



**CONSULTATION ON THE PROPOSED TOBACCO
PRODUCTS REGULATIONS (PLAIN AND
STANDARDIZED APPEARANCE)**

Forest EU response to the public consultation

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Why it matters to tobacco consumers

Forest is a lobby group informing smokers about the issues that affect them and engaging with stakeholders so the views of informed adults are considered within the decision-making process. Since 1979, Forest has been the leading voice of tolerant non-smokers and tobacco consumers who choose to smoke.

Because adults who are aware of the health risks should be able to choose to consume a legal product without excessive regulation, Forest EU campaigns against excessive regulations including comprehensive smoking bans and unnecessary government intrusion into people's personal lives and private spaces, such as tobacco display ban, standardised packaging of tobacco and other measures designed to restrict freedom of choice for adult consumers.

Our principal aims are to support adults who choose to smoke; engage with politicians and regulators; counteract the 'denormalisation' of tobacco; prevent further restrictions on the purchase and consumption of tobacco; highlight the increasingly intrusive role of politicians and regulators in the lives of private individuals; develop support among like-minded consumers and organisations in the European Union.

By responding to this consultation, Forest EU wants to share with the government of Canada its analysis of plain packaging, of its unintended consequences and the lack of public health benefit this tobacco-control measure is likely to have achieved in the countries that have implemented it, especially Australia and France.

Forest EU is supported by the Confederation of European Community Cigarette Manufacturers (CECCM), whose members are Japan Tobacco International (JTI), British American Tobacco (BAT) and Imperial Brands PLC (IMB) and by the members of the European Smoking Tobacco Association (ESTA). Our annual budget in 2018 is €165,000. Forest EU has an independent organizational structure and advocates for the consumer, not the tobacco industry. Forest EU accepts there are serious health risks associated with smoking tobacco and does not promote or encourage it. A comprehensive view of our goals can be seen on our website at <http://forestonline.eu/about>

Summary

Forest EU is categorically opposed to the plain and standardized packaging of tobacco products:

- plain and standardized packaging would not work: there is no solid public health evidence to support its introduction;
- it would adversely affect consumers who are aware of the health risks associated with smoking and chose to purchase and smoke a legal product;
- it would have genuine unintended and unsafe side effects and would erode the principles that support the success and prosperity of a Canadian social order based on freedom.



1. Does plain and standardized packaging protect young persons and others from inducements to use tobacco products and their consequent dependence on them?

The proposed measures related to the plain and standardized appearance for tobacco packaging put forward by Health Canada are unlikely to contribute to reducing smoking prevalence among adults and young persons alike. In the countries that have implemented plain packaging of tobacco products, the measure doesn't seem to have improved public health.

Australia was the first country in the world to impose plain packaging of tobacco products in 2012, with the intention to accelerate the decline in smoking prevalence. Five years after its implementation, data published by the Australian government tends to show that the measure doesn't have contributed to the acceleration in smoking prevalence in the country:

“While smoking rates have been on a long-term downward trend, for the first time in over two decades, the daily smoking rate did not significantly decline over the most recent 3-year period (2013 to 2016)”¹.

The National Drug Strategy Household Survey (NDSHS) 2016 data only shows a slight (and not statistically significant) decrease of 0.6 percentage points of smoking prevalence between 2013 and 2016.

A key stated objective of the Australian Plain Packaging Act of 2011 was to influence smoking prevalence, in particular of minors. But a statistical analysis of smoking prevalence among Australians aged 14 to 17 years conducted by researchers from the Universities of Zurich and Saarland failed “to find any evidence for an actual plain packaging effect on Australians aged 14 to 17 years” between December 2012 and December 2013².

France followed Australia and introduced plain packaging of tobacco products in 2017.

In France, one year after the introduction of plain packaging in January 2017, the data published by the public authority OFDT shows that the number of cigarettes shipped to retailers remained largely unchanged, with a decrease of only 0.7 percentage point in 2017³.

The failure of plain packaging to reduce smoking prevalence in France was acknowledged by French Health Minister Agnès Buzyn during a parliamentary debate on the Social Security Finance Bill. The Minister said that plain packaging “does not lead smokers to quit smoking”. She added that she didn't know if the introduction of plain packaging in France “has been effective in preventing youth from entering smoking”⁴.

¹ Available from: <https://www.aihw.gov.au/reports/illicit-use-of-drugs/ndshs-2016-key-findings/contents/highlights-from-the-2016-survey>, see “Highlights from the 2016 survey”.

² Available from: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2414430, see “Abstract”

³ Available from: <https://www.ofdt.fr/statistiques-et-infographie/tableau-de-bord-tabac/>, see “Dernières éditions : octobre/novembre/décembre”

⁴ Available from: <http://www.assemblee-nationale.fr/15/cri/2017-2018/20180075.asp>, see “le paquet neutre n'a donc pas fait diminuer la vente officielle de tabac. Nous ne disposons pas d'une typologie de ceux qui continuent de fumer et ne savons donc pas si le paquet neutre a été efficace pour empêcher les jeunes d'entrer dans le tabagisme – j'attends à ce sujet les données des observatoires.”



More generally, and to the best of our knowledge, there is no credible evidence that suggests underage persons start smoking because they are attracted to packaging. Nor is there credible evidence that non-smoking children or adults buy cigarettes on impulse because of exposure to cigarette packs. The principal factors – well established and agreed upon by many tobacco-control campaigners – are rebelliousness, risk taking, socio-economic status, educational success but more significantly peer pressure⁵ and the influence of family members⁶.

Considering the first aim of the Canadian plain and standardized packaging proposal – Protect youth and others from starting to use tobacco products and becoming dependent on them – and noting that regulating the shape, size and look of tobacco products and packaging would not impact peer pressure and the influence of family members in a non-smoker’s decision to start to buy and possibly consume tobacco products, there is no reason to come to the conclusion that the measures considered by the Canadian government are needed to achieved the first aim above.

Together with the absence of credible evidence establishing a causal link between tobacco packaging and the decision of young persons to start to smoke, the Australian and French experiment with plain packaging tend to show that the introduction of this tobacco-control measures has not led to a decline in smoking rates.

Since the Canadian plain and standardized packaging proposal is comparable to the plain packaging measures introduced in Australia and France, there is no reason to believe that the Canadian plain and standardized packaging proposal will contribute to reducing smoking prevalence in Canada.

2. Does plain and standardized packaging prevent the public from being deceived or misled with respect to the health hazards of using tobacco products?

There is no good evidence that the size, shape colour or texture of existing branded tobacco products give consumers a false impression regarding the relative harm levels of these products.

For example, the EU Special Eurobarometer 385 “Attitudes of Europeans Towards Tobacco” published in May 2012 indicates that, on average, 95% of the EU consumers do not consider the shape of the pack to indicate levels of harm and 95% do not consider that the colour of the pack indicate levels of harm⁷.

It is often suggested that plain and standardized packaging could be used as a possible way of increasing the visibility and effectiveness of health warnings and messages. To the best of our

⁵ Available from: <http://onlinelibrary.wiley.com/doi/10.1111/j.1559-1816.1978.tb00771.x/full>, see “Abstract”

⁶ Available from: <https://jamanetwork.com/journals/jamapsychiatry/fullarticle/204427>, see “Abstract”

⁷ Available from: https://ec.europa.eu/health/sites/health/files/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf, see page T33.



knowledge, there is however no evidence that it does in practice. The introduction of increasingly large and preposterous health warnings, followed by the introduction of graphic and sometimes disturbing images, has had little effect on smoking behavior where they were implemented.

Given that current health warnings and graphic images are clearly visible at the top half of the front of cigarette packs in Canada, there is no reason to believe that the removal of the remaining area dedicated to the brand will increase visibility and effectiveness of health warnings.

In a comparable policy context but for a different consumer good, to an Irish plan allocating one third of alcohol labels to health warnings, the European Commission reacted by calling into question the proportionality of larger health warnings in delivering public health gains, and considered that, if they are clearly visible, smaller warnings are as effective as larger warnings in the eyes of the consumer:

“Would not the same objective be achieved if the health warnings had a smaller, yet visible, size?”⁸

Forest EU supports the continued provision of information to consumers about the health risks of smoking. Simultaneously, it should be noted that noticing something, particularly something one knows already such as a health warning on a tobacco product, does not necessarily translate into a change in actual smoking behaviour.

To the best of our knowledge, there is no convincing demonstration that plain packaging would enhance the visibility, prominence or salience of health warnings, and there is no demonstration that this mechanism would lead to changes in smoking behavior.

At best, plain packaging may increase the visibility of health warnings for a very short period of time thanks to a temporary ‘shock’ value. This visibility may soon wane and there may be no change in smoking behaviour as a result.

3. Other comments and concerns regarding the plain and standardized packaging for tobacco products proposal.

Instead of empowering individuals and giving people more freedom and control over their own lives, the introduction of plain and standardized packaging would stigmatize and bully adults who choose to purchase tobacco products and smoke.

Plain packaging would also reduce a certain kind of innovation since the matter, shape, size and look of tobacco products would be the same across brands. Plain packaging would therefore reduce consumer choice, by making it almost impossible to differentiate products and brands.

In Australia for example, low priced cigarettes have doubled their market share between 2011 and 2016 (from 29% to 60%) at the expense of medium and high priced cigarettes (from 19% to

⁸ Available from: <https://www.politico.eu/wp-content/uploads/2018/05/Commission-comments-Irish-alcohol-bill.pdf>



10%) as people are switching to cheaper cigarettes⁹. The impact on consumer choice could be significant because some brands will almost certainly disappear from the market. It is also economically questionable because a properly functioning consumer goods market relies on having clearly differentiated brands with different price positioning.

Branding helps consumers make informed choices: without brands consumers have less information to differentiate between products. A recent study pointed out that 81% of Canadian consumers believe branding matters because of the distinguishing information it provides, 74% said they believed tobacco companies should be allowed to brand, and 64% said plain packaging was a waste of government resources¹⁰.

Plain packaging would boost illicit trade and will thereby reduce government revenue. By creating a de facto charter to counterfeiters, it will potentially lead to more organised crime and criminal activity. Organised crime groups and the illicit trade in tobacco would be boosted by plain packaging as it would give them the market for branded products to themselves and would make it more difficult for consumers to identify illicit products. The measure would create an uncontrolled, unregulated, unaccountable market that circumvents regulatory controls, including where and to whom tobacco is sold including, importantly, underage people: criminals don't respect age restrictions.

For example, in Australia, the market share of illegal tobacco is now 20% higher than before 2012¹¹.

Canada doesn't need this boost in illicit trade: the illegal sale of contraband cigarettes already increased exponentially between 2002 and 2008, particularly in Canada's largest provinces, Ontario and Quebec¹². In 2008, the contraband tobacco market in Ontario was estimated to be as much as 42% of total cigarette sales¹³.

Tobacco being a legal product, the law should not impose excessive regulations on consumers who know the health risks and don't want to quit. Plain packaging represents a de-normalization of tobacco products. By stigmatizing the product, governments are also ostracizing the user from normal society.

Plain and standardized packaging in Canada is unlikely to deter people from smoking as there is no clear evidence that plain and standardized packaging led to lower smoking rates in Australia and France.

Increasing the prominence of health warnings on tobacco packaging through packaging regulation is not – in itself – a legitimate public policy objective capable of justifying the proposed plain and standardized packaging measures as this mechanism does not relate to behavioural change. Because of this, there is no reason to conclude that the considered

⁹ Available from: <https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illicit-tobacco-Report-2016.pdf>, see page 11

¹⁰ Available from: <http://www.propertyrightsalliance.org/news/new-study-shows-majority-of-canadians-believe-plain-packaging-is-unnecessary-and-a-waste-of-government-resources/>

¹¹ Available from: <https://home.kpmg.com/content/dam/kpmg/uk/pdf/2017/04/Australia-illicit-tobacco-Report-2016.pdf>

¹² Available from: http://www.smoke-free.ca/eng_research/pscresearch_papers.htm

¹³ Available from: <http://www.rcmp-grc.gc.ca/pubs/tobac-tabac/tobacco-tabac-strat-2008-eng.htm>



measures further regulating tobacco packaging are needed to achieve the aims of the Canadian plain and standardized packaging proposal.

The impact on consumer choice could be significant because some brands will almost certainly disappear from the market. It is also economically questionable because a properly functioning consumer goods market relies on having clearly differentiated brands with different price positioning.

It's also an example of the 'slippery slope' approach to policy making: if the plain and standardized packaging proposal was to pass, it could serve as a blueprint for comparable policy measures on alcohol, sugary drinks, convenience food and any other product or habit considered as undesirable by the policymaker from a public health perspective. This would lead to a general shrinkage of the palette of lifestyle choices adults in Canada could enjoy.

Instead of targeting adult consumers who choose to smoke, it is our opinion that the Canadian government could focus on strategies that are proven to reduce underage smoking rates. More specifically:

- Targeted education programmes could be needed in schools to make sure children are aware of the risks of smoking from a young age;
- Tobacco taxes could be cut to reduce demand for black market cigarettes;
- Stiffer penalties could be introduced for those who sell cigarettes to children;

Apart from the serious issue of underage smoking rates, the government could:

- Respect the right of adult smokers to make informed choices about smoking a legal product;
- Conduct an evidence-based review of the impact of the existing tobacco-control regulations in Canada.

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