

Press and Information

Court of Justice of the European Union PRESS RELEASE No 136/14

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Judgment in Case C-428/13 Ministero dell'Economia e delle Finanze e.a. v. Yesmoke Tobacco SpA

The minimum excise duty of 115% applied by Italy to cigarettes with a retail price lower than the most popular price category of cigarettes is contrary to EU law

Such an excise duty distorts competition

The Directive on the excise duty to be applied to manufactured tobacco¹ provides that the rate of the proportional excise duty and the amount of the specific excise duty must be the same for all cigarettes.

In a 2012 decision the Amministrazione Autonoma dei Monopoli di Stato (AAMS) (Independent Authority for the Administration of State Monopolies) set at 115% of the basic rate the minimum excise duty payable on cigarettes with a retail selling price lower than that of cigarettes in the most popular price category.

Italian company Yesmoke Tobacco SpA, which produces and markets cigarettes at a lower price than that of the most popular price category, challenged this decision before the Tribunale amministrativo regionale per il Lazio (Lazio Regional Administrative Court), claiming that that decision reintroduced, in fact, a minimum selling price for cigarettes, contrary to the case law of the Court of Justice². The AAMS decision was therefore annulled. The Ministero dell'Economia e delle Finanze (Ministry of Economic Affairs and Finance) and AAMS have appealed against that judgment.

By its reference for a preliminary ruling, the Consiglio di Stato, (Council of State, Italy) has asked the Court of Justice whether the Directive precludes a provision of national law which, rather than establishing a minimum excise duty that is identical for all cigarettes, establishes a minimum excise duty that is applicable only to cigarettes with a retail selling price lower than that of cigarettes in the most popular price category.

In its judgment today, the Court, firstly, observes that the Directive lays down general principles for the harmonisation of the structure and rates of the excise duty on manufactured tobacco and that its objective is to ensure the proper functioning of the internal market and neutral conditions of competition in the tobacco sector. The Directive provides that, for all cigarettes (regardless of their characteristics and price) an overall excise duty is to be levied, which is made up of two elements: an *ad valorem* excise duty, calculated on the maximum retail selling price; and a specific excise duty, calculated per unit of the product. The directive specifies that the rate of the *ad valorem*

excise duty and the amount of the specific excise duty must be the same for all cigarettes. Member States also have the option of levying a minimum excise duty on cigarettes.

The Court highlights that this **minimum excise duty represents a minimum tax threshold**, **below which there may not be a proportional reduction in the tax payable**.

If Member States make use of the power to establish a minimum excise duty offered by the directive, the ensuing legislation must come within the framework laid down by that directive and

¹ Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco (OJ 2011 L 176, p. 24)

² Case <u>C-571/08</u> Commission v Italy

cannot run counter to the objectives of that directive. The establishment of different minimum tax thresholds according to the characteristics or price of cigarettes would lead to distortions of competition as between different cigarettes and would therefore be contrary to the objective of ensuring the proper functioning of the internal market and neutral conditions of competition pursued by the directive.

In this specific case, cigarettes in the most popular price category in Italy retail at \in 210 per thousand cigarettes, with a basic amount of excise duty set at \in 122.85. Applying the Italian rules, cigarettes with a price lower than \in 210 per thousand cigarettes, are subject to excise duty of \in 141.28 per thousand cigarettes.

The Court therefore finds that the Italian legislation establishes a system in which the amount levied on cigarettes in the most popular price category, in terms of the overall excise duty, is lower than the amount levied by way of the minimum excise duty on the cheapest cigarettes, a situation which leads to the distortion of competition and runs counter to the objectives of the directive.

The Court adds that the directive already takes into account the objective of the protection of public health, notably in stating that the level of taxation is a major factor in the price of tobacco products, which in turn influences consumers' smoking habits. In this connection, the Court observes that fiscal legislation is an important and effective instrument for discouraging consumption of tobacco products and, therefore, for the protection of public health. Provided that the national measures come within the framework laid down by the directive, that directive does not prevent the Member States from taking measures to combat smoking and to ensure a high level of protection for public health by levying excise duties.

The Court concludes that the directive precludes a provision of national law, which, rather than establishing an identical minimum excise duty that is applicable to all cigarettes, establishes a minimum excise duty that is applicable only to cigarettes with a retail selling price lower than that of cigarettes in the most popular price category.

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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