

Ministry of Economic Affairs and Communications, Estonia

– electronic contribution – rec. 376, 405, 432 - by Ministry of Economic Affairs and Communications

Question 1 - scope

Problem definition	Which option	Recommend option	Additional option

Question 2 – smokeless tobacco

Problem definition	Which option	Recommend option	Additional option

Question 3 – consumer info

Problem definition	Which option	Recommend option	Additional option
<p>No</p> <p>In the view of the Ministry of Economic Affairs and Communications, imposing the mandatory use of standardised packaging for tobacco products would disproportionately encroach upon free trade and competition, making this an industrial property issue rather than a health issue. Implementing the principle of standardised packaging for tobacco products affects trademark law, which in today’s global economy is important as a means to safeguard free trade and competition. Trademarks promote trade and economic efficiency, and are an important means of ensuring competition. It would be an unprecedented step in restricting industrial property rights. Trademarks are used to distinguish the goods or services of one individual from the similar goods or services of another. Implementing the proposed solution would mean that this primary objective would not be met, as the trademark itself does not incite anybody to consume tobacco products. Furthermore, such a change could bring about a situation</p>	No change		

<p>where all combined and design tobacco product trademarks could be withdrawn through lack of use, thereby damaging the interests and rights of many trademark owners. Trademarks are not only words or a logo, but can also be colours and the shape and design of the packaging itself. Therefore, even if the principle of standardised packaging allowed for the possibility of using verbal trademarks on tobacco product packaging, it would nevertheless still restrict the use of other trademarks used by companies to distinguish their products from competitors' products and which consumers also use to distinguish products from each other. According to various international agreements (e.g. Articles 8(1), 15(4) and 20 of the TRIPS Agreement and Articles 6quinquies and 7 of the Paris Convention), Community law and Estonian national law, trademark law is a form of ownership in respect of which owners can legitimately expect their rights to be protected and taken into account. Applying one-colour packaging to tobacco products may also lead to an increase in illegal trafficking. According to data from the Estonian Institute of Economic Research, illegal trafficking already accounts for 25-30% of all cigarettes sold in Estonia, resulting in EEK 807 million in uncollected tax revenue in 2009. One-colour packaging is probably easier to counterfeit and harder to distinguish from legal products, and may possibly lead to a larger counterfeit market</p>			
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Question 4 – reporting

Problem definition	Which option	Recommend option	Additional option

Question 5 – ingredients

Problem definition	Which option	Recommend option	Additional option
Yes	Establish a common list of tobacco ingredients	Establish a negative common list of tobacco ingredients	<p>The Ministry of Economic Affairs and Communications supports initiatives aimed at protecting public health. Any restriction on or prohibition of tobacco ingredients must be scientifically justified.</p> <p>Thorough scientific proof must be presented in respect of any ingredients up for prohibition demonstrating that they are toxic, attractive to young people and addictive. This measure would give the same flavour to all cigarettes sold in Estonia; this may push consumers to the illegal market, where the products they are used to are still available. Furthermore, banning various ingredients may give the consumer the false impression that the resultant tobacco products are less detrimental to health. This, in turn, could lead to the use of stronger tobacco products.</p> <p>Given the conditions of the EU internal market, we support the creation of a uniform negative common list to ensure the convergence of measures and the harmonious functioning of the internal market. A positive common list, however, would inhibit the arrival on the market of new (possibly less detrimental to health) products.</p>

Question 6 – access to tobacco products

Problem definition	Which option	Recommend option	Additional option
Yes	No change	We support the proposal to ban the sale of tobacco	A ban on displaying tobacco products could cost small

		<p>products on the internet and at vending machines as one possible measure to restrict the availability of such products.</p>	<p>companies EEK 25-30 000. Small shops may not necessarily be able to afford such an investment and may have to close – a serious problem, for instance, in sparsely populated areas. Given that in Estonia a total of 2 838 shops sell tobacco products (plus other points of sale, such as 2 205 catering establishments), the retail sector investment could exceed EEK 190 million. Any such measure must be based on scientific research enabling the proportionality of the measure to the achievement of the planned objective to be assessed.</p>
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