



Addressed to: Members of the European Parliament

Dear Members,

The undersigned Europe and United States based free market and taxpayer groups write you to express our strong concerns regarding the EU Commission's recently adopted Tobacco Products Directive (TPD). The new directive will needlessly create an expensive new European bureaucracy while potentially starting a trade war with the United States, with citizens of the EU and the United States being the losers.

First and foremost, it is our view that it is your duty to protect European citizens and taxpayers from being overly taxed and regulated. In the middle of an unprecedented financial crisis, this overzealous TPD proposal ignores the concerns of millions of taxpayers and places hundreds of thousands of jobs at risk.

In light of the economically difficult times Europe is facing, this anti-business and anti-free market message the Commission is sending to taxpayers and investors is disturbing.

The TPD proposal outright bans approximately 10% of all cigarettes sold on the European market today, including more than 30% of the cigarettes sold in Poland, over 30% in Bulgaria, nearly 26% in Finland, 16% in Romania, 13% in Greece and 12% in Sweden. It forces roughly 10 million smokers to find their product through illegal channels, thereby putting them at risk and hollowing out any potential revenue.

A key ingredient in free market competitive businesses is branding and product differentiation but the proposal standardizes tobacco product packaging, which undermines this principle, destroys brands and will drive down prices as the means for product differentiation. The 900,000+ retailers across Europe will be particularly hard hit at a time when most of them are already struggling to survive. These retailers will lose customers and income to the illicit trade, and governments will lose tax revenues when they are desperately needed to fill budget holes.

In addition, the TPD grants the EU Commission new authority to ban tobacco products outright via delegated acts without effective democratic oversight or input. This is deeply troubling to us as it takes Democracy, science, rational thought and freedom out of the process.

It is also estimated that such a ban will impact US farmers and the communities where they live as Europe is the largest market for US grown tobacco.

In a letter to João Vale de Almeida, the European Union (EU) ambassador to the United States, Senate Minority Leader Mitch McConnell (R-Ky.) and Sen. Richard Burr (R-N.C.) expressed their concerns about how the TPD will affect trade when they noted, "While the United States and the EU's trade and economic relationship is unparalleled and provides significant benefits to those on both sides of the Atlantic, we have serious concerns about the TPD and its impact on transatlantic trade relations."

It is important for regulations to be consistent with international law, be grounded in science, and take into account the concerns of its citizens, which may be negatively impacted by such policies. Regulation should also be based on what is proven to work (i.e., be necessary), be proportional, and be consistent with international obligations. Many of the TPD provisions are not grounded in science nor are they consistent with international treaty obligations.

The implementation of plain packaging would violate several international agreements to which the EU is a party. For example, it will affect the Trade-Related Aspects of Intellectual Property Rights (TRIPS) that is administered by the World Trade Organization; it will violate the Paris Convention, an international convention dealing with the protection of the industrial property (patents, industrial designs and trademarks); last but not least, it will affect the agreement on Technical Barriers to Trade (TBT) that deals with the procedure of testing and certifying conformity to technical regulations.



The protection of property rights, both physical as well as intellectual, is critical to the economic development of many economies. Creating and maintaining an environment where both forms of property are protected contribute to economic growth and stability of modern economies. We note that the EU economy relies heavily on business related to intellectual property, whether it is pharmaceuticals, movies, music, books, software or inventions and industrial designs. As such, the continued protection of intellectual property rights is critical for the economy to continue to flourish.

The protection of trademarks is a vital part of protecting intellectual property rights. Trademarks and other intellectual property rights are extremely valuable as a result of their wide recognition and the values associated with the brands they identify. It is well established under European jurisprudence that such a deprivation of property by the government is unlawful without just compensation.

Tobacco companies have significant intellectual property rights through their trademarks. Plain packaging legislation would significantly erode the value of this property. As such, the TPD not only violates the legal rights of companies affected, but sets a very dangerous precedent for the future protection of intellectual property rights within the EU..

In our view, the taxpayers of the European Union and American farmers deserve better. They deserve leaders who stand up against policies like the Tobacco Products Directive.

While tobacco may be unpopular in political circles, the nanny state policies that impact tobacco today will seep into other product categories in the future. Just read the headlines today about other products – such as soda and fast food - under assault by nanny state organizations and politicians.

Perversely, the TPD could actually have an adverse impact on public health. . By potentially banning or hindering the route to market of reduced harm products and placing burdensome new regulations on others, it may inadvertently increase the number of people smoking cigarettes.

Freedom and prudence toward taxpayers are important considerations to take into account as this debate unfolds. We urge you to stand with the undersigned conservative organizations in opposing the draconian, nanny state principles that are currently a part of the Tobacco Products Directive.

Sincerely,

Institute of Economic and Social Studies - Slovakia

Taxpayers Association of Europe - Germany

Europeans for Tax Reform- Albania

Tea Party Italia- Italy

TaxPayers' Alliance, United Kingdom

Institute for Policy Innovation – United States

National Taxpayers Union – United States

R Street Institute – United States

Taxpayers Protection Alliance – United States

Property Rights Alliance, Americans for Tax Reform's affiliate – United States