-v-doh-judgment.pdf. A summary by Action on Smoking and Health (UK) is available at

<http://ash.org.uk/information-and-resources/packaging-labelling-information-and-resources/standardised->

¹¹ **JT International SA v Commonwealth of Australia** [2012] HCA 43 (5 October 2012), available at

<http://www9.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/2012/43.html>

¹² <https://www.reuters.com/article/us-wto-tobacco-australia/australia-wins-landmark-wto-tobacco-packaging-case-bloomberg-idUSKBN1801S9>

Panel Report, Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging, WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R, 28 June 2018, available at:

https://www.wto.org/english/news_e/news18_e/435_441_458_467r_e.htm

¹³ http://www.who.int/fctc/wto_fctc/en/

¹⁴ http://www.who.int/fctc/cop/cop7/FCTC_COP7_21_EN.pdf

We urge you to see the tobacco industry's arguments for what they are: tactics to delay, block, or weaken life-saving policies to reduce tobacco use. We remain at your disposal for any questions and requests for additional information, data, and evidence.

Sincerely,

Anca Toma Friedlaender
Director, Smoke Free Partnership

Prof. MUDr. Eva Králíková, CSc.
Society for Treatment of Tobacco Dependence

List of supporting organisations

Belgium/EU: International association of mutual benefit societies

Belgium/EU: CPME: Standing Committee of European Doctors

Belgium/EU: ECL: Association of European Cancer Leagues

Belgium/EU: EHN: European Heart Network

Belgium: Belgian Foundation against Cancer

Belgium: Kom Op Tegen Kanker

Belgium: Alliance for a Smoke Free Society

Bosnia and Herzegovina: PROI: Progressive Reinforcement of Organizations and Individuals

Bulgaria: Smoke Free Life Coalition Bulgaria

Czech Republic: Česko Bez Kouře

Czech Republic: Society for Treatment of Tobacco Dependence

Finland: Suomen ASH: Finland's Action on Smoking and Health

France: CNCT: Comité National Contre Le Tabagisme

France: La Ligue contre le cancer

Germany: Unfairtobacco

Ireland: ASH Ireland

Ireland: Irish Cancer Society

Italy: SITAB: Società Italiana di Tabaccologia

Kosovo: Kosovo Advocacy and Development Center

Lithuania: NTAKK: Lithuanian National Tobacco and Alcohol Control Coalition

Montenegro: Juventas

Norway: Norwegian Cancer Society

Republic of North Macedonia: Institute for Public Health of the Republic of Macedonia

Poland: MANKO Association

Portugal: CATR: Centro de Apoio, Tratamento e Recuperação

Romania: ARPS: Asociatia Romana pentru Promovarea Sanatatii

Romania: Asociatia Generatia Romania Sanatoasa 2035

Serbia: Association „Health Mission“

Serbia: Serbian Society for the Fight Against Cancer

Slovenia: No Excuse Slovenia

Slovenia: Slovenian Coalition for Public Health, Environment and Tobacco Control

Spain: IDEPP: Grupo de I+D en Economía, Políticas Públicas y Salud

Spain: XQNS!

Sweden: Tobaksfakta - Independent Think Tank

The Netherlands/EU: INWAT: International Network of Women against Tobacco Europe

Turkey: Turkish National Coalition on Tobacco or Health

UK: ASH (UK)

UK: Cancer Research UK

UK: UKCTAS: UK Centre for Tobacco and Alcohol Studies

UK: FRESH

Ukraine: Life: Regional Advocacy Center