

The European Cigar Manufacturers Association (ECMA) is the trade association of cigar manufacturers in the Member States of the European Union. ECMA members together account for over 90% of the cigars produced in the European Union. In the context of the “HØRINGSNOTAT Implementering av tobakksproduktdirektivet (2014/40/EU) Forslag til endringer i tobakksskadeloven” ECMA would like to draw your attention to the following.

Implementation Article 11 Directive 2014/40/EU

For the reasons mentioned below ECMA is of the opinion that Norway should implement Article 11 of Directive 2014/40/EU which concerns the “Labelling of tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco”:

Consumer profile

Consideration (26) of the Directive reads: “For tobacco products for smoking, other than cigarettes and roll-your-own tobacco products, which are mainly consumed by older consumers and small groups of the population, it should be possible to continue to grant an exemption from certain labelling requirements as long as there is no substantial change of circumstances in terms of sales volumes or consumption patterns of young people. The labelling of these other tobacco products should follow rules that are specific to them”. The specific labelling rules for cigars, cigarillos and pipe tobacco are described in Article 11 “Labelling of tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco”.

According to the Special Eurobarometer report “Attitudes of Europeans towards Tobacco” that was published by the European Commission in May 2012 “regular smoking of a pipe appears to be characteristic of oldest age groups. These groups are also the most likely to smoke cigars”. On 29 May 2015 the European Commission published another Eurobarometer on Europeans’ attitudes towards tobacco and electronic cigarettes. Among others this Eurobarometer concludes:

- “.. Cigars, cigarillos and pipes are used much less frequently, with just 1-2% using them on a daily, weekly or monthly basis”;
- “There has been a decrease of six percentage points in the proportion of smokers who use cigars and a 4-point decline in the proportion using a pipe”;
- “More men than women regularly smoke .. cigars (4% vs. 0%), cigarillos (5% vs. 0%) or a pipe (2% vs. 0%)”.

Objective of the Directive

According to Article 1 of the Directive, one of the objectives is to approximate the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products in order to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of protection of human health, especially for young people.

Until today 4 EU Member States have transposed the Directive into national law, i.e. Italy, Lithuania, Portugal and the Slovak Republic. All four countries require combined health warnings plus two text warnings for cigarettes and RYO (the labelling rules of Articles 9 and 10), but exempt cigars, cigarillos and pipe tobacco from the combined health warnings on the basis of Article 11 of the Directive. In order to facilitate the smooth functioning of the internal market for cigars, cigarillos and pipe tobacco, Norway should also transpose Article 11 of the Directive on the “Labelling of tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco” into national law.

Impact of Articles 9 and 10 of the Directive on cigars, cigarillos and pipe tobacco

As these products are mainly consumed by older consumers and small groups of the population, cigars, cigarillos and pipe tobacco were exempted from Articles 9 and 10 in the original Commission proposal. Also the European Parliament was of the opinion that cigars, cigarillos and pipe tobacco should be exempted. Only during the trilogue phase of the decision making process it was decided that it should be up to the individual Member States to decide whether or not the exemption of Article 11 of the Directive should be applied.

Unfortunately Articles 9 and 10 of the Directive were not modified in line with this fundamental change. In contrast to cigarettes and roll-your-own tobacco, these Articles do not contain any references to cigars, cigarillos or pipe tobacco.

In the current Norwegian proposal Articles 9 and 10 of the Directive are applied to all tobacco products for smoking, including cigars, cigarillos and pipe tobacco. This would have the following serious and perhaps even unintended implications for the cigar sector:

Disproportionate health warning sizes

According to Article 11(4) of the Directive the health warnings on unit packets of cigars, cigarillos and pipe tobacco that appear on a surface exceeding 150 cm² shall cover an area of 45 cm². As Articles 9 and 10 of the Directive do not contain a similar provision for a maximum size of health warnings, the cigar industry will be faced with two significant problems. First, because of the very large quantity of different sizes of cigars and the variety of different packs, often produced in small volumes, in which they are presented for sale, the number of different sized warning sets that will have to be produced to dress each of these pack sizes will be enormous. As a result we anticipate that many lines currently on offer will no longer prove economical to distribute. Their withdrawal from the market will have a significant impact not only on manufacturers, but also on the small, specialist shops that retail them. And second, many cigars boxes are very large with surface areas often much greater than 150 cm², which will cause the size of the general warnings, information messages and combined health warnings to be disproportionately dominant (see annex).

Combined health warnings

In case Norway would decide to implement Articles 9 and 10 for cigars, cigarillos and pipe tobacco, the requirement that the two combined health warnings on the pack should be the same not only results in a steep increase in the cost of our packaging materials in case the warnings are pre-printed, but also in significantly higher minimum order quantities. However, in case non-pre-printed packs are used, it would make the process of the application of self-adhesive labels extremely complicated and as a result very inefficient. In particular in case of pre-printed hinged lid metal tins this requirement has extremely negative consequences regarding the cost and the minimum order quantities. The production of these metal tins is split in the lids and the bottoms and these two parts are only connected with a hinge later in the process. The fact that each tin should have the same combined warnings on the lid and on the bottom creates severe problems in the production process, as only lids and bottoms with the same combined health warning can be connected to each other.

Additional complexity due to many different shapes of packets

The cigar, cigarillo and pipe tobacco industry is characterized by products and packages of many sizes, formats, types of packaging and materials (cardboard, metal, plastic, wood) and small scale production processes. It therefore requires a lot of resources to adjust the many variants to the new requirements and to ensure that they all comply with the new labelling regulations.

Directive is silent on the positioning of general warning and information message on cigar packs

During the third meeting of the Expert Group on Tobacco Policy established under Commission Decision C(2014) 3509 on 2 July 2015, the problems related to the application of Article 9 and 10 of the Directive for cigars, cigarillos and pipe tobacco were discussed. According to the summary record of that meeting "... the Commission stressed that there have been some questions from national regulators and industry stakeholders as regards the placement of the general warning and information message on products other than cigarettes, roll-your own tobacco and water-pipe tobacco in the case they would have to comply with the combined health warnings regimes. It was underlined that TPD is silent on the positioning in this case, but that the Commission is currently reflecting on how to facilitate the implementation of Article 9 for 'other' products. Participants welcomed the idea for further discussion on this and it was suggested to involve an external contractor in this work".

As the Commission and the Member States have come to the conclusion that the Directive is 'silent' on the positioning of the general warning and information message on products other than cigarettes, roll-your own tobacco and water-pipe tobacco, ECMA questions how the cigar industry can be expected to prepare itself for the application of these Articles?

For all the above reasons, cigars, cigarillos and pipe tobacco need to be treated differently from other tobacco products. Articles 9 and 10 of the Directive simply do not reflect the characteristics of the cigar industry, with its enormous variety of models and sizes. The specific labelling rules for cigars, cigarillos and pipe tobacco are described in article 11 of the Directive, titled "Labelling of tobacco products for smoking other than cigarettes, roll-your-own tobacco and waterpipe tobacco". ECMA strongly urges Norway to transpose Article 11 of the Directive into national law.

Annex: examples of disproportionately dominant warnings based upon articles 9 and 10 of the Directive

