

Executive Summary

This study analyses the risks of the illicit trade in tobacco products (ITTP) which may arise as the unintended consequences of the introduction of plain packaging of tobacco products in the UK.

The tobacco market is a dual market. It consists of a legitimate and an illegal part, which implies that **changes to the legal market may affect the illicit market as well.** The ITTP is a threat to the effectiveness of tobacco control policies aimed at curbing smoking and its dangerous effects on human health.

The plain (also known as generic or standardised) packaging of tobacco products is a tobacco control policy which forbids any form of branding or any other distinguishing feature on the packaging of tobacco products. The main assumption behind the requirement of plain packaging is that logos, colours and other features of tobacco packaging are important means of promotion. At present, plain packaging has not yet been implemented in any country in the world. Australia is the only country to have approved plain packaging legislation, which will be implemented in December 2012. The past few years have seen lively debate on plain packaging in the UK. Recently, the Department of Health launched a public *Consultation on standardised packaging of tobacco products* on 16 April 2012.

The ITTP in the UK

The ITTP became an important concern in the UK during the 1990s. In 1999-2000, HM Treasury estimated that the market share of illicit tobacco amounted to nearly 18% for cigarettes and 80% for hand-rolling tobacco (HRT). In 2000, the UK Government launched a strategy to tackle the trade in illicit tobacco, with an investment of £209m over three years from 2000 (deployment of

approximately 1000 extra customs staff and the purchase of x-ray scanners) and the allocation of a further 200 operational staff in 2006 specifically to tackle HRT smuggling. Although the Government's action has been quite successful in reducing the market share of illicit products, **the UK illegal market still remains above the average of EU Member States.**

The structure and functioning of the UK illicit market have significantly changed in reaction to intensified enforcement efforts. Other forms of ITTP have gradually emerged, with large-scale smuggling being replaced by a significant growth of counterfeit cigarettes. Furthermore, illicit whites have gradually gained an important share of the illicit market. **This evolution shows that ITTP is a highly flexible phenomenon: it is sensitive to the regulation of the legal market and also to law enforcement efforts. The introduction of new tobacco control measures should consider their impacts on the illicit trade.**

Limited assessment of the impacts of plain packaging on the ITTP

Despite the importance of the ITTP in the UK, the policy documents prepared for the public consultation have not considered the impacts on the ITTP. In particular, the systematic review of evidence commissioned by the Department of Health has overlooked the impacts on the illicit trade (Moodie, Stead, et al., 2012, pp. 5–6). Furthermore, the Impact Assessment on plain packaging prepared by the Department of Health remarked that “any risk that standardised packaging could increase illicit trade of tobacco will be explored through consultation as there is insufficient evidence on which to include analysis in this IA” (Department of Health, 2012a, p. 3). The report explicitly recognized the importance

of the ITTP, arguing that “the main uncertainties associated with the policy explored herein [...] relate to impacts upon price and the illicit tobacco trade” (2012a, p. 13), that “the illicit and cross-border trade are declining but there is the risk that standardised tobacco packaging may lead to some reversal of this trend” (2012a, p. 19) and that “any adverse impact of standardised tobacco packaging (increase) in the non duty paid segment of the market could involve significant costs” (2012a, p. 23).

Notwithstanding the acknowledged importance of the risks relative to the ITTP, the documents cited have not conducted a detailed analysis of the likely impacts of the introduction of plain packaging. This is remarkable because plain packaging may produce a variety of effects which ultimately undermine its main purpose, i.e. to reduce smoking initiation and prevalence. **This lack of knowledge is important, and more specific studies should be conducted on this issue by the UK authorities.**

The risks of ITTP as unintended consequences of plain packaging

This study identifies three main risks associated with the introduction of plain packaging

1. **An increased risk of counterfeiting of tobacco products.** Plain packaging will facilitate the business of counterfeiters in two ways: it will make it easier for them to reproduce

genuine products, and it will significantly reduce the production costs of counterfeits. The counterarguments advanced in relation to the risk of counterfeiting are weak. Firstly, the presence of pictorial health warnings has not to date discouraged counterfeiting, and health warnings are easier to counterfeit than specific brands and features. Secondly, the presence of covert marking and other identification devices does not help consumers to spot counterfeits.

2. **A risk of decreased differentiation between legitimate and illicit tobacco products.** The implementation of plain packaging may gradually decrease consumers’ perception of the differences between legitimate and illicit tobacco products. Market data suggest that a downtrading trend is already in progress, with consumers switching to cheaper products. Given this scenario, there is the risk that unbranded genuine products may lose most of their appeal compared with cheaper illicit cigarettes.
3. **A risk of increased ITTP as a result of increased potential profits.** Many studies suggest that plain packaging may induce price-competition among brands. This may lead to price reduction, with possible risks of increased consumption. The increasing of taxes to counterbalance price reductions will increase the potential profits for the ITTP.