

Plain Cigarette Packaging in Belgium as from 1st January 2020



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Plain packaging is gaining ground in Europe and around the world.

Following in the footsteps of France, the United Kingdom, Norway, Ireland and several other countries, Belgium will introduce plain packaging for tobacco products.

This measure forms part of the Ministry of Health's anti-tobacco plan and is intended to render the textual and visual warnings affixed to tobacco-based products more effective and thus to contribute to the continuing decline in the number of smokers in Belgium.

The Royal Decree of 13 April 2019

Directive 2014/40, known as the Tobacco Directive, entered into force in May 2014 and introduced certain measures regarding the labelling and packaging of tobacco products (for example, health warnings covering 65% of the surface of cigarette packaging throughout the EU). The Tobacco Directive also authorises the Member States to introduce stricter requirements in this area.

Further to this option, Belgium decided to standardise, by way of a royal decree published in the *Moniteur belge/Belgisch Staatsblad* on 17 May 2019, the presentation of the packaging of cigarettes, rolling tobacco and water pipe tobacco and to introduce plain packaging in Belgium.

The royal decree will enter into force on 1st January 2020 and provides that the packaging of all tobacco products must have a standard colour, Pantone 448 C, a drab dark brown considered to be the ugliest colour in the world. The brand name, for its part, is demoted to a mere trade name and may not appear more than once on the packaging.

Non-absolute nature of intellectual property rights

The Tobacco Directive was challenged by the tobacco industry, which claimed that it violated intellectual property rights in particular trade mark rights.

These challenges were systematically rejected by the Court of Justice of the European Union (see cases C-477/14, C-547/14 and C-220/17).

While the Court of Justice obviously recognises that the right to property enshrined in Article 17 of the Charter of Fundamental Rights of the European Union covers intellectual property (Case C-220/17), it notes that intellectual property rights are not absolute and consequently may be subject to certain limitations, insofar as these limitations are provided for by law and respect the essence of the rights and freedoms recognised by the Charter and, in compliance with the principle of proportionality, are necessary and actually meet objectives of general interest recognised by the European Union (C-220/17, para. 96).

In this regard, as the Court has already held (cases C-477/14 and C-547/14), the heightened level of protection for public health desired in the Union should outweigh any social or economic interests.

Transition period

The royal decree provides for a one-year transition period.

In practice, all packaging that does not meet the requirements of the royal decree must be removed from circulation by 1st January 2020, with the exception of items held in stock by retailers. The latter may continue to sell these products until 31 December 2020.