

Plain or Standardized Tobacco Packaging: International Developments – Updated February 2017



Laws adopted and in force

AUSTRALIA –

- December 1, 2011 Tobacco Plain Packaging Act adopted; December 1, 2012 Tobacco Plain Packaging Regulations came into force.¹
- Requirements apply to all tobacco products.
- Legal challenges: High Court constitutional challenge by tobacco industry dismissed October 2012²; Investment treaty claim by Philip Morris dismissed December 2015³; World Trade Organization (WTO) dispute panel ruling due not before May 2017.⁴

UNITED KINGDOM –

- March 2015 Standardised Packaging of Tobacco Products Regulations adopted; May 20, 2016 Regulations came into force⁵ (applies to England, Wales, Northern Ireland, and Scotland).
- Legislation applies to cigarettes and hand-roll-tobacco. Old stock can be sold until May 20, 2017.
- Legal challenges: High Court challenge by tobacco industry dismissed May 2016⁶; ruling upheld by Court of Appeal November 2016.⁷

FRANCE –

- November 24, 2015 Legislation providing powers adopted by the Assemblée Nationale (Law n°2016-41); March 22, 2016 the Decree and Ministerial Order were published; May 20, 2016 Decree came into force.⁸
- Legislation applies to cigarettes and hand-roll-tobacco. Old stock could be sold until January 1, 2017.
- Legal challenges: Le Conseil Constitutionnel upheld the law in a decision on January 21, 2016⁹; The Conseil d'Etat dismissed six industry challenges in a decision given on December 23, 2016.¹⁰

Laws adopted but not yet implemented

HUNGARY –

- August 16, 2016 Decree No 239/2016 published.¹¹ August 19, 2016 all new brands/variants must be in plain packaging. May 20, 2019 all existing brands must be in plain packaging.
- Applies only to cigarettes and hand-roll-tobacco.

IRELAND –

- March 10, 2015 Public Health (Standardised Packaging of Tobacco) Act¹² adopted - minor amendments to Act are still required before plain packaging comes into force¹³; Regulations¹⁴ are pending commencement.
- Applies to all tobacco products.
- Legal challenge: Claim by Japan Tobacco International in the Commercial Court struck out November 2016.¹⁵

NORWAY –

- December 9, 2016 Parliament approves plain packaging Bill.¹⁶ Implementation is intended for 2017.
- Applies only to cigarettes and hand-roll-tobacco.

NEW ZEALAND –

- September 14, 2016 Smoke-free Environments (Tobacco Standardised Packaging) Amendment Act 2016¹⁷ was given Royal Assent. A consultation ran from May to July 2016.¹⁸ Draft detailed regulations are being finalized.

SLOVENIA –

- February 15, 2017 Parliament passes a tobacco control bill¹⁹ which implements the EU Tobacco Products Directive (TPD) and includes provisions for introducing uniform, no-brand packaging within two years.

ROMANIA –

- October 12, 2016 Parliament passed a law which implements the EU TPD and includes provisions which allow the health minister to introduce plain packaging regulations.²⁰

Legislation being considered by Parliament

BRAZIL – Five different plain packaging bills have been introduced in the Senate and House of Representatives; the latest in May 2016 by Representative Rodrigues.²¹

CHILE – A bill providing powers to introduce plain packaging was passed in the Senate in July 2015.²² It has been assigned to the Health and Agriculture Commission in the House of Deputies, but has since remained inactive although pressure continues for it to be debated.

ECUADOR – A bill for plain packaging was introduced to the National Assembly on August 3, 2016²³ which has subsequently been assigned to the Health Committee.

PANAMA – January 2015, a bill was introduced to the National Assembly which would require plain packaging.²⁴ A sub-committee recommended it be removed making reference to the WTO TRIPS agreement, and no further action has since taken place.

Under formal government consideration

CANADA – The Liberal government had plain packaging as one of its manifesto commitments and in November 2015 it was set as a priority for the Health Department in a formal letter of mandate from the Prime Minister to the Health Minister. In May 2016, the government commenced a consultation²⁵ on detailed proposals for plain packaging which ran until the end of August 2016.

SINGAPORE – The Parliamentary Secretary commenced a public consultation on plain packaging from November 2015 to March 2016.²⁶ The Government has yet to announce its plans following the consultation.

THAILAND – On August 16, 2016, it was reported that the Council of State was considering a draft Tobacco Consumption Control Act introduced by the Public Health Ministry.²⁷ The draft act provides for larger health warnings and plain packaging. The WTO Trade Policy Review for Thailand published in November 2015 includes a reference to Thailand's intention to introduce plain packaging of tobacco.

URUGUAY – In November 2015 the president announced that the government is considering plain packaging. At a press conference on July 13, 2016, the Health Minister stated that plain packaging would be introduced in 2017 and that the law was being developed.²⁸

FINLAND – The Government National Action Plan included plain packaging as a planned measure in June 2014.²⁹ Legislation was introduced in July 2016 to implement the TPD which did not include plain packaging.

SWEDEN – The Minister of Health directed the committee examining the implementation of the EU TPD to also consider plain packaging. The committee report, presented in March 2016, concluded that plain packaging would require a change to the Swedish constitution.³⁰ The Bill to implement the TPD is expected in 2016. It is not clear whether the bill will include plain packaging.

Political commitments given

BELGIUM – The Public Health Minister announced on April 9, 2016 that Belgium would have plain packaging by 2019.

MAURITIUS – The Minister of Health made an announcement in September 2014 that it intended to include plain packaging in its National Action Plan for Tobacco Control (2014-2017). On June 6, 2016, the Health Minister renewed the government's commitment to plain packaging.

SOUTH AFRICA – In July 2014, the Minister for Health announced that he wanted to introduce plain packaging, and in March 2015 he stated that legislation will be introduced. A further similar announcement was made in May 2016. Legislation providing enabling powers is in the process of being drafted.

KENYA – On May 31, 2016 the Cabinet Secretary for Health announced that a formal plan and timeline for implementation of plain packaging will be developed. On August 16, 2016, during the launch of the first Global Adult Tobacco Survey (GATS) in Kenya, the Cabinet Secretary for Health directed the Tobacco Control Unit to start the implementation of standardized packaging as part of the subsequent batch of graphic warnings.

BOTSWANA – On May 31, 2016 the Minister for Health announced that the government intended to introduce plain packaging laws.

GAMBIA – On August 3, 2016 the Minister of Health and Social Welfare stated that his ministry is in full support of plain packaging and counts on the continued support and collaboration from the media and the multi-sectoral team, and that the Gambia will soon join other countries that have already passed laws to implement plain packaging.

UNITED ARAB EMIRATES – In February 2014, the Ministry of Health announced that it intended to introduce legislation, which would include plain packaging, by 2016.

TURKEY – The Office of the Prime Minister published a decree on January 27, 2015 announcing the entry into force of the new National Tobacco Control Program and Plan of Action for 2015-2018, which includes plain packaging.

MALAYSIA – In February 2016 the Health Ministry announced that Malaysia is planning to introduce generic packaging, but no firm dates were included in the announcement. However, on March 21, 2016, the Health Minister said no implementation date will be announced until talks with tobacco companies on intellectual property rights have concluded.

Other relevant laws

EUROPEAN UNION – The revised Tobacco Products Directive (TPD) was adopted April 3, 2014 and came into force on May 20, 2016. The TPD introduces some elements of pack standardization and provides (at Article 24(2)) that the 28 EU Member States *have the option* of adopting further requirements to standardize tobacco packaging.³¹

¹ Tobacco Plain Packaging Act 2011, available at <http://www.comlaw.gov.au/Details/C2013C00190>

Tobacco Plain Packaging Regulations 2011, available at <http://www.comlaw.gov.au/Details/F2013C00801>

² JT International SA v Commonwealth of Australia [2012] HCA 43 (5 October 2012) Judgment available here: <http://www.austlii.edu.au/au/cases/cth/HCA/2012/43.html>

³ Philip Morris Asia Limited v Commonwealth of Australia PCA Case 2012-02 All publicly available documents associated with the case are available from the Permanent Court of Arbitration's case page: <https://pcacases.com/web/view/5>

⁴ Australia — Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging. Dispute numbers [DS435](#), [DS441](#), [DS458](#) and [DS467](#)

⁵ The Standardised Packaging of Tobacco Products Regulations 2015 <http://www.legislation.gov.uk/ukxi/2015/829/contents/made>

⁶ R (British American Tobacco & Ors) v Secretary of State for Health [2016] EWHC 1169 (Admin) available here: <https://www.judiciary.gov.uk/wp-content/uploads/2016/05/bat-v-doh-judgment.pdf>

⁷ [2016] EWCA Civ 1182 (Appeal). available here: <http://www.bailii.org/ew/cases/EWCA/Civ/2016/1182.html>

⁸ The implementing legislation that amends the Public Health Code is Decree No. 2016-1117 of 11 August 2016 on the manufacture, presentation, sale and use of tobacco products. <https://www.legifrance.gouv.fr/eli/decret/2016/8/11/AFSP1612356D/jo>

The relevant parts of the public health code can be found here:

<https://www.legifrance.gouv.fr/affichCode.do?idSectionTA=LEGISCTA000033045524&cidTexte=LEGITEXT000006072665&dateTexte=20170126>

The detail of the law is in Decree of 21 March 2016, on the conditions of neutrality and standardization for the packaging and paper of cigarettes and rolling tobacco.

<https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000032276123&dateTexte=20170126>

⁹ Décision n° 2015-727 DC du 21 janvier 2016 Judgment available here: <http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2015-727-dc/decision-n-2015-727-dc-du-21-janvier-2016.146887.html>

¹⁰ CE, 23 décembre 2016, société JT International SA, Société d'exploitation industrielle des tabacs et des allumettes, société Philip Morris France SA et autres Judgment available here: <http://www.conseil-etat.fr/Decisions-Avis-Publications/Decisions/Selection-des-decisions-faisant-l-objet-d-une-communication-particuliere/CE-23-decembre-2016-societe-JT-International-SA-Societe-d-exploitation-industrielle-des-tabacs-et-des-allumettes-societe-Philip-Morris-France-SA-et-autres>

¹¹ Decree No. 239/2016 Amending Government Decree 39/2013 of February 14, 2013 on the manufacture, placement on the market and control of tobacco products, combined warnings and the detailed rules for the application of the health-protection fine http://www.tobaccocontrolaws.org/files/live/Hungary/Hungary%20-%20Decree%20No.%20239_2016%20-%20national.pdf and in English: http://www.tobaccocontrolaws.org/files/live/Hungary/Hungary%20-%20Regulation%20239_2016.pdf

¹² Public Health (Standardised Packaging of Tobacco) Act 2015 <http://www.irishstatutebook.ie/eli/2015/act/4/section/23/enacted/en/print.html>

¹³ Amendments in the Health (Miscellaneous Provisions) Bill 2016 see here for progress: <https://www.oireachtas.ie/viewdoc.asp?DocID=30706>

¹⁴ Draft Public Health (Standardised Packaging of Tobacco) Regulations 2016 <http://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaaction=search.detail&year=2015&num=650&dLang=EN>

¹⁵ JTI v Minister for Health, Ireland and the Attorney General 2015/2530P

¹⁶ <https://kreftforeningen.no/en/cancer-prevention/parliament-adopts-standardised-packaging-to-save-lives-and-prevent-suffering/>

¹⁷ <http://www.legislation.govt.nz/act/public/2016/0043/latest/DLM5821008.html>

¹⁸ http://www.health.govt.nz/system/files/documents/publications/standardised-tobacco-products-packaging-draft-regulations-consultation-may16_1.pdf

¹⁹ Available here: <http://imss.dz-rs.si/imis/601ce03a35a0d00c2a33.pdf>

²⁰ Law no. 201/2016 establishing the conditions for manufacture, presentation and sale of tobacco products and related products and amending Law no. 349/2002 on preventing and combating the effects of tobacco products, text available here <http://lege5.ro/Gratuit/geztin|xga4g/legea-nr-201-2016-privind-stabilirea-conditiilor-pentru-fabricarea-prezentarea-si-vanzarea-produselor-din-tutun-si-a-produselor-conexe-si-de-modificare-a-legii-nr-349-2002-pentru-prevenirea-si-combate>

²¹ [Senate Bill 103/14](#) (introduced March 22, 2014 by Sen. Rollemberg); [Senate Bill 769/15](#) (introduced December 3, 2015 by Sen. Serra); [House Bill 1744/15](#) (introduced May 28, 2015 by Rep. Perondi); [House Bill 2360/15](#) (introduced July 14, 2015 by Rep. Cortes); [House Bill 5430/16](#) (introduced May 31, 2016 by Rep. Rodrigues)

²² [Senate Bill 8.886-11 w](#)

²³ [Bill 216](#)

²⁴ [Bill No. 136/2015](#)

²⁵ <http://healthycanadians.gc.ca/health-system-systeme-sante/consultations/tobacco-packages-emballages-produits-tabac/document-eng.php>

²⁶ <https://www.reach.gov.sg/participate/public-consultation/health-promotion-board/substance-abuse-department/public-consultation-paper-on-potential-tobacco-control-policies>

²⁷ http://www.nationmultimedia.com/news/opinion/achara_deboonme/30293004

²⁸ <http://www.espectador.com/salud/338068/empaquetado-generico-para-reducir-el-atractivo-del-tabaco-en-2017>

²⁹ <https://julkaisut.valtioneuvosto.fi/handle/10024/70305>

³⁰ See summary at: <http://tobaksfakta.se/wp-content/uploads/2016/03/Summary1.pdf>

³¹ EU Tobacco Products Directive introduces some pack standardization provisions (on shape and minimum quantities together with 65% front and back picture health warnings) but does not itself impose full standardized packaging. Instead it provides the EU Member States the ability act directly through domestic legislation (“Accordingly, Member States could, for example, introduce provisions providing for further standardization of the packaging of tobacco products, provided that those provisions are compatible with the TFEU [Treaty of the Functioning of the European Union], with WTO obligations and do not affect the full application of this Directive.” ARTICLE 24.2 DIRECTIVE 2014/40/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 3 April 2014.)