

DG HERA
European Commission
1049 Bruxelles/Brussel
Belgium

Cologne, 14 June 2022

**Evaluation of the legislative framework for tobacco control
Feedback by German Tobacco Wholesalers' Association (BDTA)**

Dear Sir or madam,

The German Tobacco Wholesalers' Association (BDTA) represents the common economic, political and social interests of its 100 medium-sized member companies - the majority of which are family businesses - towards authorities, political decision-makers, other associations and organizations as well as the public and the media.

Thank you for the opportunity to participate in the evaluation of the tobacco control regulatory framework, particularly product regulation and advertising, promotion and sponsorship, in the broader context of other related tobacco control policies. As part of this evaluation, we would like to share with you some concerns that we ask you to consider as the consultation process continues.

Track&Trace-System to remain as-is in order to allow economic operators to build up routine in post-implementation phase

After the traceability system for tobacco products (Track & Trace system) implemented in the EU Tobacco Products Directive 2014/40/EU already controls the legal supply chain on several levels and without gaps, further measures to combat illegal supply chains must be included in the directive. It should be mentioned that tobacco wholesalers will also face new challenges after 2024 due to the extension of this system to cigars and cigarillos. For this very reason, it must be possible for the entire value chain to continue without interruption in the event of a possible global expansion of the system.

Plain Packaging ineffective in terms of reducing smoking incidence, driving cost factors for economic operators and furthering illicit trade

One measure that we consider to impede the fighting of illicit trade is the introduction of "plain packaging" for tobacco products. The standardization of package design will make everyday processes in commissioning more difficult due to complicated distinguishability and will slow them down accordingly. Such a measure as plain packaging only means increased operational complexity for retailers, which is associated with increased costs in all areas of a business.

Kontakt BDTA e.V.:
Bundesverband Deutscher
Tabakwaren-Großhandel
und Automatenaufsteller e.V.
(BDTA)
Berrenrather Straße 482
50937 Köln
Telefon: 0221/400700
Telefax: 0221/40070-20

E-Mail: info@bdta.de
Internet: www.bdta.de

Claus Obholzer
obholzer@bdta.de

Matthias Junkers
junkers@bdta.de



Plain packaging would also freeze the market share of private labels and has been shown to lead to "downtrading": consumers find it difficult to tell the difference between premium and cheap brands and therefore reach for cheaper products with lower profit margins.¹ There is also evidence in this context that sales are shifting from the legal to the illegal market, as standardized packaging makes counterfeiting easier.²

Since the introduction of plain packaging - incidentally also the enlargement of the graphic warning labels - has been shown not to have its health-promoting effect³, the economic disadvantages far outweigh the intended effects.

Prohibition of the sale of certain product categories

Another facilitating factor that could lead to an increase in black market sales would be the prohibition of the sale of certain product categories, such as slim cigarettes. There is evidence that the ban does not reduce demand for certain products, but only shifts sources of supply - in this case, the illicit market.⁴ This means that smokers seek out recently banned product categories that continue to be offered by illicit suppliers.

Measures needed to combat the increasingly complex illicit trade as it undermines health objectives and market stability

In the light of the current regulatory situation and the prevailing prices for tobacco products, there is already a vast illegal market: in 2019, around 40 billion illicit, i.e. smuggled and illegally produced cigarettes were consumed in Europe⁵. The retail value of 40 billion legal cigarettes is about 14 billion euro. According to the European Anti-Fraud Office OLAF⁶, tobacco smuggling undermines anti-smoking health campaigns and has created incentives for large-scale organized crime.

The increasing complexity of global trade and logistics structures (e.g., e-commerce and the proliferation of postal and small package services) logically leads to a further increase in black market goods that not only undermine said anti-smoking health campaigns but also, to the same extent, are increasingly difficult to track by official anti-illicit trade agencies.



Tabakhandel mit Verantwortung

¹ See: <https://www.nature.com/articles/s41562-020-00940-6>, called on 31 May 2022.

² See: <https://www.smokefreeworld.org/eu-menthol-cigarette-ban-survey-2/>, called on 30 May 2022.

³ See: <https://businessschool.luiss.it/en/be-inspired-blog/analysis-of-the-impact-of-plain-packaging-on-tobacco-consumption-in-the-uk-and-france/>, called on 30 May 2022.

⁴ See: <https://www.smokefreeworld.org/eu-menthol-cigarette-ban-survey-2/>, called on 31 May 2022.

⁵ See: KPMG, Illicit Cigarette Consumption in the EU, UK, Norway and Switzerland, 2019 results 18. Juni 2020.

⁶ https://ec.europa.eu/anti-fraud/investigations/investigations-related-eu-revenue/tobacco-smuggling_de, retrieved on 31.05.2022

The task of policymakers must be to change their policies to minimize the increase in illegal activities and to enable the demand of the approximately 90 million consumers in Europe⁷ with legal products. The legal distribution chain for tobacco products is a business level that satisfies fiscal interests and meets health policy objectives. It is the only level that is transparent and can be controlled and influenced by regulation.

Display ban – not proven effective and outside scope of EU competence

We are also critical of the introduction of a Europe-wide display ban. A display ban would cause considerable costs for retailers and would harm, even destroy, retailers' business without evidence of its effectiveness. In addition, any sales regulation could not be regulated within the framework of the revision of the Tobacco Products Directive due to a lack of competence, as it is not a measure that promotes the functioning of the internal market and would violate the competence basis of Article 114 TFEU.

“Tobacco-free generation” – outside scope of EU competence, high risk of causing societal disorder and violating constitutional rights

Finally yet importantly, we have concerns about the EU Commission's proclaimed "tobacco-free generation" by 2040, which implies an 80% reduction in current tobacco consumption, with certain unavoidable impacts on economic actors involved in the production and distribution of tobacco and related products. In our opinion, such a revision of the Tobacco Products Directive, which would exceed the competences of the EU, is not only constitutionally questionable, but also not expedient: a drying up of supply for products in demand has already been shown in a disastrous way in the 20th century with alcohol bans in Norway and in the United States: In both cases, a huge illegal market was created within a short period of time to meet the continuing demand - in the absence of a legal supply.

We ask that the issues mentioned above be considered in the further consultation process.

If you have any questions or comments, please do not hesitate to contact us.

Kind regards



Claus Obholzer
Geschäftsführer BDTA e.V.



Matthias Junkers
Referent BDTA e.V.

⁷ See: European Commission, Special Eurobarometer 506, Attitudes of Europeans towards Tobacco and Electronic Cigarettes, February 2021: According to the “Special Eurobarometer 506“, a survey commissioned by the European Commission, 24.7% of Europe’s adult population (18+) smoke - this is around one quarter of the population, or over 90 million adults.