



EUROPEAN CIGAR MANUFACTURERS ASSOCIATION

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ECMA's contribution to the public consultation organised by the Finnish Ministry of Social Affairs and Health, in relation to the draft proposal to amend the Tobacco Act

ECMA, the European Cigar Manufacturers Association, is the trade association of cigar and cigarillo manufacturers in the Member States of the European Union (EU). ECMA members together account for over 80% of the traditional cigars and cigarillos produced in the European Union. ECMA represents 16 cigar and cigarillo producing companies with 18 manufacturing plants in the EU¹. Together these companies employ more than 5,000 persons in their cigar and cigarillo businesses in the European Union and another 30,000 in countries outside the European Union. ECMA boasts eleven family-owned companies as part of its membership. Of the full sixteen ECMA member companies, five fall under the definition of small and medium sized enterprises.

ECMA supports evidence-based tobacco regulation aimed at preventing young people from taking up smoking. Unfortunately, ECMA does not see this approach reflected in the series of new regulatory measures proposed by the Finnish government, which instead simply and unjustifiably extend restrictions meant for mass-consumption tobacco products to cigars and cigarillos².

In our comments below, ECMA would like to stress that cigars and cigarillos constitute specialty and niche tobacco products with unique production characteristics and patterns of consumption. For these reasons, ECMA considers the introduction of plain and harmonised packaging and a flavour ban for cigars and cigarillos to be disproportionate and unwarranted, and ECMA respectfully requests the Finnish government to exempt cigars and cigarillos from the scope of the proposed legislation.

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Brussels, 3 June 2021

Reference to the public consultation: VN/572/2020

¹ The full list of ECMA members can be found on the ECMA website: www.ecma.eu

² Luonnos, Hallituksen esitys eduskunnalle laiksi tupakkalain muuttamisesta, STM011:00/2020, 26 April 2021 ('Draft Government Proposal').



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Lack of justification supporting plain packaging for cigars and cigarillos

The newly proposed Section 32 of the Tobacco Act suggests introducing standardised and plain packaging to all tobacco products, including cigars and cigarillos. However, even as it references legislation from Australia, Ireland and New Zealand, these newly proposed measures lack any concrete and specific evidence as to why plain and standardised packaging should be extended to niche traditional tobacco products like cigars and cigarillos. The proposed regulation is also, in some places, simply wrong on the facts. The Finnish Draft proposal to amend the Tobacco Act refers to the Netherlands as having adopted plain packaging for cigars and cigarillos, when in fact this has only been proposed, but not adopted³. Further, regarding the use of the Netherlands as an example, even the Dutch State Secretary for Health Mr Blokhuis himself has argued that “*no hard evidence has yet to be found that young people have shifted to cigars*”⁴ in countries that apply plain packaging only to cigarettes and roll your own products. Moreover, referring to the only three countries in the world applying plain packaging to all tobacco products, Mr Blokhuis further notes that “*it is difficult to say whether the neutral packaging of cigars in Ireland, Australia or New Zealand has led to a lower use of cigars. Cigars are not used enough in those countries to provide reliable prevalence figures*”⁵.

ECMA would like to remind the Finnish government that cigars and cigarillos are traditional and niche tobacco products, and as such are not widely used nor consumed in Finland or in any other countries in the world for that matter. With an annual total consumption of approximately 130 million pieces in 2020, cigar and cigarillo consumption has been declining for years⁶ and also represents only an extremely small share of the consumption of tobacco products in Finland (3% of total legal tobacco consumption⁷).

While the Finnish government argues that the proposed measures are justified in order to reduce the “temptation” of young people to buy cigars or cigarillos, we would note that there are many sources of evidence that emphasise that young people are demonstrably not cigar nor cigarillo consumers. Indeed, the European Parliament and Member State governments reached the same conclusion in 2014 when they adopted Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products (TPDII), which acknowledged that tobacco products, such as cigars and cigarillos, “*which are mainly consumed by older*

³ Draft Government Proposal, p. 24.

⁴ Third answer, *State Minister Blokhuis' responses to written questions from the Chamber about neutral packaging cigarettes and roll-your-own tobacco*, Parliamentary Paper 32011, dated 8 November 2019, accessible here: <https://www.rijksoverheid.nl/documenten/kamerstukken/2019/11/08/beantwoording-kamervragen-over-standaardverpakking-voor-sigaretten-en-shagtabak> (accessed on 3 September 2020).

⁵ *Ibidem*.

⁶ With the exception of the 2017-2018 period linked with the introduction of 'borderline' cigarillos on the Finnish market, subsequently withdrawn with the establishment of a minimum tax, as well as for 2020 due to strict border closure.

⁷ This figure does not take into account pipe and waterpipe tobacco consumption as well as the important presence of illegal snus and illegal cigarettes smuggled from abroad. The actual market share of cigars and cigarillos is therefore much lower than 3% of the total tobacco consumption in Finland.



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*consumers and small groups of the population*⁸, should be exempted from certain labelling requirements. This fact has once again recently been confirmed in the European Commission's Support Study to the report on the application of Directive 2014/40/EU, which found practically no use of cigars and cigarillos in the under-25 age group in Finland⁹.

In this regard, cigar and cigarillo smokers have a specific and well-documented consumer profile. According to the Special Eurobarometer report *Attitudes of Europeans towards tobacco and electronic cigarette*, only 1% of EU smokers smoke cigarillos, cigars or pipes on a daily basis¹⁰; and, further, *“these tobacco products are more likely to be smoked on an occasional basis or tried only once or twice.”*¹¹ The latest Eurobarometer report continues to confirm previous conclusions that *“tobacco products like cigars, cigarillos and pipes are consumed regularly only by a minority.”*¹² While there may have been a slight increase in the daily use of cigarillos in Finland from 2017, we have not seen evidence that this has translated into an increase or uptake of smoking prevalence by young people.

Additionally, the 2021 Eurobarometer report also confirms that cigars and cigarillos are **not products associated with starting smoking**. Among all respondents in Finland who have tried tobacco products, the most common first experience of tobacco is by far cigarettes (81%), with only 2% mentioning cigars or cigarillos¹³. Cigar and cigarillo consumption is in other words, a *“characteristic of the oldest age groups”*¹⁴ with an average cigar and cigarillo smoker being an adult male over 35 years of age. This is further evident in the retail prices of cigars and cigarillos, which far exceed those of cigarettes. In this sense, ECMA would refer to the 2019 Economisti Associati Report, which stressed that cigars and cigarillos generally do not figure significantly in tax-driven substitution vis-à-vis cigarettes, *“either because their market is marginal or because their price is well-above the price of cigarettes, or simply because for their inherent characteristics and consumption patterns, they are only weak substitute of cigarettes”*¹⁵. The establishment of a minimum tax for cigars and cigarillos in 2018 has, in this regard, removed from the Finnish market so-called affordable “borderline” cigarillos.

Taking the above into account, ECMA would like to point out that nearly every European market which has already introduced or plans to introduce plain packaging, including France, Belgium, Denmark, Hungary, Norway, Slovenia and the United Kingdom, have recognised these specific characteristics of cigars and cigarillos and exempted them from plain packaging.

⁸ See Recital 26 of TPDII in conjunction with its Article 11.

⁹ Final Report: Support Study to the report on the application of Directive 2014/40/EU, May 2021, p. 290.

¹⁰ European Commission, *Attitudes of Europeans towards tobacco and electronic cigarettes*, Special Eurobarometer 506, February 2021, pp. T9-T10.

¹¹ *Ibid.*, p. 26.

¹² European Commission, *Attitudes of Europeans towards tobacco and electronic cigarettes*, Special Eurobarometer 458, May 2017, p. 20.

¹³ European Commission, *Attitudes of Europeans towards tobacco and electronic cigarettes*, Special Eurobarometer 506, February 2021, p. 98.

¹⁴ *European Commission, Attitudes of Europeans towards tobacco, Special Eurobarometer 385*, May 2012, p. 16.

¹⁵ Study on Council Directive 2011/64/EU on the structure and rates of excise duty applied to manufactured tobacco, Volume 1, January 2019, p. 174.



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And, even with these exemptions, all of these Member States are still widely regarded as countries with comprehensive and effective tobacco control policies¹⁶.

In addition, while TPDII allows the possibility for Member States to introduce further requirements under its Article 24, it also sets a threshold for the introduction of plain packaging; a test on proportionality. Considering that a display ban has been in place in Finland since 2012, and an existing trade practice to verify the age of consumers who appear to be under 30 years old¹⁷, ECMA considers it clearly disproportional to extend a regulatory measure like plain packaging, meant for mass-consumption tobacco products like cigarettes, to cigars and cigarillos; products that are sold either after age verification or in specialist tobacco stores frequented by adult connoisseurs and where several brands and types of cigars and cigarillos are being offered¹⁸.

Finally, the proposed implementation date for the introduction of plain packaging in 2023 is also not reasonable considering the slow-moving nature of cigars and cigarillos, with longer shelf life than factory-made cigarettes. In the situation where the Finnish government would confirm its intention to apply plain packaging for cigars and cigarillos, ECMA would suggest allowing a maximum sell-through period of two years for these products considering their longer turnover period on the shelf and, in the case of handmade cigars, their specific storage requirements.

For these reasons, ECMA considers the introduction of plain packaging for cigars and cigarillos to be neither appropriate nor justified, and ECMA respectfully requests the Finnish government to exempt cigars and cigarillos from the scope of the proposed legislation.

¹⁶ Association of European Cancer Leagues and the Tobacco Control Unit of the Catalan Institute of Oncology, *Tobacco Control Scale 2019*, accessible here: <https://www.tobaccocontrolscale.org>

¹⁷ As acknowledged by the Finnish Government itself in page 23 of the Draft Government proposal.

¹⁸ As opposed to the increasing number of special shops selling only one tobacco or electronic cigarette brand, as referred in page 8 of the Draft Government proposal.



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Harmonisation of the appearance of cigars and cigarillos packaging

The newly proposed Section 35 of the Tobacco Act suggests that *“the retail packaging of a tobacco product shall not differ in shape, colour, material, wrapping or other appearance from other retail packaging of the same tobacco product group”*.

Cigars and cigarillos are produced and packaged in a diverse array of sizes, formats, and materials which far exceed factory-made cigarettes in variety and complexity. Hand- and machine-made cigars/cigarillos vary significantly in length, weight, shape and diameter. Packaging materials can include cardboard, plastic, metal, and wood. Packages themselves have multiple sizes and formats – split boxes, fold-out boxes (in both cardboard and plastic), insert boxes, tins with both attached and removable covers, and wooden boxes with sliding, removable or attached tops and that range from basic to high-end in their design and the type of wood used in their manufacture. Some cigars are individually wrapped in cellophane to ensure moisture content and freshness, others are sold in their own individual metallic or plastic tubes.

This broad variation in cigar and cigarillos packaging is not, as the Draft Government proposal suggests, merely a means to make cigars or cigarillos “attractive” or as a “means of marketing products” but rather reflects both the historic diversity of cigar and cigarillo formats and their associated manufacturing methods, which are tailored to ensure that cigars and cigarillos are packaged and stored in a way that optimally preserves their freshness and quality.

For these reasons, ECMA respectfully requests the Finnish government to exempt cigars and cigarillos from the scope of the proposed Section 35 of the Tobacco Act.



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Lack of legal basis and evidence supporting a flavour ban for cigars and cigarillos

In its draft revision of the Finnish Tobacco Act, the Ministry of Social Affairs and Health is also proposing an extended flavour ban on all tobacco products and not only cigarettes and roll-your-own tobacco. The Finnish government suggests that it would be inconsistent if the ban on characterising flavours would not apply to all tobacco products with “*no reason why some tobacco products should be excluded from the ban*”¹⁹.

As already noted above, the European Parliament and Member State governments explicitly distinguished cigars and cigarillos from mass-consumption tobacco products in Article 7 of TPDII by voluntarily providing a derogation from the ban on characterising flavours enshrined in Article 7(1) of TPDII, considering the “*Directive’s focus on young people*”²⁰, who do not consume traditional niche tobacco products such as cigars and cigarillos as highlighted above. Contrary to what the Draft Government proposal implies²¹, flavoured cigarillos do not constitute new market developments appearing after the introduction of the ban on characterising flavours for cigarettes and roll-your-own tobacco products. Many of these products have been on the market for over 30 years, and EU legislators were fully aware of their existence when Parliament and Member States enacted an exemption for tobacco products other than cigarettes and roll-your-own (as opposed to novel products placed on the market after 2012).

In this regard, it is worth considering the recent example of Denmark²², which also considered a proposal regarding characterising flavours with similar wording to the Finnish Draft proposal. Under the Danish proposal, all tobacco products would have been subject to a flavour ban. As part of the legislative process, the proposal was notified to the European Commission. During the standstill period, the European Commission issued a detailed opinion, where it specifically rejected the proposed flavour ban:

*“The Union rules governing characterising flavours for tobacco products are set out in Article 7 [TPDII] (‘the Tobacco Directive’). Article 7(1) of the Tobacco Directive states that “Member States shall prohibit the placing on the market of tobacco products with a characterising flavour”. However, these provisions must be read in conjunction with Article 7(12), which indicates “Tobacco products other than cigarettes and roll-your-own tobacco shall be exempted from the prohibitions laid down in paragraphs 1 and 7. The Commission shall adopt delegated acts in accordance with Article 27 to withdraw that exemption for a particular product category, if there is a substantial change of circumstances as established in a Commission report.” It follows from the above that the Tobacco Directive currently provides for an exemption from the general ban of all tobacco products with a characterising flavour. The exemption provided for in Article 7(12) applies to tobacco products other than cigarettes and roll-your-own tobacco.”*²³

¹⁹ See page 10 of the Draft Government proposal.

²⁰ See Recital 19 of TPDII in conjunction with its Article 11.

²¹ See page 10 of the Draft Government proposal.

²² See the original Danish proposal notified under the EU 2015/1535 procedure on 17 April 2020, [https://ec.europa.eu/growth/tools-](https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=228)

[databases/tris/en/search/?trisaction=search.detail&year=2020&num=228](https://ec.europa.eu/growth/tools-databases/tris/en/search/?trisaction=search.detail&year=2020&num=228) (accessed on 10 May 2021).

²³ The Danish Parliament’s Health and Elderly Committee, publication of statements made by Member States and the European Commission within TRIS system, page 17, 18 September 2020, accessible



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As a response to the above, the Danish government, instead of relying on article 7(1) of TPDII, argued that it had the right to ban flavours for all tobacco products under article 24(3) of TPDII, i.e., that a member state may prohibit a certain category of tobacco products based on justified public health reasons²⁴.

However, here, too, the European Commission responded and explained that article 24(3) TPDII can, based on EU Court of Justice precedent²⁵, only be used if the specific matter has not been harmonised within the EU. As the ban on flavours has been harmonised within the EU, Denmark could not unilaterally ban flavours for other tobacco products categories.

The responsible Danish minister subsequently noted in a letter to the Danish parliament the following:

“In the light of the Commission's reply, the Government does not consider it possible to bring the proposed ban into force based on Article 24.3 of the Tobacco Products Directive.”²⁶

It should be clear from the above that an all-encompassing ban on flavours in tobacco products is currently not possible according to European legislation. ECMA was also disappointed and surprised to see the Finnish Government claim, incorrectly, that characterising flavours in cigars and cigarillos would be banned or restricted in Italy, Hungary, Slovakia and Romania²⁷ where no such restrictions in fact exist. In a similar fashion, a ban of additives resulting in a characterising flavour is not foreseen in TPDII for tobacco products other than for cigarettes and roll-your-own tobacco.

As the European Commission reported that “no product category reached the threshold that would mandate the Commission to trigger [the substantial change of circumstances clause]”²⁸, the Finnish government does not possess the necessary legal basis to enact a flavour ban for cigars and cigarillos.

here: <https://www.ft.dk/samling/20201/lovforslag/L61/spm/67/svar/1714081/2281716.pdf> (accessed on 10 May 2021).

²⁴ The Danish Parliament's Health and Elderly Committee, Question 35 (L61) to the Minister of Health, 13 November 2020, accessible here: <https://www.ft.dk/samling/20201/lovforslag/L61/spm/35/svar/1713013/2280240.pdf> (accessed on 10 May 2021).

²⁵ See Court of Justice of the European Union, *Philip Morris Brands and Others*, in Case C-547/14, 4th May 2016, paragraph 90.

²⁶ The Danish Parliament's Health and Elderly Committee, Question 85 to the Minister of Health and its reply, 14 December 2020, accessible here: <https://www.ft.dk/samling/20201/lovforslag/L61/spm/35/svar/1713013/2280240.pdf> (accessed on 10 May 2021).

²⁷ See page 25 of the Draft Government proposal.

²⁸ Section 10.2 of Report from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the application of Directive 2014/40/EU concerning the manufacture, presentation and sale of tobacco and related products, 20 May 2021, COM(2021) 249 final, p. 16.



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ECMA also firmly rejects the description made of cigarillos in the Draft Government proposal, where it claims their appearance supposedly “resembles that of cigarettes, although the white wrapping paper of cigarettes has been replaced with brown tobacco leaves”²⁹. An outer wrapper of natural tobacco constitutes the intrinsic characteristic of cigars and cigarillos and has done so since these products were first introduced in Europe in the 15th century. If the Finnish government is interested in further differentiating cigarillos from cigarettes, we would refer to the ongoing discussions at the European level in relation to the potential alignment of the excise definition of cigars/cigarillos with their customs classification – as part of the ongoing revision of Directive 2011/64/EU. If adopted, this will create additional and **useful differentiation between cigarillos and cigarettes**; namely by fully covering the filter with a natural wrapper modifying both the physical appearance of the product and the consumer smoking experience. This position would therefore support the Council’s call to improve the “definitions of certain manufactured tobacco products in EU legislation on excise [...]. In this context, definitions based on the classification for customs purposes in the Combined Nomenclature could be considered”³⁰.

Finally, as cigars and cigarillos represent only a extremely small and decreasing fraction (even in the presence of derogation for the use of flavours) of the total consumption of tobacco products, and do not act as a gateway to youth or first-time smoking, they should continue to enjoy appropriate exemptions from provisions aimed at mass market products like cigarettes.

ECMA believes that the Finnish Government does not possess the necessary legal basis to enact and enforce a flavour ban for cigars and cigarillos.

²⁹ See page 10 of the Draft Government proposal.

³⁰ General Secretariat of the Council, Council Conclusions concerning the structure and rates of excise duty applied to manufacture tobacco (hereinafter Council Conclusions 2020), 8483/20, 2 June 2020, paragraph 12.