

The illicit tobacco  
trade review

2013

# JTI POSITION ON THE ILLEGAL TRADE OF TOBACCO

The fight against the illegal tobacco trade is an important business priority for JTI Ireland. Success against this trade requires cooperation between government and the industry, something JTI Ireland is fully committed to.

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# 01

## INTRODUCTION

*In this year's Illicit Tobacco Trade Review, we seek to analyse and reflect upon the trends that have emerged in the illegal tobacco trade in 2013. The Review aims to highlight where action has been effective but also point out where gaps have emerged in our collective response to the issue. Combating the illegal trade is a key business priority for JTI.*



John Freda  
General Manager, JTI Ireland Limited

A stylized white signature on a dark background, likely belonging to John Freda.

The scale of the illegal tobacco trade continues to be a problem in Ireland and there are several reasons for why this is the case, not least the current economic climate.

The Irish economy is beginning to show signs of recovery. Economic indicators, such as capital investment and gross national product (GNP) are starting to point in the right direction. Consumer sentiment rose to a two year high at the end of 2013 while the number of people unemployed fell to a four year low of 12.1%.<sup>1</sup>

However, personal consumption, which accounts for approximately two thirds of domestic demand, fell by 1.1% in 2013.<sup>2</sup> Fundamental shifts in consumer behaviour over the last number of years and the significant reductions in disposable income have meant that consumers have sought out value both in products purchased and retail destinations. Despite the optimistic macro-economic indicators, this trend for consumer downtrading is set to continue for the medium term.

Within this overall economic context, the illegal tobacco trade has continued to flourish. Revenue's latest estimate puts the level of non Irish Duty Paid tobacco products consumed in Ireland at 19%.<sup>3</sup> Industry estimates, which take account of the growth of the roll your own (RYO) segment, estimate that the Irish Exchequer fails to collect duty on nearly 1 in 4 of all cigarettes consumed in the State.<sup>4</sup>

“(In Australia) between 2012 and 2013 the level of illicit tobacco consumption grew to 13.9% of total tobacco consumption, the highest level recorded to date. This followed the introduction of plain packaging for tobacco products.”

Proposals to further regulate the tobacco market, such as the plain packaging of tobacco products, must be assessed in terms of their potential effect on the illegal tobacco trade. In the absence of reliable evidence as to the measure's efficacy, the potential negative effects on the illegal tobacco trade, on the retail trade and on the Exchequer must be borne in mind.

In April 2014, KPMG published a report on the illegal tobacco trade in Australia, Illicit Tobacco in Australia, which found that between 2012 and 2013 the level of illicit tobacco consumption grew to 13.9% of total tobacco consumption, the highest level recorded to date and 2.1% percentage points higher than in 2012.<sup>5</sup>

Due to high excise duties, Australia is already a lucrative target for illegal tobacco smuggling. The introduction of plain packaging appears to have exacerbated the problem.

Despite consumption remaining relatively stable, the report also found the overall sales of legal domestic product in the full year 2013 declined by 0.5% from the previous year: a lower decrease compared to an annual fall of 1.6% between 2000 and 2013.

JTI Ireland takes a zero tolerance approach to the illegal tobacco trade. We work closely with law enforcement agencies in Ireland to do everything we can to support them in combatting this illegal trade, supplying information in order to facilitate seizures of illegal tobacco.

On an international level, in 2013 JTI supplied information relating to over 4 billion cigarettes in over 80 suspect shipments across Europe to the European Anti-Fraud Office (OLAF). In December 2007, JTI entered into a 15 year voluntary agreement to contribute \$400 million to the European Commission to help combat the illegal trade of tobacco into and through Europe. To date, the Commission has distributed €195.7 million of JTI's contribution in annual installments to EU Member States. The Revenue Customs Service has drawn on this funding programme several times over the last number of years.<sup>6</sup>

From 2014, European Member States can access funding under the newly endorsed Hercule III anti-fraud programme, a financing programme managed by OLAF, which will make €70 million available to fight fraud, corruption and other illegal activities. Law enforcement agencies across Europe will now be able to access 80% of the funding needed to assist in the tackling of the illegal tobacco trade.<sup>7</sup>

In Ireland, illegal whites, cigarettes without any legal market, accounted for more than 60% of all cigarettes seized in 2013.<sup>8</sup> These illegal products are manufactured by small indigenous tobacco companies legitimately operating in their own country, but with absolutely no connection to any of the tobacco companies that legally supply tobacco products in Ireland.

In response to a request by the Chairman of the Oireachtas Committee on Jobs, Enterprise and Innovation, Damien English TD, the Minister for Finance, Michael Noonan TD, recently committed to the setting up of an informal working group between officials from the Department of Finance, Revenue Customs officials and members of the Oireachtas Committee to examine proposals to reduce the loss of revenue to the State from the impact of the illegal sale of goods.<sup>9</sup> This would be a significant step forward in bringing together all concerned stakeholders to devise one coherent strategy for Ireland to combat unlawful tobacco sales. It is only through collaborative initiatives between all relevant stakeholders such as this that sustainable progress will be achieved.

We in JTI look forward to continued collaboration with law enforcement, Government, retailers and other stakeholders in 2014 to introduce measures which will seriously halt and reverse the illegal tobacco trade in this country.



# 02

## EXECUTIVE SUMMARY

- Non Irish duty paid (NIDP) products are made up of illegal tobacco products sold in Ireland and legal cross border purchases. Revenue's latest estimate puts the level of NIDP tobacco products consumed in Ireland at 19%. Industry estimates, which take account of the growth of the roll your own (RYO) segment, estimate that the Irish Exchequer fails to collect duty on nearly 1 in 4 of all cigarettes consumed in the State.<sup>10</sup>
- In 2013, the Revenue Customs Service, having made 6,888 seizures, confiscated a total of 40.8 million cigarettes, with a retail value of approximately €18.9 million, and 4,203kg of loose tobacco worth approximately €1.7 million.<sup>11</sup>
- More than 60% of cigarettes seized in 2013 by the Revenue Customs Service were illegal whites. These illegal cigarettes are manufactured by small indigenous tobacco companies legitimately operating in their own countries but with absolutely no connection to any of the tobacco companies that legally supply tobacco products in Ireland.<sup>12</sup>
- On an international level, in 2013 JTI supplied information relating to over 4 billion cigarettes in over 80 suspect shipments across Europe to the European Anti-Fraud Office (OLAF).<sup>13</sup>
- The average fine imposed by the Irish Courts in 2013 for illegal tobacco related offences was €2,800 with a fine total of €169,750. 87 people were prosecuted during the year.<sup>14</sup>
- At €1,064 million, tobacco excise receipts in 2013 continued a year on year decline.<sup>15</sup> This is despite the fact that smoking prevalence has remained relatively constant during 2013<sup>16</sup> indicating further displacement to the illegal trade.
- Of the total Government excise take, tobacco excise continues to make up a significant portion at 21.5%.<sup>17</sup> This equated to 2.6% of the total Government tax receipts in 2013.
- Cigarettes in Ireland remain the most expensive within the Eurozone region with a premium average price of €9.50 per 20-stick premium pack compared to €3.40 in Poland (as of February 2014).
- 80% of the retail selling price of every packet of cigarettes sold in Ireland goes to the Government in excise and VAT.<sup>18</sup>
- The disposable income of Irish consumers remained stable during 2013, albeit at a low base having declined 18% since 2008.<sup>19</sup> Allied to fundamental shifts in consumer behaviour, the trend among consumers towards downtrading continued in 2013.
- Legislative measures must be considered in light of the potential impact on the illegal tobacco trade. Plain packaging, for example, is likely to exacerbate the illegal trade problem in Ireland.

The unregulated trade imposes enormous revenue losses for governments which directly affect its debt levels and ability to fund socially beneficial programmes such as healthcare or education.<sup>20</sup>

*Grant Thornton, An Irish and Global Challenge, March 2014.*



# 03

## OUR COMPANY AT A GLANCE

### Our worldwide locations

- *JTI offices*
- *JTI factories*

### 25,000 employees

We employ over 25,000 people across 90 offices, 24 factories, 6 R&D centres and 5 tobacco processing facilities worldwide.

### 120 offices

We operate in more than 120 countries around the world.

### 90 nationalities

We combine the multicultural diversity of over 90 nationalities.

### Our history

JTI – Japan Tobacco International is the international tobacco division of Japan Tobacco Inc., with a global market share of 11%.

JTI was formed in 1999 when Japan Tobacco Inc. purchased the international tobacco operations of the US multinational R.J. Reynolds.

The further acquisition of UK-based Gallaher in 2007 nearly doubled the size of JTI by adding 11,000 new employees.

### Our company

JTI is headquartered in Geneva, Switzerland. A truly international and multicultural business, JTI employs more than 25,000 people around the world.

JTI Ireland is a member of the Western Europe region which is made up of 16 JTI markets: Benelux (Belgium, Luxembourg, Netherlands), Cyprus, France, Greece, Iberia (Andorra, Canary Islands, Gibraltar, Portugal and Spain), Ireland, Italy, Malta, Switzerland and the United Kingdom.

### Our brands

Our eight Global Flagship Brands constitute the core of JTI's brand portfolio, which includes four of the top ten worldwide cigarette brands: Winston, Mevius, LD and Camel.

Our key cigarette brands in Ireland are Silk Cut, Benson & Hedges (representing the No.1 and No. 2 brands in the market respectively), Camel, Mayfair and Winston.

We are also market leaders in the growing RYO (Roll Your Own) segment with Amber Leaf, Ireland's No.1 RYO brand.

### Our engagement

JTI's view is clear: tobacco products carry risks to health. Appropriate and proportionate regulation of the tobacco sector is both necessary and right. JTI believes that:

- Minors should not smoke, and should not be able to obtain tobacco products. It is central to our Code of Conduct, our marketing practices, our operational policies and the way JTI does business;
- Adult smokers should be appropriately reminded about the health risks of smoking.



Reinforcing the age limit in retail stores is imperative to help prevent minors from gaining access to tobacco products. In this regard since 2010, JTI Ireland has proactively invested in and promoted its youth access prevention programme 'Show Me I.D – Be Age Ok'. The programme, supported by Retail Associations, Vintners, Chambers of Commerce and the Irish Tobacco Manufacturers Advisory Committee (ITMAC), was developed specifically to assist Ireland's retailers in preventing sales of tobacco products and other age restricted products to minors. The campaign includes an annual Awareness Week which will take place from the 30 June – 6 July this year. This comprises a nationwide media campaign and in-store promotions in over 2,000 retail outlets across the country. Visit [www.showmeid.ie](http://www.showmeid.ie) for further information.

It is important that adult smokers are reminded of the risks associated with tobacco products. Our consumer information initiative, No Safe Cigarette, addresses this by giving consumers more information about risks associated with smoking. It is a voluntary action by JTI to better inform consumers about our products. Its aim is to explain clearly that no cigarette is safe. All JTI cigarette packs in Ireland carry the web address, [www.nosafecigarette.com](http://www.nosafecigarette.com). Please consult this website for further information.

Irish criminal gangs are making about €3 million a week in selling illegal cigarettes.<sup>21</sup>

Tackling the Black Market and Retail Crime, Retail Ireland, 2012.

04

WHY THE ILLEGAL TOBACCO MARKET EXISTS

An International Problem

Levels of non domestic duty paid tobacco (inclusive of illegal trade and legitimate cross border trade).

Sources: Industry figures\* Euromonitor 2013\*\*

18%  
CANADA\*\*

28%  
IRELAND\*

22%  
GERMANY\*

42%  
HONG KONG\*

27%  
BRAZIL\*\*

An Established Criminal Network

“The illegal tobacco industry is a global industry invariably and it amasses large amounts of money for organised crime gangs.”

Assistant Commissioner Derek Byrne, An Garda Síochána, Oireachtas Health Committee Hearing, 23rd January 2014.

High Tobacco Taxation

“Every country with high tobacco taxes has an illegal tobacco problem. Ireland, which has exceptionally high tobacco taxes and tobacco prices, has a significant problem.”

Gerard Moran, Assistant Secretary, Revenue Commissioners, Oireachtas Health Committee Hearing, 23rd January 2014.

Ireland  
3rd highest rate of tobacco taxation in the EU

Low Penalties





# 04

## WHY THE ILLEGAL TOBACCO MARKET EXISTS

*The illegal tobacco trade is a serious issue that affects many countries across the globe depriving Governments of much needed revenue streams while funding organised crime gangs.*

### International growth

The illegal tobacco market is growing across the globe, with a 4% growth rate, excluding China, recorded in 2012.<sup>22</sup> The illegal tobacco market at 12% holds a greater percentage of the total global market, excluding China, than JTI. Some countries have a recorded illegal market share of well above 50%. Estimates put the potential figure of illegal cigarettes sold on the world market by 2017 at 628 billion cigarettes.<sup>23</sup>

Reducing the availability of illegal tobacco products is a serious challenge for all Governments. Not only does it undermine an important source of State revenue, it also circumvents national health policies aimed at the reduction of tobacco consumption. Studies assess that annual losses in tax revenues resulting from the illegal trade in cigarettes alone amounts to USD 40.5 billion.<sup>24</sup>

There are a number of key drivers that contribute to the growth of illegal tobacco within a jurisdiction:<sup>25</sup>

### Drivers of Illegal Tobacco in Ireland

**Source:** Transcrime Report, 2013.



The [KPMG, Empty Pack Survey] report is recognised by the UK National Audit Office, OLAF and the OECD as the most comprehensive study of its kind.<sup>26</sup>

Robin M. Cartwright, Partner KPMG, BMJ, 5 March 2014.

The scale of illegal tobacco in Ireland

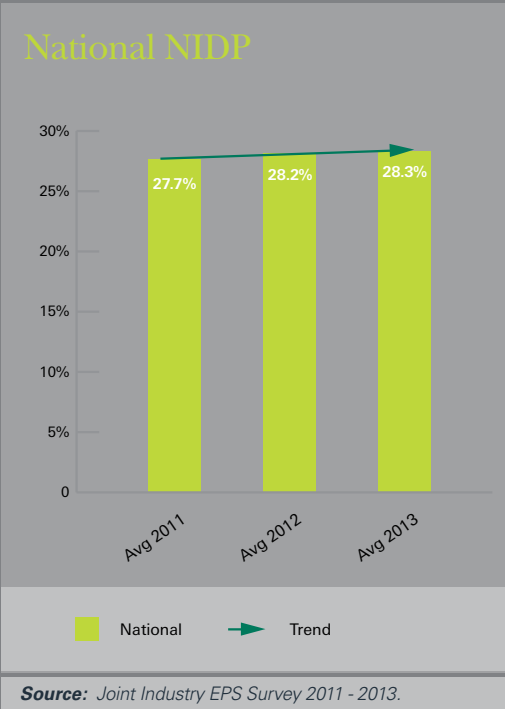
Empty Pack Survey (EPS)

In 2013, the joint industry Empty Pack Survey (EPS) indicated that the level of non Irish duty paid (NIDP) tobacco in Ireland was at 28.3%, a marginal increase on the 28.2% recorded in 2012. This is in line with trends over the past three years which have shown a consistent gradual increase.<sup>27</sup>

The EPS estimates the proportion of non Irish duty paid (NIDP) cigarettes consumed in Ireland at a given time over two waves per year in May and November. This includes contraband, counterfeit, illegal whites, duty free and cross-border purchasing.

The objective of the EPS is to detect early trends in the illegal tobacco trade and provide an indication on the incidence of non-domestic or counterfeit cigarettes consumed in the country. The EPS is designed to focus on evolution rather than incidence at a single point in time.

Japan Tobacco International (JTI), Philip Morris International (PMI), British American Tobacco (BAT) and Imperial Tobacco Group (ITL), commission the EPS as a shared industry initiative in more than 40 countries (including the EU 28). This industry accepted methodology, is implemented by KPMG and shared with OLAF.



Drivers of the illegal tobacco trade in Ireland

High Taxation

In most countries, tobacco is considered to be an ideal product for taxation revenues as demand is relatively inelastic. Today all countries impose at least one tax on tobacco products which are in the vast majority of cases due to be paid in the country of consumption. Tobacco taxes provide Governments with a secure, predictable and easy source of revenue.

Ireland has the highest tobacco prices among the Eurozone member states with 80% of the retail selling price of every packet of cigarettes sold in the legitimate retail trade going to the Exchequer in VAT and excise. As Revenue has set out, a high tax incidence will increasingly displace consumers from the legitimate trade to the illegal trade.<sup>28</sup> The illegal tobacco trade deprives the Exchequer of much needed revenue and circumvents public health objectives.<sup>29</sup>

In 2013, the Government generated €1,063.8 million in excise tax from tobacco products. Tobacco excise at 21.5% therefore continues to represent a significant portion of the total excise collected during the year. To put this in context, this represents 2.6% of total Government receipts in 2013.<sup>30</sup>

Government Excise Receipts 2009 - 2013

Net Receipts	2009 € millions	2010 € millions	2011 € millions	2012 € millions	2013 € millions
Hydrocarbons	2,194	2,305	2,428	2,381.4	2,423.2
Motor Vehicles	375	384	388	379.4	436.9
Alcoholic Drinks	968	826	830	846.1	995.3
Tobacco	1,216	1,160	1,126	1,113.1	1,063.8
Others	147	160	100	80.5	81.2
Total Excise	4,901	4,835	4,872	4,800.3	4,960.4
Tobacco as % of Total Excise	25%	24%	23%	23%	21.5%

Source: Revenue Commissioners. 2013 Headline Results, January 2014.

Government policy of sustainable excise increases over the past two budgets has seen moderate excise increases of 10c being levied on tobacco products. Given the fact that Ireland has the highest prices for tobacco products among the Eurozone member states, this policy of moderate increases has helped ensure that tobacco receipts have remained largely stable.

In this context, a long term sustainable approach to tobacco taxation that sets out moderate and predictable increases over a fixed period of time would provide the most advantageous method of tobacco tax collection for the State. This would allow Government to accurately predict excise receipts in the short to medium term and help offset potential losses to the illegal tobacco market.

Highly Regulated Market

In 2013, Euromonitor International stated that, over time, Ireland has become one of the more restrictive countries with regard to its tobacco control legislation with smoking bans in public places, blanket bans on tobacco advertising and steadily increasing tobacco taxation.<sup>31</sup> Successive Governments have continued to implement increasingly restrictive regulation on the legitimate tobacco market and the retail trade.

This has in effect created a two tier tobacco market where highly regulated legitimate retailers compete against criminal organisations operating outside all forms of statutory oversight, offering cheaper priced products to consumers.

In 2009, the Government introduced legislation to remove all tobacco branding from the point of sale in retail outlets selling tobacco products thereby giving sellers of illegal tobacco products an additional competitive advantage in generating sales volumes.

Legislation must therefore be considered in light of its potential impact on the illegal tobacco trade.



### Established illegal distribution network

Illegal drug use in Ireland is relatively high when compared with international counterparts.<sup>32</sup> This demand is supplied by organised crime groups with the capacity and capability to import and distribute illegal products. These illegal distribution networks have also provided opportunities for the illegal smuggling of tobacco products.

As recently stated by Assistant Commissioner, Derek Byrne of An Garda Síochána, cigarette smuggling has been identified as a low risk/ high profit enterprise for organised crime groups within the European Union.<sup>33</sup> Well established organisations engaged in a wide variety of criminal activity can therefore generate significant returns by using the illegal tobacco trade as a low risk source of funding. Retail Ireland state that criminal gangs are generating approximately €3 million per week from illegal tobacco sales.<sup>34</sup>

Since 2005, Ireland has seen the proportion of non Irish duty paid tobacco products as a percentage of the total tobacco market increase.

This has necessitated an extensive distribution network evidenced by the variety of distribution channels uncovered by Revenue Customs and An Garda Síochána during 2013.

Revenue Customs have stated that criminal gangs have been moving away from very large consignments in favour of smaller volumes, often transported in conjunction with legal products. This is as a result of the number of large seizures being made throughout the EU, including in Ireland.<sup>35</sup>

### Tobacco prosecutions in 2013

In 2013, the Revenue Customs Service secured convictions against eighty seven people for smuggling or other illegal tobacco offences. The courts imposed 37 custodial sentences, 19 of which were suspended, ranging from 2 months to 3 years.<sup>36</sup>

This equates to average fines for tobacco related excise offences of €2,800.

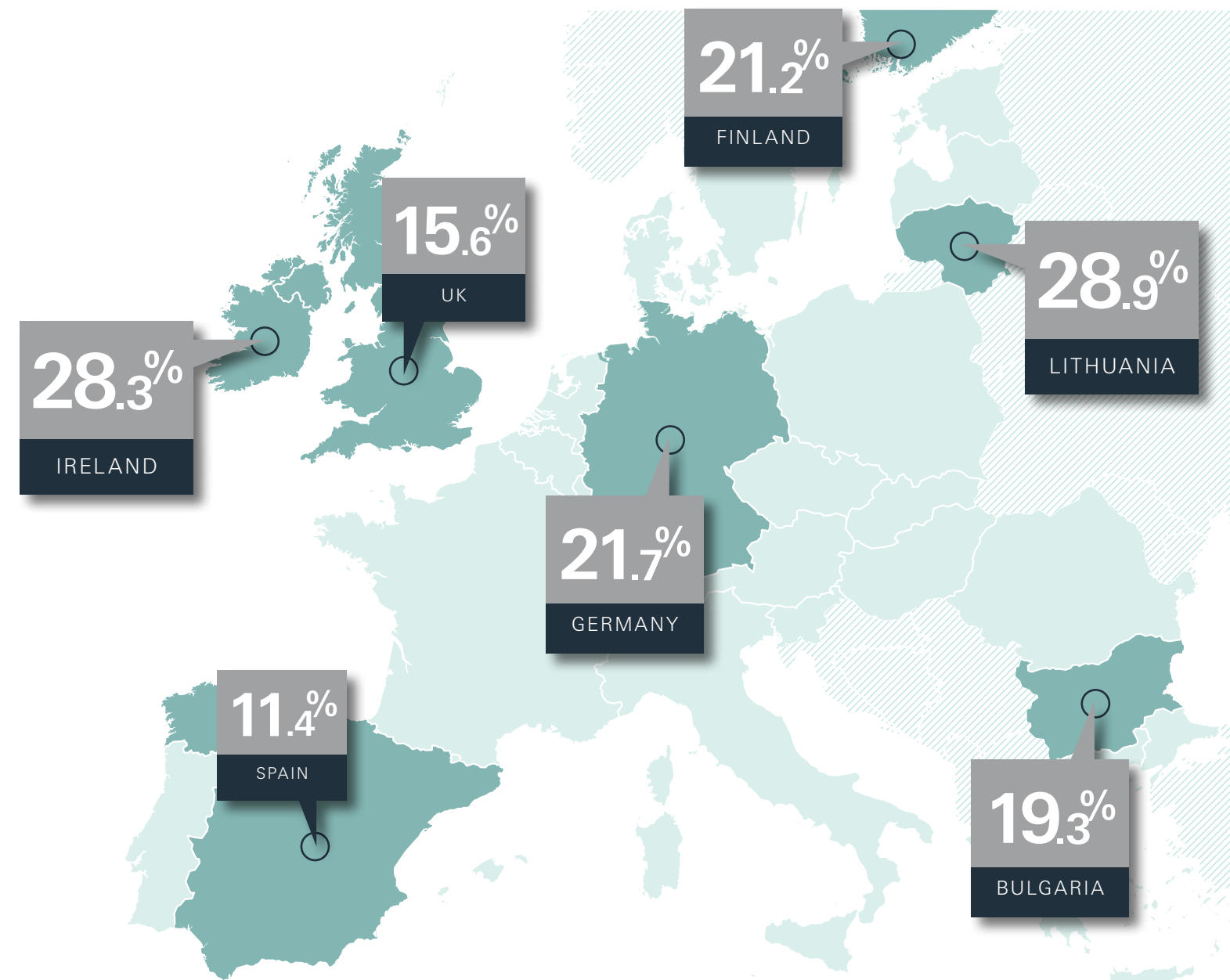


### Minors' access to tobacco products

The illegal tobacco trade circumvents one of the key objectives of public health policy i.e. preventing minors' access to tobacco products. The Irish retail trade is strictly regulated in this regard with the Department of Health and Children conducting regular inspections to assess compliance. In relation to sales to minors legislation, 1,452 inspections were conducted from 2009 to end September 2012 with 14 convictions. This equates to 0.96% inspections resulting in a conviction.

Within the illegal trade no such control exists and tobacco products are sold to minors and by minors on a regular basis. Detective Superintendent George Kyne of the National Bureau of Criminal Investigation recently referred to reported instances of where children were being used as runners by cigarette gangs.<sup>37</sup>

Since 2010, an industry supported programme, Show Me I.D – Be Age Ok, has sought to assist retailers in ensuring that all of their staff comply with the laws regarding sales of tobacco products to minors. However, such initiatives are consistently undermined by the easy access to tobacco products created by the illegal tobacco trade.



### Non Irish duty paid - tobacco rates in Europe

European Union hot spots  
European Union  
Non-European Union

Source: Industry Pack Collection, January 2014.



We have come across instances where children are used as runners by cigarette gangs.<sup>38</sup>

Detective Superintendent George Kyne, Irish Examiner, 13 November 2013.

# 05

## WHY THE ILLEGAL TOBACCO TRADE HAS POTENTIAL TO GROW

Illegal Tobacco Facts ...

GOVERNMENT LOSS

€250m

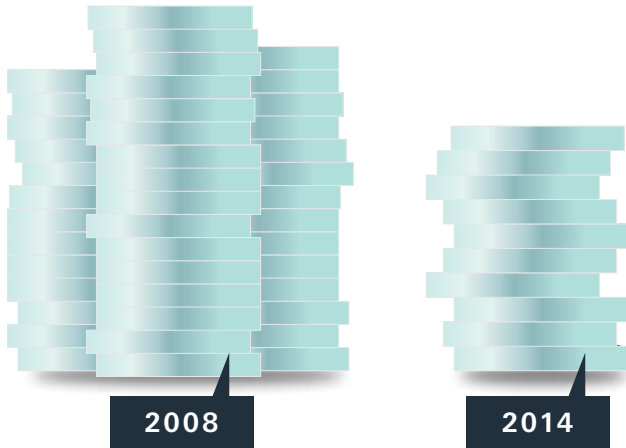
RETAILER LOSS

€450m

CRIMINAL GAIN

€150m

Disposable incomes declined in Ireland by ...  
**18%**  
since 2008



Minors' Access to Illegal Tobacco ...

An illustration showing a person in a black hoodie handing a pack of cigarettes to a younger person in a yellow t-shirt. The scene is set against a light grey background.



# 05

## WHY THE ILLEGAL TOBACCO TRADE HAS POTENTIAL TO GROW

*The illegal tobacco trade in Ireland has grown to its current level because the environment has facilitated it. Measures taken with regard to the legitimate tobacco trade and external macro-economic factors have provided incentives for a growing numbers of consumers to turn to the illegal trade in tobacco. Despite the current depth of penetration, there is considerable potential for further growth of the illegal tobacco market.*



### Current economic climate

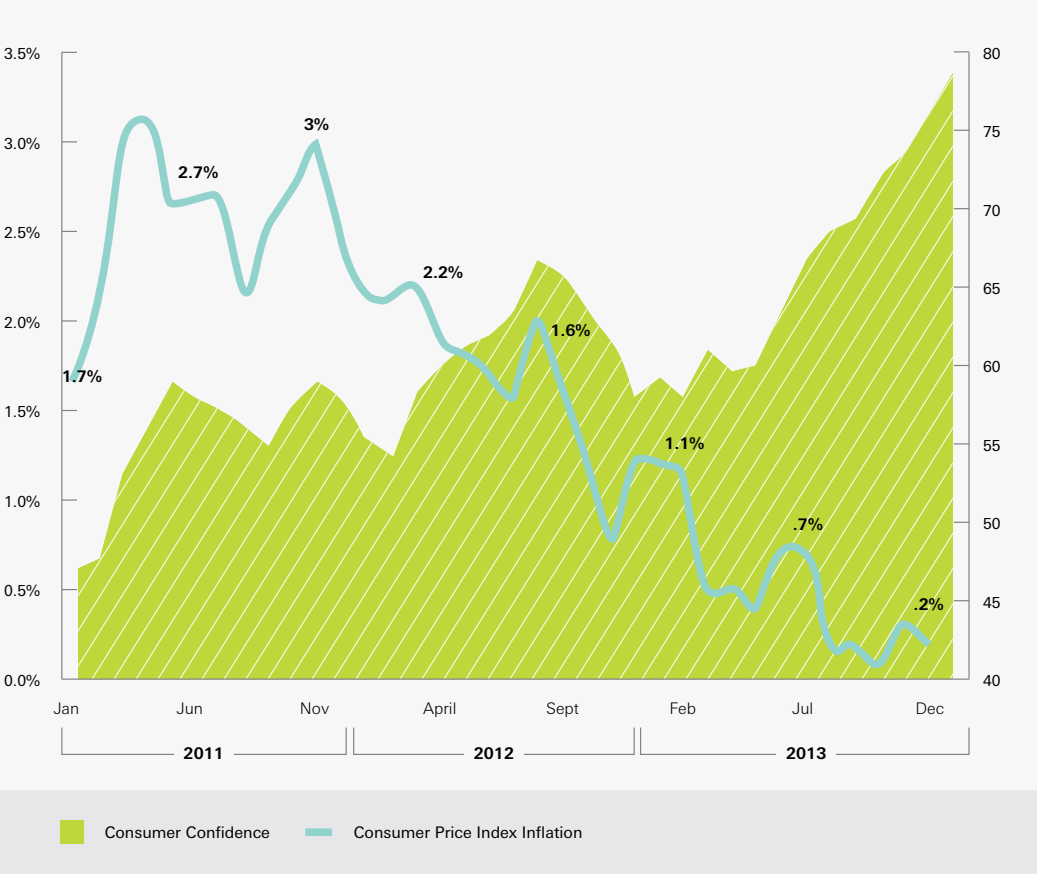
Ireland is getting back on its feet after a severe banking and fiscal crisis. Determined structural reforms and considerable fiscal consolidation have helped to rebalance the economy, which is recovering gradually.<sup>39</sup> Consumption and spending are expected to increase in 2014 driven by reductions in unemployment, inflationary pressures and positive sentiment.

However, the economic crisis has left a legacy of unemployment and debt, amongst the highest in the OECD and disposable incomes have declined by 18% since a peak in 2008.<sup>40</sup> Allied to fundamental shifts in consumer behaviour, the trend among consumers towards downtrading to value products that emerged over the past number of years continued during 2013.

### Consumer downtrading

In 2013, the total Irish grocery market was worth just under €8.98 billion.<sup>41</sup> Households continued to employ a variety of strategies to cope with reduced disposable incomes including downtrading in both their choice of product and store. This trend highlights the continued incentive for Irish consumers to exit the legitimate trade in favour of low priced, illegal alternatives.

### Consumer confidence increases



05  
WHY THE ILLEGAL  
TOBACCO TRADE HAS  
POTENTIAL TO GROW

Plain packaging of tobacco products, in my view, will likely lead not to a reduction in smoking but to substitution in favour of cheaper brands and supply alternatives.<sup>42</sup>

Constantin Gurdgiev, Economist Trinity College, Retail News, March 2014

Legislation as a driver of the illegal trade

*Tobacco products carry risks to health, and therefore appropriate and proportionate regulation is both necessary and right.<sup>43</sup> Regulation must be based on a sufficiently robust evidential base as certain measures may have unintended consequences such as providing a competitive advantage to criminal operators to grow their trade.*

As set out earlier, Ireland has one of the most highly regulated legitimate tobacco markets in the world which is forced to compete with an entirely unregulated one which comprises over one quarter of the total tobacco market.<sup>44</sup>

Certain proposed legislative measures have the potential to further exacerbate this issue.

Revised EU Tobacco Products Directive

On 3 April 2014, the Presidents of the European Parliament and Council signed the agreed text of the revised EU Tobacco Products Directive (TPD). The Directive is expected to enter into force in May 2014. The revised Directive regulates the manufacture, sale and distribution of tobacco products within the European Union.

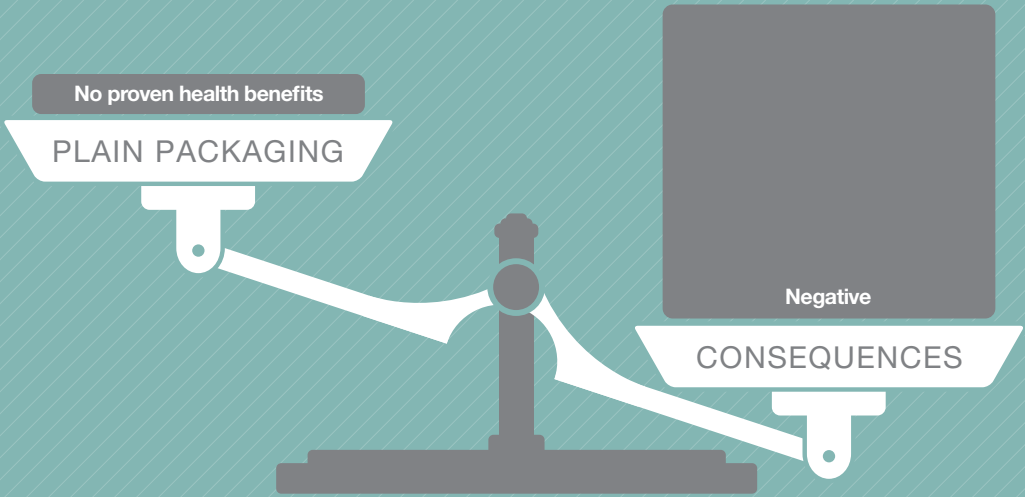
Measures within the revised Tobacco Products Directive include:

- Pictorial Health Warnings (PHWs) covering 65% of the front and back of cigarette packages;
- A minimum pack size of 30 grams for roll your own (RYO) or ‘loose’ tobacco;
- For cigarettes, there will be a ban on certain pack shapes including ‘slim cigarettes’ packs;
- Menthol and other flavours deemed ‘characterising’ will be prohibited, subject to certain exceptions;
- An EU wide tracking and tracing system with security feature for tobacco products will be put in place.

Many of the measures, including the menthol ban and restriction on pack sizes and formats, could lead to a growth in the illegal trade.

THE POTENTIAL  
IMPACT OF THE  
PROPOSAL TO  
INTRODUCE

PLAIN PACKAGING



*The Minister for Health, James Reilly TD, is pursuing his plan to introduce plain packaging for tobacco products in Ireland. Plain packaging, if introduced, would require a standardised appearance for all tobacco packaging, with only the brand name in a specified standard typeface, colour and size.*

The European Commission did not include plain packaging in the draft revised Tobacco Products Directive (TPD) put forward in 2012. A European Parliament amendment to introduce plain packaging into the Directive was then rejected in October, 2013. On 18 December 2013, the EU Council of Ministers stated that any Member State considering the introduction of plain packaging will need to justify such a measure.<sup>45</sup>

Article 24 of the TPD would require Ireland to justify the need for plain packaging:

*“on grounds of public health, taking into account the high level of protection achieved through this Directive”*

and plain packaging will be required to be:

*“proportionate (and) not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States.”*

Moreover Ireland, in its submission to the revision of the TPD consultation in 2010, stated:

*“that the introduction of generic or plain packaging must be on the basis of robust evidence. If such a measure is to be introduced, it should be mandatory and there should be a harmonized approach across Europe.”<sup>46</sup>*

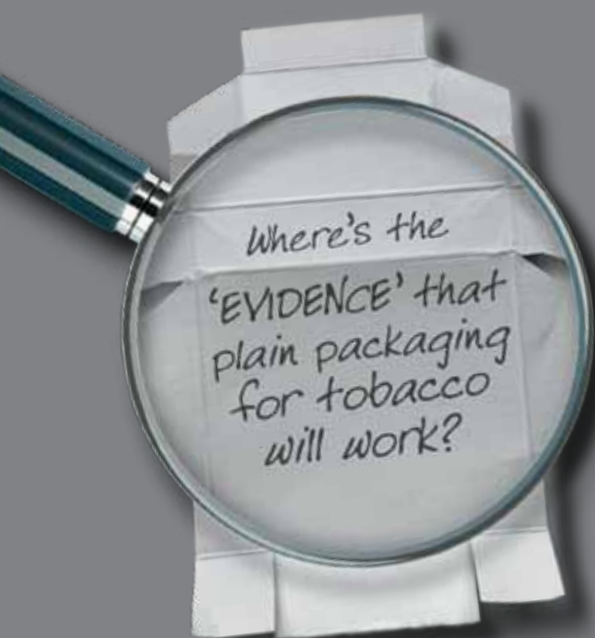
For Ireland to proceed now with plain packaging in the absence of official evidence flies in the face of the 2010 submission.

Australia is the only country in the world to have introduced plain packaging. No credible evidence has emerged from Australia, where plain packaging has been in place for over a year, showing that plain packaging has had any positive health impacts.

The whole concept of plain packaging is based on outdated notions of smoking behavior.

Regulators and academics tell us that there are many reasons why children start smoking including peer pressure, family and parental influence or access and availability to cheap tobacco products. It may be a combination of all of these factors, but not because of the actual packaging of cigarettes.





### No credible evidence

Despite the potential negative impacts associated with the introduction of plain packaging, no evidence from Australia, the only country where the policy has been implemented, has emerged that plain packaging has changed the rate of decline in smoking or has had any positive impact on smoking behaviour. The Australian Department of Health and Ageing has announced that it will undertake an assessment on the impact of plain packaging in December 2014. The Irish Government should await and examine these results before making any decision on whether to proceed with the policy.

### Negative effect on the retail trade

Tobacco sales account for between 10% - 30% of the turnover of the 5,000 retail outlets serving communities in every town in Ireland. Plain packaging if implemented would lead to downtrading where price becomes the most important product differentiator for consumers.

These local retailers observe and implement tobacco regulations rigorously, as well as collecting excise on behalf of the State. In recent years, retailers have already been faced with many difficult trading conditions. Last year, loss in turnover and impulse purchases to these businesses was estimated, nationally, at around €450 million. According to Retail Ireland, 700 retail jobs were lost to the illegal tobacco trade in 2011.<sup>47</sup> If plain packaging is implemented it would only add further pressure in the retail sector.

From personal experience, I know that the money made by criminals and subversives from illegal involvement in the tobacco trade is very substantial and continues to grow.<sup>48</sup>

*Tony Hickey, former Assistant Commissioner of An Garda Síochána, Sunday Independent, 2 March 2014.*

### Increasing the illegal trade

Introducing plain packaging would increase the illegal trade by giving criminals the opportunity to sell tobacco products in the branded packaging that its legitimate owners can no longer use and by making counterfeit products easier to make, distribute and sell. With plain packaging, criminals would be effectively given a blueprint of how to make every pack.

The level of non Irish duty paid tobacco consumed in Ireland is already amongst the highest in the EU.

Plain packaging, by increasing the amount of the illegal tobacco trade, may also make illegal products more accessible to children.

Criminals who sell illegal tobacco products do not discriminate who they sell to, and often target children or adults from lower socio-economic backgrounds.

The best way to help avoid this is to maintain a well-regulated legitimate market where tobacco can be legally sold. But also to stamp out the selling of untaxed and unregulated tobacco by organised criminals.

### KPMG Report on Australia

...

In April 2014, KPMG published a report on the illegal tobacco trade in Australia, *Illicit Tobacco in Australia*, which found that the level of illicit tobacco consumption had grown to 13.9% of total consumption, 2.1% percentage points higher than in 2012. Additionally, the consumption of illegal whites continues to be a growing issue and accounted for more than 2.3% of total manufactured cigarette consumption in 2013. 'Manchester' is currently the largest illegal white brand in Australia. If it were sold legally in Australia it would have 1.4% of the market.<sup>49</sup>

Due to high excise duties, Australia is already a lucrative target for illegal tobacco smuggling. The introduction of plain packaging appears to have exacerbated the problem.

Also of significance, the overall sales of legal domestic product in the full year 2013 declined by 0.5% from the previous year: a lower decrease compared to an annual fall of 1.6% between 2000 and 2013.

In October 2013, Australian law enforcement made one of the largest illegal tobacco seizures on record, seizing 80 million cigarettes and 70 tonnes of loose tobacco.<sup>50</sup>

05  
WHY THE ILLEGAL  
TOBACCO TRADE HAS  
POTENTIAL TO GROW

Wide ranging restraints on the use of branding, including colours, distinctive pack, product sizes and shapes would set a dangerous precedent.<sup>51</sup>

Sharon Higgins, IBEC, Oireachtas Health Committee Hearing, 6th February 2014.



A worrying precedent

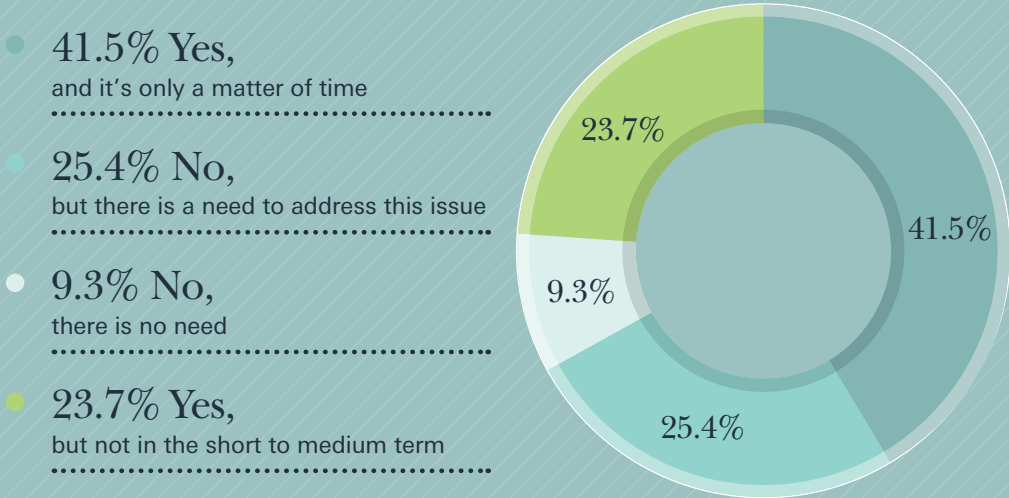
The introduction of plain packaging will hugely undermine the protection of intellectual property rights and branding in Ireland. Going this route will introduce a fundamental element of doubt and unpredictability to Ireland’s business environment.

It will unjustifiably infringe fundamental legal rights to property, freedom of expression and trade that are protected under Irish, EU and international law; and potentially jeopardise Ireland’s international obligations under World Trade Organisation (WTO) law, which in turn, could give rise to legal challenges.

International intellectual property organisations such as the International Chamber of Commerce, the European Community Trademark Association and Marques, the European Trade Mark Right Owners Association have expressed their concern that the measure would adversely affect country’s economies through facilitating and escalating counterfeiting and piracy.<sup>52</sup>

Checkout Magazine Survey of Retail Executives

*The Government’s plans to introduce plain packaging for tobacco products has been read by many in the industry as an indication that high-sugar and high-fat products could be next on the agenda. Do you think this will be the case?*<sup>53</sup>



Source: Checkout Conference 2014.

Alternative solutions

It is possible to achieve public health benefits in a proportionate, effective and less restrictive way:

- Firstly, prevent minors from accessing tobacco products. This can be done;
  - by reinforcing the age limit through initiatives such as the industry supported youth access prevention programme, Show Me I.D – Be Age Ok, which has sought to assist retailers in ensuring that all their staff comply with the laws regarding sales of tobacco products to minors;
  - by devising meaningful policies that make it harder for children to get their hands on tobacco, such as punishing adults who knowingly buy tobacco products for children, and;
  - before doing anything else, Government simply must prioritise and focus on stopping children’s access to cheap tobacco products from the unregulated market.
- Secondly, Government should establish targeted, comprehensive programmes in schools to tackle peer pressure which is a key driver of youth smoking.



05  
WHY THE ILLEGAL  
TOBACCO TRADE HAS  
POTENTIAL TO GROW

Views on the plain packaging proposal



*“For an exporting country such as Germany, protecting intellectual property rights is of outstanding importance. In my opinion, we have found an acceptable compromise by introducing pictorial warnings.”*

Angela Merkel, German Chancellor, speaking to the German Trademark Association  
**June 2013**

*“Ireland’s announced measure would undermine the economic rise of Least Developed Countries like Malawi, which depend on the manufacture of tobacco products as a key tool for poverty reduction by creating direct and indirect employment and livelihood.”*

Malawi statement to the World Trade Organisation, Committee on Technical Barriers to Trade  
**25th June 2013**

**THE IRISH TIMES**

*“The notion that the Irish Government is contemplating measures that would destroy any industry’s legitimate and legally sanctioned trademark protection and branding causes concern in the US business community and extends into many different sectors of our membership.”*

Chamber of Commerce of the United States of America  
**25th January 2014**

**Retail News**  
Ireland’s Longest Established Grocery Magazine

*“There is an argument that the measure [plain packaging] actually aids counterfeiters and fuels the black market.”*

Senator Fergal Quinn, Retail News  
**31st January 2014**

*“The implementation of the proposed legislation will have a profoundly negative effect on our members’ businesses and there is no credible evidence that plain packaging as a policy proposal will lead to a reduction in smoking or prevent youth initiation.”*

Paul Candon, Topaz and Retail Excellence Ireland, Oireachtas Health Committee Hearings  
**6th February 2014**

*“It is incumbent upon government, especially at times of extreme economic difficulties to ensure that the measures they take are balanced and do not bring with them unintended consequences that adversely impact upon business and employment. We believe the plain packaging proposal would have such consequences.”*

Sharon Higgins, IBEC, Oireachtas Health Committee Hearing  
**6th February 2014**

*“We are concerned with the legal implications of the concept of plain packaging as such and how it might affect the standing of the intellectual property rights here in Ireland and abroad.”*

John Shaw, President, The Law Society of Ireland, Oireachtas Health Committee Hearing  
**13th February 2014**

**ShelfLife**  
IRISH FOOD & RETAIL ASSOCIATION

*“The production of packaging is a complex process and involves a range of products all produced to exacting standards. Any move to a plain packaging specification will benefit the producer of fake products.”*

Mike Ridgway, Spokesman for UK Packaging Manufacturers, Shelflife  
**28th February 2014**

*“We confirm our strong concerns about legislation precluding – fully or in part – brand owners from making legitimate use of their trademarks... Any such legislation would adversely affect markets, with harmful impacts on the European and worldwide economies, due to escalating counterfeiting and piracy.”*

International Intellectual Property Organisations,  
**28th March 2014**

**Retail News**  
Ireland’s Longest Established Grocery Magazine

*“Plain packaging of tobacco products, in my view, will likely lead not to a reduction in smoking but to substitution in favour of cheaper brands and supply alternatives.”*

Constantin Gurdgiev, Economist Trinity College, Retail News  
**28th March 2014**



The illicit sale of goods and other shadow economy practices are matters that concern me greatly... I believe that the setting up of an informal working group could be a useful additional initiative.<sup>54</sup>

Minister for Finance, Michael Noonan, 25 February 2014.

# 06

## WHAT CAN BE DONE TO REVERSE THE ILLEGAL TOBACCO TREND

### Collaborative Effort Required ...

*“(The illegal tobacco trade) does require a global response, multi-agency collaborative approach to deal with the issues involved.”*

Assistant Commissioner Derek Byrne, An Garda Síochána, Oireachtas Health Committee Hearing, 23rd January 2014.

### Increased Funding ...

% of European co-financing now available to law enforcement to tackle illegal trade through Hercule III Programme.





# 06

## WHAT CAN BE DONE TO REVERSE THE ILLEGAL TOBACCO TREND

*A number of independent strategies are currently in place to tackle the illegal tobacco trade. The following provides an overview of some actions undertaken in 2013.*

### Retailer actions - against the illicit tobacco trade

The retail trade right across Ireland continues to work closely with law enforcement and Government to tackle the illegal trade as it directly and negatively impacts their business. One such example is the work of Retailers against Smuggling.

#### Retailers Against Smuggling

In 2013, Retailers Against Smuggling (RAS), an organisation established by retailers to combat the illegal trade, launched, in association with Topaz and Applegreen, [stopsmuggling.ie](http://stopsmuggling.ie) to make the public aware that buying goods and products on the black market puts jobs and Irish businesses at risk and supports organised crime by putting money in the pockets of criminals.

This is the first public awareness campaign of its kind and calls on retailers and consumers across Ireland to raise their concerns about this criminal activity with their local law enforcement agencies. Only by reporting this crime, can law enforcement effectively tackle it.

Paul Candon, Marketing Director of Topaz:

*“If it looks like too much of a good deal, then it probably is and should be avoided. Supporting fuel laundering and tobacco smuggling is bad for everyone except criminals”.*



Visit [stopsmuggling.ie](http://stopsmuggling.ie)

There is a vast cost in terms of jobs and lost revenue to the State (caused by the illicit trade). Government and legislators must avoid any further regulatory burden which incentivises criminal opportunism to the detriment of legitimate retailers.<sup>55</sup>

Deputy Damien English TD, Chairman of the Oireachtas Committee on Jobs, Enterprise and Innovation, Dáil Debates, 16 January 2013.

### Government actions - against the illicit tobacco trade

#### An Garda Síochána ‘Operation Decipher’

In late 2013, An Garda Síochána rolled out Operation Decipher in districts across the country, to target the growing issue of the illegal tobacco trade. Operation Decipher involves the targeting of suspected distribution outlets of the illegal tobacco trade, the carrying out of test purchases and the subsequent seizure of illegal product.

Detective Superintendent George Kyne explained how the operation has evolved:

*“There have been meetings between retailers and manufacturers to see what we can do to try and assist to investigate and reduce the problem of the illicit tobacco trade. The Organised Crime Unit, Criminal Asset Bureau and Customs are looking at what is going on internationally in order to stop the trucks coming in. This plan will be on-going and long term.”<sup>56</sup>*

#### Revenue Customs Service Multi-Annual Strategy

The Revenue Customs Service has, over the last three years, been guided in their efforts to combat the illegal tobacco trade by their Strategy on Combating the Illicit Tobacco Trade (2011-2013). This strategy is currently being revised in consultation with the relevant stakeholders including JTI. The revised strategy will assist the Revenue Customs Service in continuing to tackle the illegal tobacco trade.

#### Department of Social Protection

In 2013, the Department of Social Protection continued to implement initiatives designed to combat fraud. In line with the objectives of these initiatives, the Department is committed to enhanced prevention and detection of social welfare fraud.

In collaboration with An Garda Síochána and the Revenue Customs Service, officials at the Department of Social Protection carried out investigations into individuals engaged in the illegal tobacco trade and concurrently claiming social welfare payments. Where evidence emerged of fraud claims, benefit payments were disallowed.

#### Oireachtas Committee on Jobs, Enterprise and Innovation

The Oireachtas Committee on Jobs, Enterprise and Innovation, led by Chairman Deputy Damien English TD, compiled a report during 2013 on the loss of jobs in Ireland driven by the illegal trade. Public consultations were held across the country from Mayo to Kilkenny to gauge the public’s view on the issue. The report is due to be published in 2014.

Deputy English has also gained the support of the Minister of Finance, Michael Noonan TD, for the setting up of an informal working group between officials from the Department of Finance, Revenue Customs officials and members of the Oireachtas Committee to examine proposals to reduce the loss of revenue to the State from the impact of the illegal sale of goods.

## JTI actions - against the illicit tobacco trade

JTI takes a zero tolerance stand against the illegal tobacco trade. Fighting contraband is our number one priority. JTI does everything in its power to ensure that its commercial operations and brands are not associated with illegal activities and will continue to assist law enforcement to achieve this aim.

### Assisting Law Enforcement

One of the key methods for achieving this is through the provision of an early indication of trends in respect of new illegal brands in the market and the promotion of co-operation between JTI and law enforcement, Government and regulatory authorities through liaison and prosecution support.

JTI provides ongoing assistance to law enforcement agencies by confirming the authenticity of JTI brands discovered in seizures. JTI also offers counterfeit recognition training to law enforcement officials with An Garda Síochána and the Police Service of Northern Ireland both having attended sessions over the last year.

### All Ireland Illicit Tobacco Trade Bulletin

In 2013, JTI published the All Ireland Illicit Tobacco Trade Bulletin which was distributed to law enforcement agencies both North and South of the Border. The Bulletin aims to keep law enforcement officers apprised of the most current developments in the international and domestic illegal tobacco trade.

### Anti Illicit Trade Manager in Ireland

JTI's commitment to supporting law enforcement and combating the availability of illegal products has been demonstrated by the creation and appointment of a dedicated Anti Illicit Trade position in Ireland.

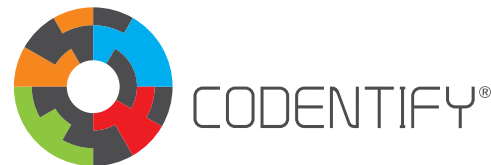
### Codentify

Codentify offers a technological solution to address illegal tobacco and revenue collection issues through:

1. **Tracking and tracing** – enabling electronic monitoring of products as they move forwards through the supply chain and the tracing backwards of their journey history to identify potential points of diversion into the illegal tobacco market;

2. **Product authentication** – enabling anyone to immediately verify the authenticity of a product using widely available technologies such as a mobile phone or the internet;
3. **Digital tax verification** – enabling governments to verify and control (online) the volume of products manufactured to assist the government in calculating the commensurate amount of excise and other taxes due.

The Codentify technology is based on internationally recognised technical standards and is being used by JTI Ireland on the outer packaging of its tobacco products.



## Potential solutions to the illegal tobacco trade problem

*External factors such as the macro-economic climate, international tobacco consumption trends and domestic regulatory initiatives such as excessive excise tax increases have combined to provide opportunities for criminal organisations to supply a consumer demand. However several of these factors are within the scope of the Government to control as set out below.*

### Cross-Governmental Strategy

The illegal trade of goods touches on many different aspects of Government policy in Ireland.

The functions performed by the Department of Finance, the Department of Health and Children, the Department of Justice and Equality, the Department of Jobs, Enterprise and Innovation and the Department of Social Protection are all negatively impacted by the growth of this trade. Therefore a comprehensive and effective solution will by necessity involve a co-ordinated and strategic response from all relevant Departments. This will only be possible

with the establishment of an Interdepartmental Committee focused solely on the issue of the illegal trade of goods.

The Minister for Finance, Michael Noonan, has recently supported a call by the Chairman of the Oireachtas Committee on Jobs, Enterprise and Innovation, Deputy Damien English TD for the establishment of an informal working group to include amongst others, representatives from the Office of the Revenue Commissioners, Members of the Committee and representatives from the Department of Finance, to examine proposals to reduce the loss of revenue to the State from the impact of the illegal sale of goods.<sup>57</sup>

### Proportionate Regulation

Evidence-based policy is public policy informed by rigorously established credible evidence. Credible evidence and analysis plays a useful, even decisive, role in informing policy-makers' judgments leading to considerable economic benefits. The European Commission has estimated that administrative costs in Ireland were some 2.4% of GDP (3.5% at EU level) i.e. some €4.5 billion and that a 25% reduction in these costs would boost Ireland's GDP by 1%.<sup>58</sup> A recent report by EPS Consulting, Smart Regulation A Driver of Irish Economic Recovery, found that over the last three years the impact of legislation was assessed in only 42% of the 139 Bills introduced in Ireland.<sup>59</sup>

Regulation must be based on a sufficiently robust evidential base as certain measures may have unintended consequences such as providing a competitive advantage to criminal operators to grow their illegal trade.

In the instance of the proposal to introduce plain packaging into Ireland, no credible evidence has been advanced that plain packaging would lead to any actual positive public health impacts.



Moderate and Predictable Excise  
Increases

In order to ensure continued stability of Exchequer returns on tobacco excise receipts, the Government must continue with its policy of moderate excise increases. This could be further enhanced by putting in place a system of multi-annual, incremental tax increases that would result in greater predictability in excise receipts.

For example, Japanese policy makers have implemented a policy of moderate tax increases over a set period of time. This has avoided any disruption to the legitimate market for cigarettes and has led to steadily increasing tax revenues in real terms while smoking prevalence has fallen from 34% in 1999 to 29% in 2005 and 21% in 2012. Critically, government tobacco tax policy objectives were not undermined by illegal trade as it is negligible. In contrast, countries such as the UK and Ireland, which have in the past raised tobacco taxation sharply, have seen both revenues and health objectives undermined as illegal trade has expanded sharply.<sup>60</sup>

Tobacco excise tax rates and revenues (2012 prices)				
		1999 (JP, IE) 1992 (UK)	2012	% Difference
Japan	Excise Rates – JPY per pack	120.6	244.9	103
	Excise Revenues – JPY billion	2,239	2,498	12
UK	Excise Rates* – £ per pack	2.09	4.62	121
	Excise Revenues – £ billion	9.14	8.59	-6
Ireland	Excise Rates* – € per pack	3.37	5.49	63
	Excise Revenues – € billion	1.21	1.11	-8
* Most popular price category				

Source: JTI Statistics.

The acquisition of the Scan Van and other new baggage scanners was funded by Revenue with assistance from the European Union Hercule Programmes.<sup>61</sup>

Minister for Finance, Michael Noonan, 24 October 2013.

Increased Support for Law Enforcement

For both the Revenue Customs Service and An Garda Síochána, combating the illegal tobacco trade is a high priority. In recent years, they have implemented a multi-faceted strategy including ongoing analysis of the nature and extent of the problem, developing and sharing intelligence on a national, EU and international basis, the use of analytics and detection technologies, and ensuring the optimum deployment of resources at both the point of importation and within the country.<sup>62</sup>

The successful implementation of these strategies is predicated on sufficient funding and resourcing being made available to the State’s law enforcement agencies.

Hercule III Programme

European Member States can now access funding under the newly endorsed Hercule III anti-fraud programme, a financing programme managed by OLAF, the European Anti-Fraud Office, which will make €70 million available to fight fraud, corruption and other illegal activities.

Under the Hercule III programme, the EU will co-finance activities including technical assistance, the purchase of equipment such as scanners, and specialised training up to 80% of the eligible projects. This is an increase from the previous funding programme which only allowed funding of 50% of projects. For Member States facing higher risks, the co-financing rate can be up to 90% of the total cost.<sup>63</sup>

In July 2012, with funding assistance from the previous European Union Programme, Hercule II, a scan van was acquired by the Revenue Customs Service. During 2013, Revenue drew on the fund to assist in the purchasing of three modern replacement baggage x-ray scanners.

European Commissioner for Taxation and Customs Union, Audit and Anti-Fraud, Algirdas Šemeta stated about Hercule III:

“an important area under this (new) programme will continue to be the fight against cigarette smuggling. Through the financing of X-ray scanners and sniffer dogs in harbours and airports, for example, it can greatly boost Member States’ capacity to stamp out this costly and criminal activity”.<sup>64</sup>

# 07

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The Illicit Tobacco Trade Review 2013 marks the fifth year of the JTI Ireland annual publication and the first year of the online edition: **[stopillicittobacco.com](http://stopillicittobacco.com)**



The Review seeks to provide an overview of the scale of the illicit tobacco trade in Ireland and analyse the drivers that have led to its growth. The Review also sets out a series of proposals aimed at bringing about a real and sustainable decrease in the level of non Irish duty paid tobacco products available in Ireland.



Copies of all editions can be accessed at: **[stopillicittobacco.com](http://stopillicittobacco.com)**





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