



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-151/17
Swedish Match AB v Secretary of State for Health

Advocate General Saugmandsgaard Øe proposes that the Court hold that the prohibition on the placing on the market of snus is valid

In the UK, the placing on the market of tobacco for oral use, such as snus, is prohibited in accordance with the Tobacco Directive of 2014.¹ (Sweden is exempt from that prohibition on account of the traditional use which is made of snus in that country.) Swedish Match, a company which manufactures and markets snus, challenges the validity, under EU law, of the UK legislation and, consequently, of the directive which it transposes. Although, in 2004, the Court of Justice declared that the prohibition on the placing on the market of tobacco for oral use laid down by the directive preceding the Tobacco Directive of 2014 was valid,² Swedish Match argues that that prohibition, as maintained by the 2014 Directive, is now invalid having regard, inter alia, to the principles of proportionality and non-discrimination. According to Swedish Match, the EU legislature failed, in particular, to take into account developments in scientific knowledge and in the regulatory framework applicable to tobacco products which have taken place since the earlier judgments of the Court.

Hearing the case, the High Court of Justice (England & Wales), Queen's Bench Division (Administrative Court), asks the Court whether the Tobacco Directive of 2014 is valid in so far as it lays down a prohibition on the marketing of tobacco for oral use such as snus.

In today's opinion, Advocate General Henrik Saugmandsgaard Øe considers that the **prohibition on the placing on the market of tobacco for oral use is valid**.

As regards whether that prohibition is compatible with the principle of proportionality in the light of developments in scientific knowledge, the Advocate General is of the opinion that the EU legislature did not exceed the limits of its discretion in finding that **tobacco for oral use is addictive and harmful to health in so far as it increases the risks of certain harmful effects and may increase the risks of other harmful effects**. The fact that some of the data, on the basis of which the legislature concluded that tobacco for oral use is harmful, are challenged by studies indicating the contrary is not sufficient to call that conclusion into question.

Similarly, the Advocate General takes the view that the EU legislature did not exceed the limits of its discretion in concluding that **lifting the prohibition on the placing on the market of tobacco for oral use could result in an overall increase in the harmful effects of tobacco within the EU** because of its effects on consumption patterns. In that regard, the EU legislature considered that the lifting of that prohibition could result, in particular, in introducing young people to smoking and increasing the risk of later use of tobacco for smoking.

By contrast, he is of the opinion that the effectiveness of tobacco for oral use as an aid for giving up smoking has not been established.

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 Cases: [C-210/03](#) Swedish Match and [C-434/02](#) Arnold André, see Press Release No [99/04](#).

In the light of that assessment of the risks to public health which might result from lifting the prohibition at issue, the legislature decided to maintain that prohibition in the new Tobacco Directive of 2014. According to the Advocate General, such a choice is not manifestly inappropriate in pursuit of the twofold objective of that directive, that is, to facilitate the proper functioning of the internal market, whilst taking as a basis a high level of human health protection, especially for young people.

The Advocate General also rejects the argument that the principle of non-discrimination was infringed on account of tobacco for oral use receiving different treatment from that reserved, in particular, for other tobacco products and electronic cigarettes. According to the Advocate General, tobacco for oral use and those other products are not in comparable situations having regard to their objective characteristics. Concerning the different treatment of tobacco for oral use and chewing tobacco or nasal tobacco, the Court has previously held, in a judgment of 2004, that those products are different inasmuch as tobacco for oral use was a novelty on the internal market and considered to have a particular attraction for young people when the legislature decided to prohibit the placing on the market of those products. The Advocate General considers that there is no evidence to call that conclusion into question. Concerning the difference in treatment to that of tobacco for smoking, the Advocate General observes that unlike tobacco for smoking, tobacco for oral use is a novelty, which is why its prohibition avoids the creation of a new source of addiction in view of the particular appeal that it might have for young people. Moreover, the Advocate General notes that the prohibition of tobacco for smoking would most likely lead to the emergence of a black market. As regards the difference of treatment in relation to electronic cigarettes, the Advocate General points out that they do not contain tobacco, function without combustion and are relatively new products whose risks to human health still need to be clarified.

Lastly, the Advocate General notes that, as the Court previously held in 2004, alternative measures to prohibition of the placing on the market of tobacco for oral use, such as the imposition of technical standards to reduce the harmfulness of the product or the regulation of labelling or sales conditions, would not have the same preventative effect, inasmuch as such measures would let a product which is in any event harmful gain a place in the market.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

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 Opinion is published on the CURIA website on the day of delivery.

Press contact: Holly Gallagher 📞 (+352) 4303 3355