

# SMOKE FREE PARTNERSHIP BRIEFING

TOBACCO PRODUCTS DIRECTIVE  
FACT NOT FICTION



## THIS BRIEFING BY THE SMOKE FREE PARTNERSHIP

1. Sets out the evidence base for the key new measures in the revised Tobacco Products Directive (TPD).
2. Counters the myths being put forward by the tobacco industry.
3. Explains why we believe that in some instances the TPD should be revised and improved.

### SMOKING IS AN ADDICTION OF CHILDREN AND YOUNG ADULTS -THE TPD WILL HELP TO PROTECT THE NEXT GENERATION

- Smokers start as children and continue as addicts: 70% of smokers start before they are 18 and 94% under 25.<sup>1</sup>
- Smoking is the major cause of preventable premature death and disease killing 700,000 people in the EU each year, more than the next six causes put together (road deaths, illegal drugs, suicides, murders, aids and accidents at work).<sup>2</sup>
- It is estimated that the TPD will in five years reduce the number of smokers in the EU by 2.4 million, providing a net gain of 2234 jobs, a net benefit to the economy of 4 billion euros and 506 million euros in annual reductions in healthcare expenditure, and saving 16.8 million life-years.<sup>2</sup>

- Countries like Canada<sup>3</sup> and Australia<sup>4</sup> with comprehensive tobacco control strategies in place including large pictorial health warnings have seen significant declines year on year in youth smoking.

### TOBACCO INDUSTRY CONFLICT OF INTEREST

Tobacco multinationals are required to maximise shareholder value and so in consequence they must resist attempts by governments to reduce smoking prevalence. The EU and its Member States (MS) recognise that there is an irreconcilable conflict of interest between the tobacco industry and public health.<sup>5</sup> As parties to the WHO FCTC the EU and its MS are required to ensure the commercial and vested interests of the tobacco industry do not undermine tobacco control policies.<sup>6</sup>

In 2000 BAT claimed the current TPD then under negotiation would 'wipe out' employment in tobacco manufacturing in the UK.<sup>7</sup> Yet in 2005 when BAT moved production out of the EU, with the loss of over 500 jobs in the UK and Ireland, the press release from BAT said this was to reduce costs, not because of the TPD.<sup>8</sup> And the European Globalisation Adjustment fund has indicated that redundancies in the tobacco industry are primarily caused by globalisation and NOT by tobacco control legislation.<sup>9</sup>

Industry arguments against the TPD are not generally independently verified or peer reviewed. Most evidence in support of the TPD is produced by public health academics and clinicians and independently verified and reviewed. Rebuttals to industry myths are set out below. All the evidence in this document is sourced and full references can be found in the online version of this publication at [www.smokefreepartnership.eu](http://www.smokefreepartnership.eu)

# TOBACCO MYTHS

## MYTH N° 1:

**There is no evidence that the measures in the TPD proposal will work**

### FACT

There is good evidence that the measures in the TPD are both proportionate in terms of the internal market and will help drive down the number of young people taking up smoking, lead to more adult smokers quitting and help prevent ex-smokers relapsing. See below for a summary of the evidence.

### Picture plus text warnings of 75% front and back [3.2; Art. 9]

A systematic review of the evidence shows that health warnings on tobacco packs are effective in discouraging young people from taking up smoking and in motivating smokers to think about quitting. Picture warnings and warnings of 75% and above are significantly more effective than text-only warnings of 50% or below and are particularly effective with young people.<sup>10</sup> In Belgium the number of calls to the quitline increased by more than two thirds in the year that pictorial warnings containing the number to call were included on all packs.<sup>11</sup> Countries which have introduced large pictorial warnings have done so as part of a comprehensive tobacco control strategy and the impact of packaging changes is not immediate so it can sometimes be difficult to prove a causal link between health warnings and a reduction in the number of young people taking up smoking. However, in Canada there is good evidence that the introduction of pictorial warnings in 2001 was effective in increasing quit attempts and reducing smoking rates.<sup>12</sup> Smoking rates amongst 15 to 19 year olds fell from 25% to 22% in the year picture warnings were introduced and have continued to fall such that by 2011 only 12% of this age group were current smokers.<sup>3</sup>

### Removal of tar nicotine and carbon monoxide (TNCO) levels from packs to be replaced by descriptive information [3.2, Art.12]

This is in line with new evidence that the quantitative information about tar, nicotine and carbon monoxide included on the side of cigarette packs is

misleading as it encourages consumers to think that some tobacco products are safer or less risky than others.<sup>13 14</sup> This is untrue, low tar cigarettes are no less likely to kill you than high tar cigarettes.<sup>15 16</sup> Yet in every Member State smokers are most likely to mention TNCO levels as the best indication of the harmfulness of a brand<sup>17</sup> and smokers, particularly those considering quitting, look at this information regularly.<sup>18</sup> This also supports the need for quitting information to be on all packs as it is clear that smokers wanting to quit look at information on the pack.

### Ban on slim cigarettes [3.2, Art.12]

Research into the impact of pack design on young women, including the impact of brand descriptors such as “slims”, as well as skinny packs and pink colours finds that such packs are both misleading and significantly more appealing to young women.<sup>19 20</sup> In particular, such packs can reinforce the belief that smoking helps to control appetite and prevent weight gain as well as being less harmful. This is a growing problem which the TPD needs to address as global sales of slim cigarettes, which are explicitly targeted at women, are expected to grow from 4% to 13% of the market between 2011 and 2016.<sup>21</sup>

### Minimum number 20 cigarettes per pack and requirement for cuboid pack shape [Art. 13]

Increasing the average price of a pack of cigarettes helps reduce youth uptake as young people are particularly price sensitive and put off buying cigarettes by higher prices.<sup>22</sup> Pack sizes smaller than 19 are already banned in 16 out of 27 MS.<sup>2</sup> Health warnings are designed to work best on cuboid shaped packs; the warnings have less impact on other shapes, such as lipstick and perfume shaped packs<sup>23</sup> as the text becomes compacted.

### Ingredients and Emissions – banning characterising flavours [3.1, Art.6]

Tobacco Products with flavours which characterise the taste of the cigarette are prohibited (e.g. chocolate, mint, vanilla, cherry, peach and grape). These flavours improve the taste and make it easier to inhale, particularly for young people just starting to smoke.<sup>34</sup>

## MYTH N° 2:

**The proposal will increase the illicit market in tobacco**

### FACT

The tobacco multinationals' concern about illicit trade needs to be evaluated in the context of their history of some manufacturers having facilitated the smuggling of their products.<sup>25 26 27 28</sup> Since 2004, the four major international tobacco companies have paid billions of dollars in fines and payments to settle cigarette smuggling litigation by the EU and Canada.<sup>29</sup> <sup>30</sup> Japan Tobacco International is currently under investigation by the EU.<sup>31</sup>

The Impact Assessment confirms that no convincing evidence was submitted by the tobacco industry that larger health warnings, pictorial warnings or standardised packs will lead to an increase in the illicit trade in tobacco, thereby reducing legal sales.<sup>2</sup> MS which have introduced picture warnings have seen no increase in the illicit trade, in fact in the UK since picture warnings were introduced in 2008 the illicit market share of cigarettes has steadily fallen from 14% to 9%.<sup>32</sup>

Tobacco packs are already easily counterfeited which is why the industry puts covert markings on all tobacco packs to distinguish between authentic and counterfeit packs. Packs under the new Directive will continue to have all the health warnings and other markings required on current packs – so they will be no easier to counterfeit.<sup>33</sup>

Controlling the illicit trade is an enforcement issue. The illicit trade protocol (ITP) to the WHO FCTC was adopted in November 2012 and this will further strengthen the ability of the EU to control the illicit trade once it is ratified. The measures as set out in the TPD will require all tobacco manufacturers to implement tracking and tracing systems and are designed to enable the EU to meet the requirements of the ITP.

### MYTH N° 3:

#### **These proposals are not popular with the public**

##### **FACT**

Tobacco control policies are popular with EU citizens: 76% support putting picture warnings on packs; 73% support improved security features on packs; 63% support banning flavourings; 57% support plain, standardised packaging.<sup>17</sup>

### MYTH N° 4:

#### **The proposal will harm employment in the EU**

##### **FACT**

The proposals in the TPD are estimated to decrease tobacco consumption by 2% over a period of 5 years. This decrease in sales will lead to a small decrease in employment in the tobacco sector, continuing a long-term trend. However, the tobacco industry is not a labour intensive industry. In 2008 the tobacco industry employed only 34,000 people<sup>34</sup> or 0.015% of those employed across the EU-27. Less expenditure on tobacco products means more expenditure on non-tobacco products and services in more labour intensive sectors. These industries will see an increase in demand for their products and an increase in employment adding an estimated 2,234 additional jobs in the EU over the next five years.<sup>35</sup>

### MYTH N° 5:

#### **The proposal will harm growers**

##### **FACT**

EU tobacco production only accounts for a quarter of the tobacco supply in the European tobacco industry.<sup>36 37</sup> A reduction of 1% of tobacco products in the EU will result in at most a reduction of 0.25% of the tobacco harvest in Europe.<sup>37</sup> Unitab has acknowledged that a ban on characterising flavours would not in itself harm Burley growers as it will not prevent the use of additives in Burley tobacco.<sup>38</sup>

### MYTH N° 6:

#### **The complexity of the measures (e.g. ingredients regulation, tracking and tracing) could undermine the viability of a range of Small and Medium sized Enterprises (SMEs)**

##### **FACT**

Implementation of the measures in the TPD are the responsibility of the tobacco manufacturers not SMEs, so there is no reason why the proposals should undermine the viability of SME's. Retail sales will decline gradually but not overnight as the main impact will be on reducing uptake amongst young people not on current smokers, so shops will have time to adapt.

### MYTH N° 7:

#### **Further controls on packaging will breach intellectual property rights leading to compensation claims**

##### **FACT**

The use of tobacco trademarks is already limited by law. The use of a trademark is a privilege, not a right as explained in TRIPS agreement Article 20 and article 8(1) which specify that "members may adopt measures necessary to protect public health, provided that such measures are consistent with the provisions of this Agreement." Indeed, international trade agreements do not create a right to use trademarks, and in any case, they allow for governments to implement measures to protect public health.<sup>39</sup> Trademarks are already limited by EU law in the current TPD<sup>40</sup> and the Medicines Directive<sup>41</sup> without compensation being due.

### MYTH N° 8:

#### **The proposals will introduce rather than remove barriers to trade**

##### **FACT**

As the Impact Assessment states the proposals in the TPD will ensure MS bring national legislation in line with international obligations and the scientific evidence base while at the same time ensuring a high level of health protection as required by EU law.<sup>2</sup>

### MYTH N° 9:

#### **Standard packs and larger health warnings will cause confusion and extra costs for small businesses**

##### **FACT**

It's just as easy to sell standard packs as heavily branded packs. Industry estimates that it would take 45 seconds longer per sale are based on a survey of the opinions of just 6 tobacco retailers.<sup>42</sup> Objective research measuring over 5,000 transactions found that standard packs do not increase transaction times<sup>43</sup> and this is backed up by experience in Australia.<sup>44</sup>

### MYTH N° 10:

#### **The tobacco industry should have equal right to influence policy making process to health community**

##### **FACT**

Tobacco is not like any other product, it is the only legal consumer product on the market which is lethal when used as intended. That is why the UK and over 170 other governments have signed up to the WHO Framework Convention on Tobacco Control which places legal obligations on governments to strictly regulate tobacco products and to protect their tobacco control policies from the commercial and vested interests of the tobacco industry.

# IMPROVEMENTS TO THE TPD

The Smokefree Partnership believes that the TPD could be improved in the following ways.

## Standard packaging [(40),(41) Art.24]

MS can introduce standard packaging but we believe that this should be mandatory in the TPD as there is good evidence that standard packaging which removes all branding elements on the pack (colours logos etc.) apart from the product name in a standard font is effective in enhancing the impact of health warnings and reducing the attractiveness of the pack particularly to young people. To quote a Philip Morris executive, "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."<sup>45</sup>

## Traceability and Security Features [Art.14]

The TPD proposal requires an EU tracking and tracing system down to packet level throughout the supply chain (excluding retail). The current Directive gives the Commission powers to adopt technical measures related to traceability and identification and this power is brought into effect in the current directive. This new

measure will strengthen Member States powers to control the illicit trade and enable consumers to verify the authenticity of tobacco products. However, the proposal would be strengthened considerably by requiring links between identifiers on packs and outside packaging; invisible as well as visible security features; and that data storage and access related to tracking and tracing must be independent of the tobacco companies.

## Nicotine Containing Products [Art. 18]

The current proposal requires that products above a certain nicotine concentration are authorised as medicines while below that level they come under the TPD. We strongly recommend that all non-tobacco nicotine containing products require medicines authorisation. This is because:

- Medicines regulation will ensure that good quality products remain available to smokers, while preventing them being sold or promoted to children and young people who are non-smokers. It will

also enable prohibition of sweet-like flavourings such as bubble gum, chocolate and vanilla attractive to children.

- The cutoff point in the Directive is difficult to measure as the actual level of nicotine taken in by users depends on how the product is used, and not the nicotine content itself. The TPD as currently drafted in this area would make for bad regulation as determining whether the product comes above or below the cutoff point is difficult and expensive and very similar products will be regulated in very different ways.
- Products regulated under the TPD will require a 30% front and back warning stating "This product contains nicotine and can damage your health". This warning is misleading and could put smokers off using nicotine replacement therapy (NRT). NRT has a medicines license in the EU to help smokers quit because the nicotine it contains is effective in helping smokers quit without causing harm. Medicines authorisation for all nicotine containing products will remove the need for this warning.



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