



Court of Justice of the European Union

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Judgments in Cases C-358/14 Poland v Parliament and Council
C-477/14 Pillbox 38(UK) Limited v Secretary of State for Health and
C-547/14 Philip Morris Brands SARL and Others v Secretary of State for
Health

Press and Information

The new EU directive on tobacco products is valid

The extensive standardisation of packaging, the future EU-wide prohibition on menthol cigarettes and the special rules for electronic cigarettes are lawful

The new 2014 directive on tobacco products¹ seeks, first, to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of protection of human health and, secondly, to meet the obligations of the European Union under the WHO Framework Convention on Tobacco Control.²

That directive provides in particular for the prohibition from 20 May 2020³ of the placing on the market of tobacco products with a characterising flavour and for the standardisation of the labelling and packaging of tobacco products. In addition, it introduces special rules for electronic cigarettes.

Poland, supported by Romania, challenges before the Court of Justice the prohibition of menthol cigarettes (Case C-358/14). In two other cases (C-477/14 and C-547/14), the High Court of Justice of England and Wales, Queen's Bench Division (Administrative Court) asks the Court of Justice whether a number of provisions of the directive on tobacco products are valid.

By today's judgments, **the Court dismisses Poland's action and confirms the validity of the provisions of the directive** which it has examined.

As regards, first of all, the prohibition of menthol cigarettes, the Court finds that tobacco products containing a characterising flavour (whether menthol or another flavouring) have certain similar, objective characteristics and similar effects as regards initiating tobacco consumption and sustaining tobacco use. It points out that menthol, by its pleasant flavour, makes tobacco products more attractive to consumers and that reducing the attractiveness of those products may contribute to reducing the prevalence of tobacco use and dependence among new and continuing users.

Next, the Court finds that, when the directive was adopted, there were significant divergences between the regulatory systems of the Member States, given that some of them had established different lists of permitted or prohibited flavourings, whilst others had not adopted any specific rules on the matter. In addition, the Court considers that, in prohibiting the placing on the market of tobacco products with a characterising flavour, the directive guards against such divergences in the rules of the Member States. Consequently, the Court considers that such a prohibition facilitates the smooth functioning of the internal market for tobacco and related products and is at the same time appropriate for ensuring a high level of protection of human health, especially for young people.

In addition, the Court holds that it was lawful for the EU legislature, in the exercise of its broad discretion, to impose such a prohibition, since the less restrictive measures advocated by Poland

¹ Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

² World Health Organisation Framework Convention on Tobacco Control signed in Geneva on 21 May 2003.

³ That prohibition is to apply to tobacco products with a characterising flavour whose EU-wide sales volumes represent 3% or more in a particular product category.

do not appear to be equally suitable for achieving the objective pursued. The Court considers that neither raising the age limit solely from which the consumption of tobacco products with a characterising flavour is permitted, nor prohibiting the cross-border sale of tobacco products, nor, lastly, including a health warning on the labelling stating that tobacco products with a characterising flavour are as harmful to health as other tobacco products, is likely to reduce the attractiveness of those products and thus prevent persons above that age from starting smoking. Finally, the Court holds that such a prohibition does not infringe the principle of subsidiarity.

As regards the standardisation of the labelling and packaging of tobacco products, the Court clarifies, at the outset, that the Member States may maintain or introduce further requirements solely in relation to aspects of the packaging of tobacco products that are not harmonised by the directive.

As regards the prohibition on the inclusion on the labelling of unit packets and on the outside packaging, as well on the tobacco product itself, of any element or feature that is such as to promote a tobacco product or encourage its consumption, even if these are factually accurate, the Court considers that that prohibition is such as to protect consumers against the risks associated with tobacco use and does not go beyond what is necessary in order to achieve the objective pursued. It also holds that the rules which relate, in essence, to the integrity of health warnings after the packet has been opened, to the position and minimum dimensions of the health warnings and to the shape of unit packets of cigarettes and the minimum number of cigarettes per unit packet are proportionate.

In addition, the Court finds that, in providing that each unit packet and the outside packaging must carry health warnings taking the form of a message and a colour photograph, which cover 65% of the external front and back surface of each unit packet, the EU legislature did not go beyond the limits of what is appropriate and necessary.

Concerning the special rules for electronic cigarettes, which provide, inter alia, for a duty on manufacturers and importers to submit a notification to the national authorities for any product which they wish to place on the market (with a six-month standstill period), specific warnings, a maximum nicotine content of 20 mg/ml, a leaflet requirement, a separate prohibition on advertising and sponsorship and annual reporting obligations, the Court notes that electronic cigarettes display different objective characteristics from those of tobacco products. Therefore, by submitting those cigarettes to a separate legal regime which is, moreover, less strict than the one applicable to tobacco products, the EU legislature has not infringed the principle of equal treatment.

In addition, the Court points out that, taking into account the growing market for electronic cigarettes and refill containers, the national provisions governing the conditions which those products must satisfy are in themselves liable, in the absence of harmonisation at Union level, to constitute obstacles to the free movement of goods. The Court also notes that, by allowing the Member States to prohibit the cross-border distance sales of electronic cigarettes and refill containers and by imposing certain common rules on the Member States which do not prohibit those sales, the directive enables the Member States to ensure that the rules on conformity are not circumvented.

The Court points out that the identified and potential risks linked to the use of electronic cigarettes have led the EU legislature to act in a manner consistent with the requirements stemming from the precautionary principle. In that regard, submitting electronic cigarettes to a notification scheme does not seem manifestly inappropriate or manifestly beyond what is necessary to attain the objective pursued by the EU legislature. In addition, the Court rejects the argument that the obligation on manufacturers and importers of electronic cigarettes and refill containers to submit each year, to the competent authorities of the Member States, certain data enabling those authorities to monitor the development of the market infringes the principles of proportionality and legal certainty. Similarly, by fixing the maximum nicotine yield which may be contained in the liquid of electronic cigarettes at 20 mg/ml, the legislature has not acted arbitrarily or manifestly exceeded the limits of what was appropriate and necessary in order to achieve the objective pursued by the directive.

The Court further holds that it is not disproportionate to require the unit packages of electronic cigarettes and refill containers to contain a separate leaflet, nor is it disproportionate essentially to prohibit commercial communications and sponsorship for electronic cigarettes and refill containers. In addition, the prohibition imposed on economic operators of promoting their products does not affect the essence of the freedom to conduct a business and the property right recognised by the Charter of Fundamental Rights of the European Union.

The Court holds, lastly, that the special rules applicable to electronic cigarettes do not infringe the principle of subsidiarity.

NOTE: An action for annulment seeks the annulment of acts of the institutions of the European Union that are contrary to European Union law. The Member States, the European institutions and individuals may, under certain conditions, bring an action for annulment before the Court of Justice or the General Court. If the action is well founded, the act is annulled. The institution concerned must fill any legal vacuum created by the annulment of the act.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The full text of the judgments [C-358/14](#), [C-477/14](#) and [C-547/14](#) is published on the CURIA website on the day of delivery.

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