

Watch Out: Paternalism Is Taking over Europe!



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BILL
WRITZ

Be it alcohol, tobacco, or sugary drinks; individuals have a number of vices that they voluntarily engage in. It has been commonly accepted that we attempt to engage in these “vices” with moderation. However, over the past years, public health advocates have made it their mission to regulate people’s lifestyle directly and indirectly. Consequently, we have seen the emergence of the so-called “Nanny State,” in which the politicians in charge of the regulatory state have deemed themselves competent to determine the right amount of consumption on all of these products. Over the past years, the pressure (and influence) drastically increased, but this has been their mission for decades. After all, British MP Iain Macleod referred to the Nanny State as early as the 1960s. Despite being largely a phenomenon of Northern and Western Europe, the Nanny State is extending to Central and Eastern Europe, encouraged by individual states: such as the United Kingdom, the European Union, as well as international organizations like the United Nations and the World Health Organization. Citizens need to ask questions about the proper role of government when it comes to individuals’ personal freedom, ask for inquiries into the unintended consequences and the general effectiveness of these policies.

ALCOHOL CONSUMPTION

“Alcohol may be man’s worst enemy, but the Bible says love your enemy.” Be that Frank Sinatra, as the origin of this quote,¹ or the loud advocates for prohibition in the 19th and 20th century,² governmental

¹ Kahn, J.M.D. (2016) “Another New Year Another Past, Same Old Hangover?”, [in:] *Huffington Post*. Available [online]: https://www.huffingtonpost.com/joel-kahn-md/another-new-year-same-old_b_8801734.html

² Engs, R. C. (2000) “Phases of Health-Reform Movements”, [in:] *Clean Living Movements: American Cycles of Health Reform*. Praeger Publishers.

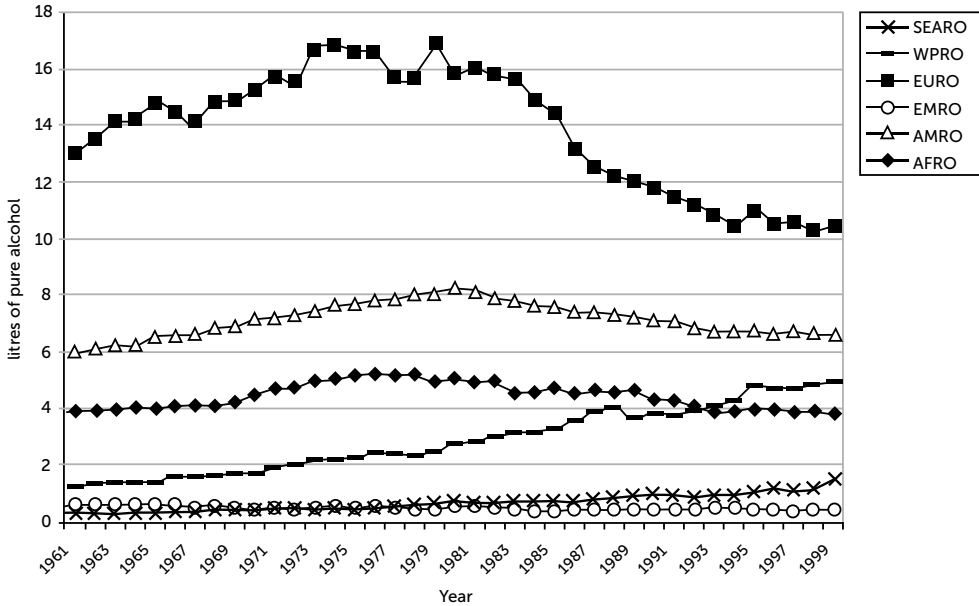
”
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OF SPIRITS

positions on alcohol have certainly always been ambiguous. The data displays that the prevalence of drinking has decreased over time: WHO numbers show that European total pure alcohol consumption (in liters) per capita has decreased from 12.5 liters in 1961 to above 10 liters in 1999.³ When considering global total alcohol consumption, it may be observed that there are strong fluctuations that might not necessarily explain a general trend (See Figure 1). For instance, the 1979 spike in European consumption wasn’t significant in setting a trend for its time, given the gradual decline in the following decades. This puts certain headlines about exploding rates of alcohol consumption, such as “Alcohol is the only drug epidemic we’ve got”,⁴ in perspective.

³ WHO (2004) *Global Status Report on Alcohol, Department of Mental Health and Substance Abuse*. Geneva, pp. 9-12.

⁴ McDonald, P. (2015) “Alcohol Is the Only Drug Epidemic We’ve Got. Where’s the National Task Force on That?”, [in:] *The Guardian*. Available [online]: <https://www.theguardian.com/commentisfree/2015/apr/16/alcohol-is-the-only-drug-epidemic-weve-got-wheres-the-national-taskforce-on-that>

Figure 1: Population weighted means of the recorded adult per capita consumption in the WHO Regions 1961-1999



Data from the World Health Organization from 2010 and 2015 suggests that European consumption levels continue to remain between 8 and 11 liters of pure alcohol per adult per capita per year.⁵ (See Figures 2 and 3)

ALCOHOL-RELATED POLICIES: PIGOUVIAN TAXES

While the initial goal of levying taxes in Europe is to raise revenue, it is also increasingly a model to discourage certain behaviors. Examples can be found in increased tobacco and alcohol taxation.⁶ In the at-

tempt to reduce the overall alcohol consumption, fueled by the idea that despite drinking being on a long-term decline, public health advocates in Europe campaign for burdensome taxes on alcoholic beverages.⁷ This is done by varying levels of VAT tax rates on alcohol, but specifically through excise tax rates.

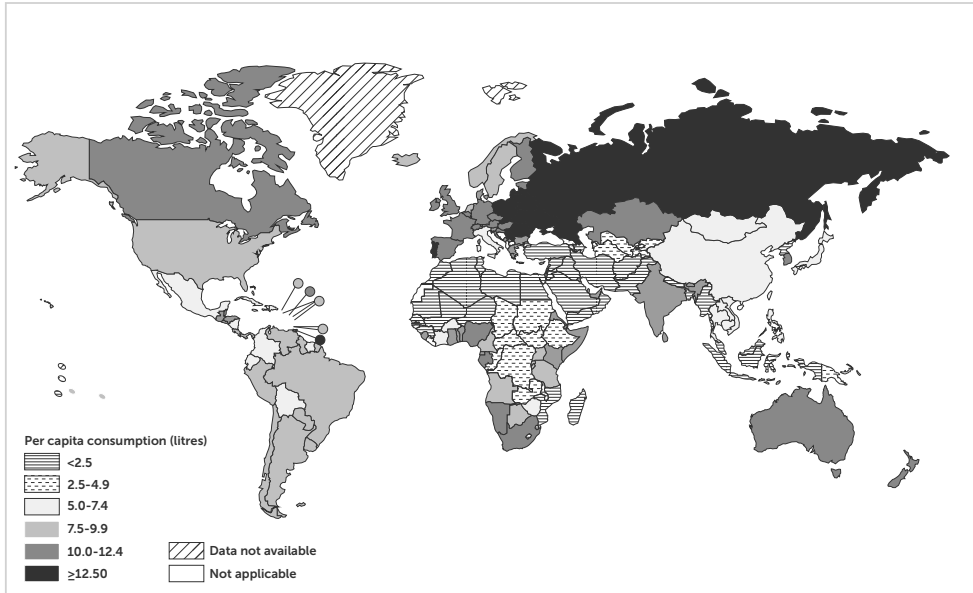
When comparing excise tax rates across Europe, we see that Central and Eastern European countries choose rates that fall below the average of other areas in Europe. Sparkling wine rates in the Czech Republic, Estonia, Croatia, Hungary and Slovakia in 2017 were close to 0 (See Figure 4). In fact, excise taxes on both still and sparkling wine are only high in Western and Northern European countries that have negligible pro-

⁵ WHO (2014) "Total Alcohol per Capital (15+ Years) Consumption, in Litres of Pure Alcohol", 2010, Health Statistics and Information Systems (HSI). Available [online]: <http://gamapserv.who.int/mapLibrary/app/searchResults.aspx>; WHO (2016) *Total Alcohol per Capital (15+ Years) Consumption, in Litres of Pure Alcohol*. Information Evidence and Research (IER). Available [online]: <http://gamapserv.who.int/mapLibrary/app/searchResults.aspx>

⁶ Kofler, G., M.P. Maduro, and P. Pistone (eds.) (2011) *Human Rights and Taxation in Europe and the World*. Amsterdam: International Bureau of Fiscal Documentation (IBFD), p. 521.

⁷ WHO (2012) *European Action Plan to Reduce the Harmful Use of Alcohol 2012-2020*. WHO Regional Office for Europe, pp. 24-25.

Figure 2: Total alcohol per capita (15+ years) consumption, in litres of pure alcohol, 2010

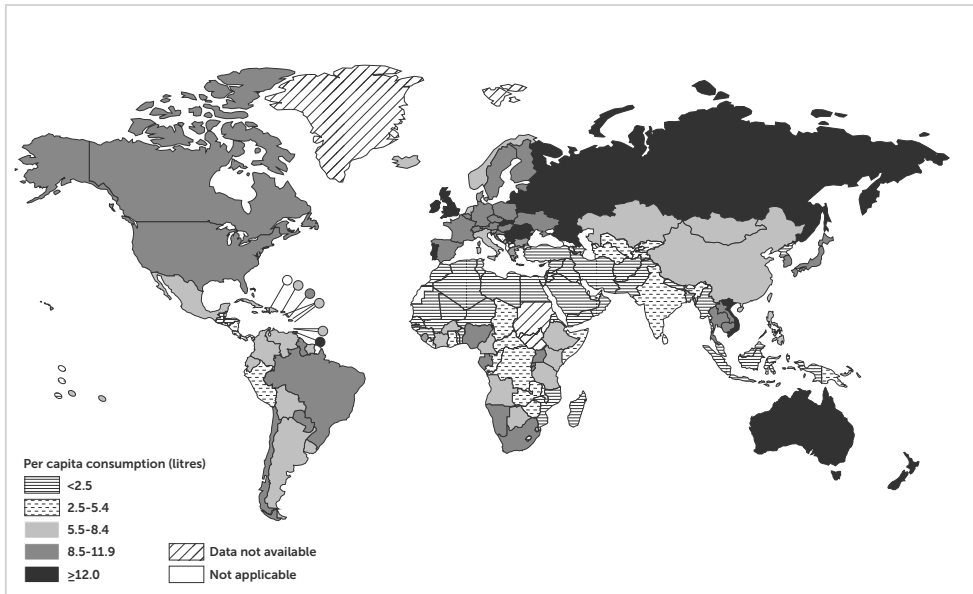


The boundaries and names shown and the designations used on this map do not imply the expression of any opinion whatsoever on the part of the World Health Organization concerning the legal status of any country, territory, city or area or of its authorities, or concerning the delimitation of its frontiers or boundaries.

Data Source: World Health Organization
 Map Production: Health Statistics and Information Systems (HSI)
 World Health Organization



Figure 3: Total alcohol per capita (15+ years) consumption, in litres of pure alcohol, projected estimates, 2015

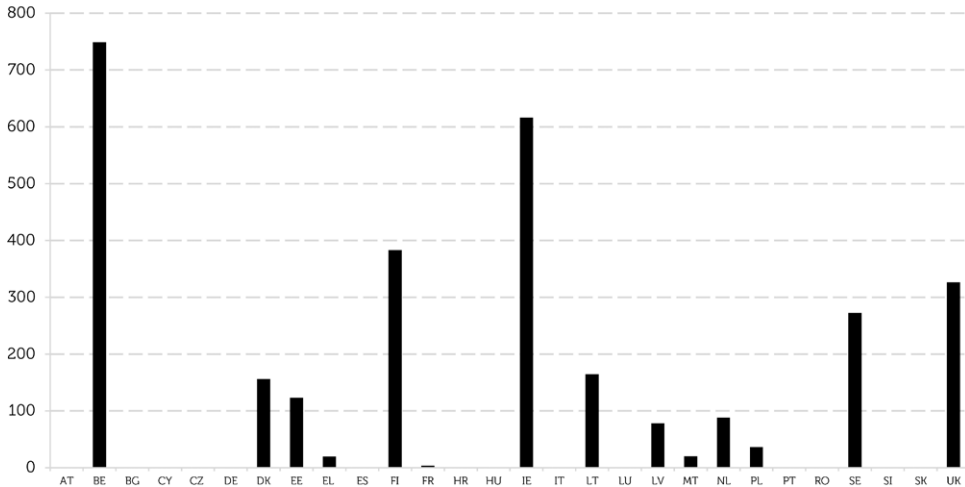


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Data Source: World Health Organization
 Map Production: Health Statistics and Information Systems (HSI)
 World Health Organization



Figure 4: Still wine (values in EUR at 3/10/2016)



Minimum Excise Duty: 0 EUR per hectoliter of product

duction rates in these areas, such as the United Kingdom, Ireland, Sweden, Finland or Denmark.⁸

On ethyl alcohol, or what is also known as strong alcohol, we see rates in 2017 that are considerably higher (See Figure 5). Only a handful of states, including Bulgaria, Croatia, and Romania, have excise tax rate below EUR 1000 per hectolitre.

In a comprehensive review on alcohol taxes and the shadow economy in Estonia, Robert Mürsepp explains the correlation between increased excise taxation and developments in illicit trade, stating that “[p]roponents of raising the excise tax under the banner of saving public health, claim that it is possible to increase taxes so that the consumption of alcohol is reduced. While this applies in theory, it is hard to achieve in real life due to the volatile nature of the shadow economy.”⁹ This underlines

that even when consumption goes down under the effect of a certain set of tax policy measures, this does not mean that overall consumption has declined, as the shadow economy plays a significant role in determining consumer behavior.

A review of nineteen studies by the Department of Economics of Pennsylvania State University only found two instances that showed a significant and substantial reduction in drinking rates in response to alcohol price rises – “and even these two showed mixed results”.¹⁰ In *The Economics of Alcohol*, Robert Pryce found that heavy drinkers’ price elasticity of demand was only barely distinguishable from zero, and concluded that “[t]he quantity results show that price-based measures will have little effect in reducing heavy consumption because of their small ab-

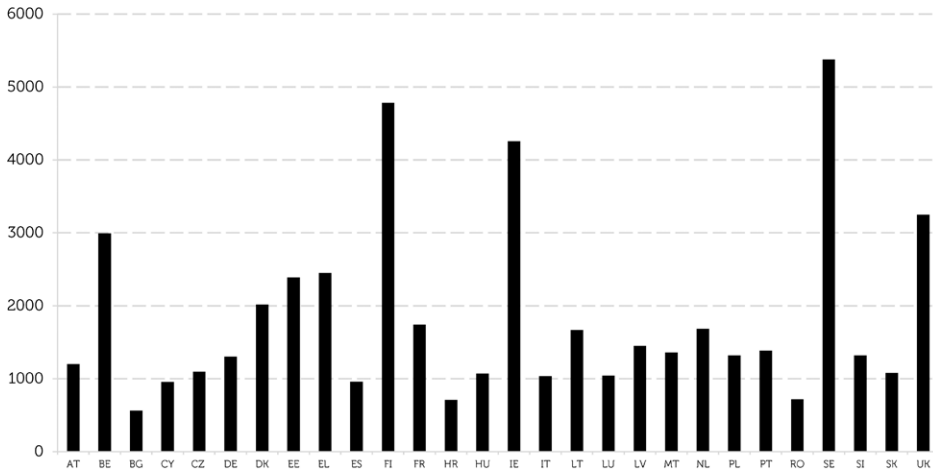
⁹ Mürsepp, R. (2015) “Alcohol Excise and the Shadow Economy in Estonia”, [in:] *4Liberty.eu Review* No. 3, pp. 82-92.

¹⁰ Nelson, J. P. (2013) *Does Heavy Drinking by Adults Respond to Higher Alcohol Prices and Taxes? A Survey and Assessment*. Pennsylvania: Department of Economics, Pennsylvania State University, p. 11.

⁸ European Commission (2017) *Excise Duty Tables* (shows the situation as of July 1, 2017). Brussels.

⁹ Mürsepp, R. (2015) “Alcohol Excise and the Shadow

Figure 5: Ethyl alcohol (values in EUR at 3/10/2016)



Minimum Excise Duty: 550 EUR or 1000 EUR per hectolitre of pure alcohol



AFTER A DECADE
-LONG FEUD
WITH PRODUCERS,
THE SCOTS HAVE
CRACKED DOWN
ON ALCOHOL
CONSUMPTION

solute price elasticity, whilst simultaneously having a large negative effect on consumer surplus for the light drinking majority, because of their large absolute price elasticity.”¹¹

¹¹ Pryce, R.E. (2016) *The Economics of Alcohol: A Collection of Essays*, Doctoral Thesis. Lancaster University, p. 47.

MINIMUM ALCOHOL PRICING

Take the example of minimum unit pricing on alcohol in Scotland. After a decade-long feud with producers, the Scots have cracked down on alcohol consumption. The legislation, which the Scottish parliament passed in 2012, and which the Supreme Court only recently allowed them to implement, sets a minimum price of 50 pence per unit of alcohol, which would lift the lowest price of a bottle of whisky to GBP 14.¹²

The European Court of Justice in Luxembourg had ruled in 2015 (ruling C-333/14) that Scotland would only be allowed to set minimum pricing if it were able to prove that the measure would increase public health.¹³ However, the United Kingdom Su-

¹² O’Leary, E. (2017) “Scotland Becomes Minimum Alcohol Price Trailblazer in Bid to Boost Public Health,” [in:] *Reuters*. Available [online]: <https://www.reuters.com/article/us-britain-scotland-alcohol/scotland-becomes-minimum-alcohol-price-trailblazer-in-bid-to-boost-public-health-idUSKBN1DF1EH>

¹³ Court of Justice of the European Union (2015) *The Scottish Legislation Introducing a Minimum Price per Unit of Alcohol Is Contrary to EU Law If Less Restrict-*



THE OVERARCHING CONSENSUS IN PUBLIC POLICY IS THAT TAX INCREASES REDUCE CONSUMPTION OF TOBACCO PRODUCTS

preme Court in a 2017 ruling (in the case *Scotch Whisky Association and others (Appellants) v The Lord Advocate and another (Respondents) (Scotland)*) concluded “minimum pricing is a proportionate means of achieving a legitimate aim.”¹⁴ It would stand to reason that the “proportionate means” part of the argument was actually backed up by science, but the opposite is the case as no evidence points to the fact that minimum pricing would actually reduce the consumption of spirits.

Just as the example of increased taxation, setting price limits is unlikely to show the desired results. The empirical evidence support this as the heaviest drinkers’ responsiveness to price changes was statistically indistinguishable from zero.¹⁵ Even

tive Tax Measures Can Be Introduced, Press release N°155/15, Luxembourg. Available [online]: <https://curia.europa.eu/jcms/upload/docs/application/pdf/2015-12/cp150155en.pdf>

¹⁴ *Scotch Whisky Association and others (Appellants) v The Lord Advocate and another (Respondents) (Scotland)* (2017) UKSC 76.

¹⁵ Manning, W., L. Blumberg, and L.H. Moulton (1995) “The Demand for Alcohol: The Differential Response to Price,” [in:] *Journal of Health Economics*, Volume 14, Is-

more recent studies find that hazardous and harmful drinkers (people who consume more than 17.5 units per week) had a very low response to price changes.¹⁶

In essence, a complete absence of information about price changes is actually more effective. And yet, the United Kingdom’s Supreme Court judges stated in the previously mentioned ruling that minimum pricing was “a proportionate means of achieving a legitimate aim,” because it does not matter whether your policy works or not, as long as you had good intentions.

ALCOHOL-RELATED SALES RESTRICTIONS

The restriction of the exact day and time in which alcohol sales are allowed is a constant topic of debate in public policy at both the national and local level of governments in Europe. Apart from the age-restrictions on alcohol, the sale of alcohol after 10 p.m. is only allowed if storeowners were guaranteed a special license, which can only be acquired if they follow a special course.¹⁷ In countries such as Norway¹⁸ or Sweden,¹⁹ the sale of alcohol is a monopoly of the state. The scientific evidence on

sue 2, pp. 123-48.

¹⁶ Purshouse, R.C., P.S. Meier, A. Brennan, K.B. Taylor, and R. Rafia (2010) “Estimated Effect of Alcohol Pricing Policies on Health and Health Economic Outcomes in England: An Epidemiological Model,” [in:] *The Lancet*, Volume 375, Issue 9723, pp. 1355-1364.

¹⁷ Service-Public-Pro.fr (2018) *Vente d’alcool la nuit*, Direction de l’information légale et administrative (Premier ministre). Ministre chargé de l’intérieur. Available [online]: <https://www.service-public.fr/professionnels-entreprises/vosdroits/F22386>

¹⁸ Strand, S. (2018) “Today’s Vinmonpolet – a modern chain with a social responsibility,” [in:] *Vinmonopolet no.* Available [online]: <https://www.vinmonopolet.no/social-responsibility>

¹⁹ Government Offices of Sweden (2015) *Swedish Alcohol Retailing Monopoly (Systembolaget Aktiebolag)*. Available [online]: <http://www.government.se/government-agencies/swedish-alcohol-retailing-monopoly-systembolaget-aktiebolag/>

the issue is split: some studies have failed to find changes in consumption or a reduction in alcohol-related problems following changes in hours of sale.²⁰ Other studies have reported increases in traffic accidents and assaults.²¹ Even researchers, who seem very supportive of the idea of restricting sales hours, fail to provide sufficient scientific evidence to support the claim definitively.²²

Given this sparse amount of evidence in support of restriction of alcohol sales hours, questions need to be asked about the unintended consequences of this policy. If store owners are already infringing on the law by selling alcohol past a certain time, and, depending on the country they are in, they are already at risk of losing their license, then what could prevent them from running the risk of infringing on other rules and regulations such as selling to minors? Before public policy-makers jump to conclusions about the effectiveness of restricted sales times, they should consider the implications that these policies have not only on the business freedom of the owners or the individual liberty of the consumers, but also which consequences may arise from such a policy. It should remain within the personal freedom of both the consumer and the storeowner to choose the legal products that can be sold.

TOBACCO CONSUMPTION

²⁰ McLaughlin, K.L. and A.J. Harrison-Stewart (1992) "The Effect of a Temporary Period of Relaxed Licensing Laws on the Alcohol Consumption of Young Male Drinkers," [in:] *International Journal of Mental Health and Addiction*, Volume 27, Issue 4, pp. 409-423.

²¹ Chikritzhs, T. and T. Stockwell (2002) "The Impact of Later Trading Hours for Australian Public Houses (hotels) on Levels of Violence," [in:] *Journal of Studies on Alcohol and Drugs*, Volume 65, Issue 5, pp. 591-599.

²² Hahn, R.A., J.L. Kuzara, and R. Elder, et al. (2010) "Effectiveness of Policies Restricting Hours of Alcohol Sales in Preventing Excessive Alcohol Consumption and Related Harms," [in:] *American Journal of Preventive Medicine*, Volume 39, Issue 6, pp. 590-604.

Tobacco consumption has different rates of prevalence across European countries (See Figure 4). Not only do Central and Eastern European countries have a higher overall consumption of cigarettes, they also have a larger rate of 20+ cigarettes/day. Bulgaria, Hungary, Croatia, Latvia, Estonia, Austria, Slovakia, Poland, the Czech Republic, Lithuania, Romania, and Slovenia are all above the EU-28 average on total prevalence of cigarette smokers.²³ [See Figure 6]

SALES DROPS AFTER PRICE INCREASES DO NOT ACCOUNT FOR THE SHADOW ECONOMY

Tobacco-related tax policies are subject to continuous political debate, and are one of the main public policy influences on the products' consumption. The overarching consensus in public policy is that tax increases reduce consumption of tobacco products, with varying studies setting price elasticity at -0.4.²⁴ International research varies on the extent to which making cigarettes more expensive forces people to quit, and prevents ex-smokers from starting again, or whether it is the best strategy for reducing smoking levels.

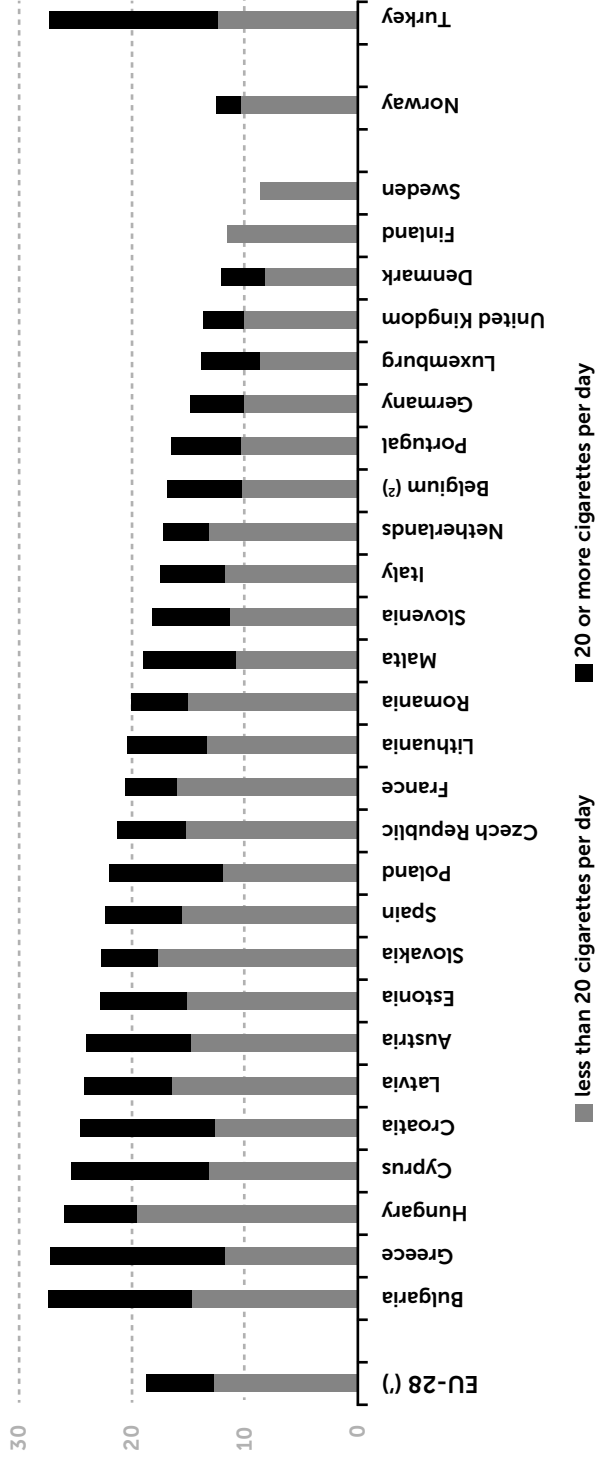
However, setting smoking levels through sales numbers is inherently misleading, due to the prevalence of black market sales. The illicit tobacco trade is a global issue accounting for an estimated 10.4% of the cigarette market worldwide. In addition to being a major funding source for organized crime, the cost to European tax revenues is estimated to amount to EUR 11.3 billion a year.²⁵ This means that a large number

²³ Eurostat (2017) "Tobacco Consumption Statistics," [in:] *Eurostat Statistics Explained*. Available [online]: http://ec.europa.eu/eurostat/statistics-explained/index.php/Tobacco_consumption_statistics

²⁴ World Bank (1999) *Curbing the Epidemic. Governments and the Economic of Tobacco Control*. Washington D.C.: World Bank.

²⁵ Michalopoulos, S. (2016) "'Cheap Whites': The New

Figure 6: Tobacco consumption in Europe



Note: ranked on the overall proportion of daily smokers. 2014 data for Ireland not available.

(1) Estimates.

(2) Data with low reliability.

of tobacco consumers' behavior does not enter the records of tobacco sales, which distorts the perceived reduction in consumption for those who merely consume these statistics.

In fact, Eastern European countries have been among the largest contributors to this trend of 'illicit whites', meaning cigarettes, which were produced under a legal framework in one country, yet smuggled into another without the payment of customs duties. Belarus is retailer number 1 of illicit whites to the European Union, through a variety of brands. In 2014, the largest part of C&C (Counterfeit and Contraband, including Illicit Whites) in the United Kingdom originated from Belarus, with 15.7%; in Germany, most C&C's came out of the Czech Republic with 20.1%, while in Austria most illicit trade originated from Hungary, with 26.6% of total illegal trade.²⁶

TOBACCO-RELATED POLICIES: PLAIN PACKAGING

A 2014 study conducted at the Department of Economics at the University of Zurich, Switzerland, analyzed the effects of plain packaging on the prevalence of minors who smoke in Australia. It showed that for young people, the neutral packaging had absolutely no effects on their consumption. "Altogether, we have applied quite liberal inference techniques, that is, our analysis, if anything, is slightly biased in favor of finding a statistically significant (negative) effect of plain packaging on smoking prevalence of Australians aged 14 to

17 years". The researchers also added: "[...] if the guiding research question is whether there is a plain packaging effect at all, one must adjust the confidence intervals to take the possibility of 'cherry picking' into account (that is, the possibility of searching for a statistically significant effect over the entire period). Such an adjustment requires the use of uniform confidence intervals, in which case there is again no evidence for a plain packaging effect on smoking prevalence."²⁷

A 2016 study by the School of Economics, Finance and Marketing of the RMIT University in Melbourne, Australia, concluded that the policy didn't hold what it promised and criticized the government of funding biased research. As they concluded, "[i]n the first instance the Australian federal government paid over AUD 3 million of taxpayer funds for a research project to accurately and factually evaluate the impact of the introduction of the plain packaging policy. (...) While it is true to say that research was undertaken, data was collected and then analyzed, it is not clear that the results of that research have been accurately described and disseminated to the Australian government, the Australian community, or the broader international community."²⁸

It appears that the public policy analysts who studied the policy were the same people who advocated for it in the first place. This is rightfully raising serious questions about the policy-making process.

Trend Dominating Tobacco Black Markets," [in:] *Euractiv.com*. Available [online]: <https://www.euractiv.com/section/health-consumers/news/mondaycheap-whites-the-new-trend-dominating-tobacco-black-markets/>

²⁶ KPMG (2014) *A Study of the Illicit Cigarette Market in the European Union, Norway and Switzerland*. Available [online]: http://kpmg.co.uk/creategraphics/2015/06_2015/CRT026736/files/assets/common/downloads/CRT026736%20Project%20SUN%20COMBINED%20v10.pdf

²⁷ Kaul and Wolf (2014) "The (Possible) Effect of Plain Packaging on the Smoking Prevalence of Minors in Australia: A Trend Analysis," [in:] *Working Paper Series*. Zurich: Department of Economics No. 149, University of Zurich, pp. 9-10.

²⁸ Davidson, S. and A. De Silva (2016) *Stubbing Out the Evidence of Tobacco Plain Packaging Efficacy: An Analysis of the Australian National Tobacco Plain Packaging Survey*. Melbourne: RMIT University – School of Economics, Finance and Marketing, p. 11.



WHO'S FCTC 2030 PROJECT IS SUPPORTING TOBACCO CONTROL MEASURES IN COUNTRIES WORLDWIDE, INCLUDING COLOMBIA, EL SALVADOR, JORDAN, MADAGASCAR, AND NEPAL

However, it becomes increasingly clear that plain packaging won't only be applied to a handful of Western European countries. For instance, the Republic of Georgia is being parachuted into a law mandating the plain packaging for all tobacco products.²⁹

The change of heart in Georgia is no chance occurrence. Not only has the United Nations congratulated the country on its decision, the United Kingdom, backed by the World Health Organization, has pledged funding for the policy.³⁰

²⁹ Ossowski, Y. (2017) *New Anti-Tobacco Measures won't work in Georgia, Tsarizm*. Available [online]: <https://tsarizm.com/analysis/2017/05/12/new-anti-tobacco-measures-wont-work-georgia/>

³⁰ UNDP (2017) *UN Supports Comprehensive Tobacco-*

These financial incentives are not limited to Georgia; the WHO's FCTC 2030 project is supporting tobacco control measures in countries worldwide, including Colombia, El Salvador, Jordan, Madagascar, and Nepal. Conditions for obtaining these funds include the "willingness to increase tobacco taxation" or the "ambitions to accelerate implementation of the WHO Framework on Tobacco Control."³¹

By voting for plain packaging, the Georgian parliament has gone beyond the EU's strict directive on tobacco (TPD2), ignoring the EU and WHO advice to go step-by-step. This essentially means that taxpayers in the UK are paying millions of pounds to help implement a policy proven ineffective elsewhere.

The United Nations is not Georgia's only cheerleader in this endeavor. UN officials are using the implementation of these measures as leverage for membership negotiations. United Nations Development Program (UNDP) representatives have said that, "Passage of the draft legislation would align Georgia with its obligations as a Party to the WHO Framework Convention on Tobacco Control (FCTC), and help meet Article 356 of the EU-Georgia Association Agreement, which makes FCTC implementation a precondition for further European integration."³²

Control Legislation in Georgia. New York City. Available [online]: <http://www.ge.undp.org/content/georgia/en/home/presscenter/pressreleases/2017/05/02/un-supports-comprehensive-tobacco-control-legislation-in-georgia.html>

³¹ WHO (2017) *FCTC 2030. Strengthening WHO FCTC implementation to achieve the Sustainable Development Goals*. Geneva. Available [online]: <http://www.who.int/fctc/implementation/fctc2030/en/>

³² Agenda.ge (2017) "UN supports comprehensive tobacco-control legislation in Georgia," [in:] *UNDP Georgia*. Available [online]: <http://agenda.ge/news/78771/eng>

International organizations therefore seem to push policies infringing on personal freedoms in parts of the world, including Eastern Europe. This policy is ill advised; the choices regarding liberal policies on lifestyle choices should be up to individual countries by principle, and shouldn't be dependent on other political priorities. In the same way, Western European countries certainly wouldn't accept that trading relations with China were to be made dependent on an adoption of Chinese authoritarianism.

SMOKING BANS: THE EFFECTS OF SECOND-HAND SMOKE HAVE BEEN OVERBLOWN

The bans on smoking indoors had largely been implemented because early studies believed there to be a correlation between secondhand smoke and heart disease, going as far as claiming a drop in 60% in hospital admissions for cardiovascular diseases; a number which quickly made it into mainstream headlines such as the *Wall Street Journal*.³³ However, upon publication the study only claimed a 40% drop.³⁴

A 2006 study in the Piedmont region in Italy revealed an 11% drop in heart disease, a much smaller drop than the 60% that politicians had promised.³⁵ After a sweeping ban on smoking inside in England, a study

found a heart attack reduction of only 2%.³⁶ That number is so low that it might not be related to the bans at all. A study in New Zealand found no correlation whatsoever.³⁷ Similar US-studies have subsequently appeared in the *Journal for Community Health*³⁸ as well as the *American Journal of Medicine*³⁹, in the United States.

THE FREEDOM TO ACT SELF-DESTRUCTIVELY

In an essay to *The Freeman*, Don Boudreaux expresses his dissatisfaction with the Nanny State. He concludes his analysis of the freedom to enjoy tobacco as follows: "I have my own proposed tobacco settlement. Let's recognize that smoking is voluntary. Let smokers enjoy their cigarettes, and let tobacco companies be regulated only by the market by putting an end to government's odious molestation of smokers and tobacco companies."⁴⁰ There is an inherent right for individuals to act self-destructively, which lies in each and everyone's personal freedom.

³³ Winslow, R. (2003) "Montana City Smoking Ban Appears to Cut Heart Attacks," [in:] *Wall Street Journal*. Available [online]: <https://www.wsj.com/articles/SB104924037780880000>

³⁴ Sargent, R.P., R.M. Shephard, and S.A. Glantz (2004) "Reduced Incidence of Admissions for Myocardial Infarction Associated with Public Smoking Ban: Before and After Study," [in:] *British Medical Journal*, Volume 328, Issue 7446, pp. 977-980.

³⁵ Barone-Adesi, F., L. Vizzini, F. Merletti, and L. Richiardi (2006) "Short-Term Effects of Italian Smoking Regulation on Rates of Hospital Admission for Acute Myocardial Infarction," [in:] *European Heart Journal*, Volume 27, Issue 20, pp. 2468-2472.

³⁶ Sims, M., R. Maxwell, L. Bauld, and A. Gilmore (2010) "Short Term Impact of Smoke-Free Legislation in England: Retrospective Analysis of Hospital Admissions for Myocardial Infarction," [in:] *British Medical Journal*, 340: c2161.

³⁷ Edwards, R., G. Thomson, and N. Wilson, et al (2008) "After the Smoke Has Cleared: Evaluation of the Impact of a New National Smoke-Free Law in New Zealand." A Report Commissioned and Funded by the New Zealand Ministry of Health.

³⁸ Rodu, B., N. Peiper, and P. Cole (2012) "Acute Myocardial Infarction Mortality Before and After State-Wide Smoking Bans," [in:] *Journal for Community Health*, Volume 37, Issue 2, pp. 468-472.

³⁹ Basel, P. et al. (2013) "The Effect of a Statewide Smoking Ordinance on Acute Myocardial Infarction Rates," [in:] *The American Journal of Medicine*, Volume 127, Issue 1, 94.e1-94.e6.

⁴⁰ Boudreaux, D. (1997) *Freeman Essay #13: "The Nanny State,"* [in:] *Café Hayek*. Available [online]: <http://cafe-hayek.com/2017/12/freeman-essay-13-nanny-state.html>



IN OCTOBER 2011, DENMARK'S LEADING COALITION INTRODUCED A TAX ON FATTENING FOODS AND BEVERAGES: SUCH AS BUTTER, MILK, CHEESE, MEAT, PIZZA, AND OIL, AS LONG AS THEY CONTAIN MORE THAN 2.3% SATURATED FAT. AFTER FIFTEEN MONTHS IN EFFECT, THE SAME PARLIAMENTARY MAJORITY REPEALED THE TAX, AS THE DANES RECOGNIZED THE MEASURE TO BE A FAILURE

As for the lieu of consumption, property rights are key: individuals should be allowed to smoke as much as they want, as long the owner of the property has authorized him/her to do so. Framing the discussion in the fact of "the rights of non-smokers", as it has been done,⁴¹ misses the point of the argument: your ability to ban the act of smoking of another individual should only extend as far as your own property does.⁴²

SUGARY AND "FATTY" PRODUCTS

Sugary products and so-called "fatty" foods have come increasingly under fire for the health concerns that they pose. The lifestyle policies that are already in affect are not as far-reaching as they are in the domains of tobacco and alcohol. However, one notable example of the Danish "fat tax" stands out.

Most of the governmental pushes to limit the consumption of sugar in society, be that the ban on unlimited soda-refills in France or soda taxes in Ireland, ignore the real-life examples of the implementation of such punitive taxes. France has had its soda tax since 2012, yet, rising obesity levels and the absence of long-term studies make its effect difficult to determine as of now. As a matter of principle, evaluating the effect of a single tax increase on a particular product on population-wide obesity rates is generally a complicated task. However, the analysis on specific consumption rates is a case study that has been illustrated by Denmark, after the introduction of its "fat tax".

⁴¹ Katz, J.E. (2005) "Individual Rights Advocacy in Tobacco Control Policies: An Assessment and Recommendation," [in:] Tobacco Control, ii36-ii37.

⁴² Skoble, A. (2012) "Smoking Bans: Banning Freedom," [in:] Libertarianism.org. Available [online]: <https://www.libertarianism.org/media/around-web/smoking-bans-banning-freedom>

In October 2011, Denmark's leading coalition introduced a tax on fattening foods and beverages: such as butter, milk, cheese, meat, pizza, and oil, as long as they contain more than 2.3% saturated fat.⁴³ After fifteen months in effect, the same parliamentary majority repealed the tax, as the Danes recognized the measure to be a failure. Still, a study in the *European Journal of Clinical Nutrition* suggests that in the months during the implemented tax, the sale of these foods fell by between 10 and 15%.⁴⁴ However, this does not account for the stockpiling or hoarding effect that the Danes experienced prior to the introduction of the tax:

"[...] this size of this "hoarding" might also be a part of the explanation for the observed decrease in consumption of fats, at least in the period following right after the introduction of the tax."⁴⁵

In fact, when analyzing the effects over the 15 months during which the tax was in effect in Denmark, we find a marginal drop of 0.9% in consumption of fatty foods and beverages, which lies within the margin of error.⁴⁶

It stands to reason that prior to the introduction of so-called "fat" or "sugar taxes", the preventative unintended consequences that such policies can have should be

⁴³ BBC (2012) *Denmark Introduces World's First Food Fat Tax*. Available [online]: <http://www.bbc.com/news/world-europe-15137948>

⁴⁴ Vallgård, S., L. Holm, and J.D. Jensen (2014) "The Danish Tax on Saturated Fat: Why Did It Not Survive," [in:] *European Journal of Clinical Nutrition*, Volume 69, Issue 2, pp. 223-226.

⁴⁵ Jensen, J.D. and S.Smed (2013) "The Danish Tax on Saturated Fat: Short Run Effects on Consumption and Consumer Prices of Fats," [in:] *Food Policy*, Volume 42, October, pp. 18-31.

⁴⁶ Bødker, M., C. Pisinger, U. Toft, and T. Jørgensen (2015) "The Danish Fat Tax—Effects on Consumption Patterns and Risk of Ischaemic Heart Disease," [in:] *Preventive Medicine*, Volume 77, pp. 200-203.



NUDGE THEORY
WAS POPULARIZED
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first examined. It is to nobody's advantage if consumers chose low-quality products with the same amount of sugar and fat, only to keep their consumption at the same price.

PERSONAL CHOICE

The consumption of fatty foods considered to be unhealthy are a matter of individual choice. In their inherent nature, they represent a trade-off in utility for the consumer. As Ninos Malek writes: "Every time you buy cigarettes or unhealthy food, and every time you do not buy food that's good for you, you are weighing your own costs and benefits."⁴⁷ Consumers wouldn't choose

⁴⁷ Malek N.P. (2003) "Fast Food and Personal Responsibility," [in:] *Foundation for Economic Education*. Available [online]: <https://fee.org/articles/fast-food-and-personal-responsibility>

to buy these goods if they were not convinced that it would increase their personal well-being, no voluntary exchange takes place unless both parties benefit.⁴⁸ Stella Zawistowski writes in *The Objective Standard*: “The proper role of government is not to count our calories or to watch our weight but to protect our rights. The government has no moral right to interfere with a food producer’s offerings, a restaurant’s menu, or an individual’s diet. And where the government has created for itself a legal right to do so, such laws should be repealed.”⁴⁹ In essence, freedom implies the eventuality that individuals make choices that aren’t healthy in every aspect, but they have an inalienable right to make these choices regardless.

NUDGE THEORY IN PUBLIC POLICY

Nudge theory was popularized as a concept by Nobel Prize winner and American Economist Richard Thaler, and has since been a booming trend in modern government policy. Nudging is a set of policies, which indirectly push consumers or users to adopt a certain behavior. A prominent example is the pictures of flies put in urinals in men’s bathrooms, in order to improve cleanliness.⁵⁰ However, nudging increasingly becomes a matter of public policy.

In a 2016 article in the *Conversation*, Ivo Vlaev, professor of behavioral science at the University of Warwick, suggested that it is possible to nudge people into drink-

ing less alcohol.⁵¹ In an experiment, he laid out that drinkers reduced their consumption when they got a text message saying: ‘You are in the top 10% of heaviest drinkers.’ In a similar example, HMRC had raised an additional GBP 210 million of tax revenue after sending people tax reminder letters saying that most people in their town had already paid.⁵²

The “nudgers” are spreading among academics and influence public policy makers. Examples of this can be found in the advocacy in the likes of Italian policy advisor Alberto Alemanno, who engaged in repeated advocacy for plain packaging of cigarettes. In early 2010, long before the legislative introduction of plain packaging in France and the United Kingdom, the Italian activist penned *The Case of Plain Packaging for Cigarettes*, with an underlying tone showing clear support for the measure. However, even Alemanno warned against the legal problem of “not establishing a causal link between the measure and the protection of the specific public interest,”⁵³ something France and the UK have consciously ignored. This has, and will lead to, multiple lawsuits by the tobacco industry, as has been the case for the latest EU Tobacco Directive 2014/40/EU, which also increased the size of warning labels on packs of cigarettes.⁵⁴

⁴⁸ Public Broadcasting Service (2000) *On Freedom and Free Markets (Interview with Milton Friedman)*. Available [online]: http://www.pbs.org/wgbh/commandingheights/shared/minitext/int_miltonfriedman.html

⁴⁹ Zawistowski, S. (2014) “Of Freedom and Fat: Why Anti-Obesity Laws Are Immoral,” [in:] *The Objective Standard*. Available [online]: <https://www.theobjectivestandard.com/issues/2009-spring/anti-obesity-laws/>

⁵⁰ Wu, F. H. (2017) “The Nobel Prize and the Urinal Fly,” [in:] *Huffington Post*. Available [online]: https://www.huffingtonpost.com/entry/the-nobel-prize-and-the-urinal-fly_us_59ddaa76e4b07a185aa75f91

⁵¹ Vlaev, I. (2016) “How to Start Nudging People to Drink Less Alcohol,” [in:] *The Conversation*. Available [online]: <https://theconversation.com/how-to-start-nudging-people-to-drink-less-alcohol-57704>

⁵² The Behavioural Insights Team (2013) *Behavioural Insights Tax Trials Win Civil Service Award*. Available [online]: <http://www.behaviouralinsights.co.uk/tax/behavioural-insights-tax-trials-win-civil-service-award/>

⁵³ Alemanno and Bonadio (2010) “The Case of Plain Packaging for Cigarettes – an Overview,” [in:] *European Journal of Risk Regulation*, pp. 268-70.

⁵⁴ European Union (2014) “Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014,” [in:] *Official Journal of the European Union*, pp. 1.

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NUDGE THEORY IS JUST STARTING TO SHOW ITS EFFECTS ON PUBLIC POLICY. IT WILL CERTAINLY BE AN INTEGRAL PART FOR THE CREATION OF NEW LIFESTYLE REGULATIONS IN THE UPCOMING YEARS

Nudge theory is just starting to show its effects on public policy. It will certainly be an integral part for the creation of new lifestyle regulations in the upcoming years. Its implementation asks important questions about privacy protection, branding rights, and individual liberty itself.⁵⁵ The mere fact that established news outlets subtitle nudging as “How subtle policy shifts can be in everyone’s best interest”⁵⁶ should

⁵⁵ Zoido-Oses, P. (2014) *The Problem with Nudge Policies Is That They Threaten Our Freedom to Choose to Act Well*. London: The London School of Economics and Political Science. Available [online]: <http://blogs.lse.ac.uk/politicsandpolicy/the-problem-with-nudge-policies-freedom-to-choose/>

⁵⁶ Chu, B. (2017) “What Is ‘Nudge Theory’ and Why Should We Care? Explaining richard Thaler’s Nobel economics prize-winning concept,” [in:] *Independent*. Available [online]: <http://www.independent.co.uk/>

raise eyebrows regarding the definition of “subtle” and “best interest.” Furthermore, it needs to be pointed out that governmental limits have the characteristic of being difficult to remove, which, as Micah Mattix points out in an article entitled “Freedom and the Nanny State” for *The American Conservative*, makes them different from advertising or other forms of involvement into personal choices.⁵⁷

CONCLUSIONS

Paternalistic lifestyle regulations do not merely infringe on the principles of consumer choice and individual liberty, their applications rarely show any real-life improvement of public health. Given the large amount of unintended consequences, additional data could show in the future that the policies indeed deteriorated public health, as the consequences on black market development through illicit trade, as well as shifts in consumer behavior already display. Public policy makers would be ill advised to jump to emotional responses in light of public health hazards. Rather, they should improve their balance of support for the choices of individual consumers and evidence-based policy-making. ●

[news/business/analysis-and-features/nudge-theory-richard-thaler-meaning-explanation-what-is-it-nobel-economics-prize-winner-2017-a7990461.html](https://www.theamericanconservative.com/features/nudge-theory-richard-thaler-meaning-explanation-what-is-it-nobel-economics-prize-winner-2017-a7990461.html)

⁵⁷ Mattix, M. (2014) “Freedom and the Nanny State,” [in:] *The American Conservative*. Available [online]: <http://www.theamericanconservative.com/prufrock/freedom-and-the-nanny-state/>



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