



Press and Information

Court of Justice of the European Union
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Judgment in Case C-160/20
Stichting Rookpreventie Jeugd and Others

Filter cigarettes: the method which has been established by ISO for determining the maximum emission levels for tar, nicotine and carbon monoxide and to which EU law refers is valid and binding on cigarette manufacturers

However, since that method has not been published in the Official Journal of the European Union, it is not binding on the public generally, for example on associations for the protection of consumers' health

In July and August 2018, the Stichting Rookpreventie Jeugd (Youth Smoking Prevention Foundation, Netherlands) and 14 other entities ('the applicants') made a request for an order to the Nederlandse Voedsel- en Warenautoriteit (Netherlands Food and Consumer Product Safety Authority). They requested that authority, first, to ensure that filter cigarettes offered for sale to consumers in the Netherlands comply, when used as intended, with the maximum emission levels for tar, nicotine and carbon monoxide prescribed by Directive 2014/40¹ and, second, to order manufacturers, importers and distributors of tobacco products to withdraw from the market filter cigarettes allegedly not complying with those emission levels.

The applicants challenged the decision rejecting that request by bringing an administrative objection before the State Secretary. After that objection was rejected, the applicants brought an action before the Rechtbank Rotterdam (District Court, Rotterdam, Netherlands). They submitted that Article 4(1) of Directive 2014/40² does not require recourse to a particular method of measuring emission levels and that it is clear, inter alia, from several studies that another measurement method (the 'Canadian Intense' method) should be applied in order to determine the precise emission levels for filter cigarettes used as intended.

The District Court, Rotterdam, made a reference to the Court of Justice for a preliminary ruling concerning, inter alia, the validity of Article 4(1) of Directive 2014/40 having regard to the principle of transparency,³ to a number of provisions of EU law⁴ and to the World Health Organisation Framework Convention on Tobacco Control.⁵

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). Article 3(1) of that directive lays down the maximum emission levels for tar, nicotine and carbon monoxide in respect of cigarettes placed on the market or manufactured in the Member States ('the maximum emission levels prescribed by Directive 2014/40').

² Under Article 4(1) of Directive 2014/40, 'the tar, nicotine and carbon monoxide emissions from cigarettes shall be measured on the basis of ISO standard 4387 for tar, ISO standard 10315 for nicotine, and ISO standard 8454 for carbon monoxide. The accuracy of the tar, nicotine and carbon monoxide measurements shall be determined in accordance with ISO standard 8243'.

³ The principle of transparency is laid down in the second paragraph of Article 1 and Article 10(3) TEU, Article 15(1) and Article 298(1) TFEU and Article 42 of the Charter of Fundamental Rights of the European Union ('the Charter').

⁴ Article 114(3) and Article 297(1) TFEU, Council Regulation (EU) No 216/2013 of 7 March 2013 on the electronic publication of the *Official Journal of the European Union* (OJ 2013 L 69, p. 1) and Articles 24 and 35 of the Charter.

⁵ World Health Organisation Framework Convention on Tobacco Control ('the FCTC'), concluded in Geneva on 21 May 2003, to which the European Union and its Member States are party.

By its judgment, delivered by the Grand Chamber, the Court confirms that that provision is valid, holding that it complies in particular with the principles and provisions of EU and international law mentioned by the reference for a preliminary ruling.⁶

Findings of the Court

First, the Court holds that, pursuant to Article 4(1) of Directive 2014/40, the maximum emission levels prescribed by that directive for cigarettes intended to be placed on the market or manufactured in the Member States must be measured in accordance with the measurement methods arising from the ISO standards to which that provision refers. That provision refers in mandatory terms to those ISO standards and does not mention any other measurement method.

Second, the Court analyses first of all the validity of Article 4(1) of Directive 2014/40 having regard to the principle of transparency. It points out that, whilst that provision refers to ISO standards which have not been published in the Official Journal, it does not lay down any restriction concerning access to those standards, including by making that access subject to the submission of a request pursuant to the provisions regarding public access to documents of the European institutions.⁷ So far as concerns, next, the validity of Article 4(1) of Directive 2014/40 having regard to Regulation No 216/2013,⁸ the Court observes that under the case-law the substantive legality of that directive cannot be examined in the light of that regulation. As regards, finally, the validity of Article 4(1) of Directive 2014/40 having regard to Article 297(1) TFEU⁹ read in the light of the principle of legal certainty, the Court states that the EU legislature, in the light of the broad discretion that it has in the exercise of the powers conferred on it where its action involves political, economic and social choices and where it is called on to undertake complex assessments and evaluations, may refer, in the acts that it adopts, to technical standards determined by a standards body, such as the International Organisation for Standardisation (ISO).

However, the Court points out that the principle of legal certainty requires that the reference to such standards be clear and precise and predictable in its effect, so that interested parties can ascertain their position in situations and legal relationships governed by EU law. In the present instance, the Court holds that, since the reference made by Article 4(1) of Directive 2014/40 to the ISO standards complies with that requirement and the directive was published in the Official Journal, the mere fact that that provision refers to ISO standards that have not, at this juncture, been so published is not capable of calling the validity of that provision into question.

Nevertheless, as regards the ability of ISO standards to bind individuals, the Court states that, in accordance with the principle of legal certainty, such standards made mandatory by a legislative act of the European Union are binding on the public generally only if they themselves have been published in the Official Journal. In the absence of publication in the Official Journal of the standards to which Article 4(1) of Directive 2014/40 refers, the public is thus unable to ascertain the methods of measuring the emission levels prescribed by that directive for cigarettes. On the other hand, regarding the ability of ISO standards to bind undertakings, the Court states that, in so far as undertakings have access to the official and authentic version of the standards referred to in Article 4(1) of Directive 2014/40 through the national standards bodies, those standards are binding on them.

⁶ Inter alia, Article 5(3) of the FCTC.

⁷ Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ 2001 L 145, p. 43).

⁸ Regulation No 216/2013 lays down inter alia the rules relating to the publication of acts of EU law in the Official Journal.

⁹ Pursuant to that provision, 'legislative acts shall be published in the *Official Journal of the European Union*. They shall enter into force on the date specified in them or, in the absence thereof, on the 20th day following that of their publication'.

Third, as to the validity of Article 4(1) of Directive 2014/40 having regard to Article 5(3) of the FCTC,¹⁰ the Court observes that the latter provision does not prohibit all participation of the tobacco industry in the establishment and implementation of rules on tobacco control, but is intended solely to prevent the tobacco control policies of the parties to the convention from being influenced by that industry's interests. Therefore, the mere fact that the tobacco industry participated in the determination at ISO of the standards in question is not capable of calling into question the validity of Article 4(1) of Directive 2014/40.

Fourth, as to the validity of Article 4(1) of Directive 2014/40 having regard to the requirement for a high level of protection of human health¹¹ and to Articles 24 and 35 of the Charter,¹² the Court points out that, in accordance with settled case-law, the validity of that provision of Directive 2014/40 cannot be assessed on the basis of the studies mentioned by the referring court in the request for a preliminary ruling, as those studies postdate 3 April 2014, the date on which that directive was adopted.

Fifth and finally, the Court specifies the characteristics that must be displayed by the method of measuring emissions to be used for cigarettes in order to verify compliance with the maximum emission levels prescribed by Directive 2014/40, should the reference made in Article 4(1) of the directive to ISO standards not be binding on individuals. Thus, it holds that that method must be appropriate, in the light of scientific and technical developments or internationally agreed standards, for measuring the levels of emissions released when a cigarette is consumed as intended, and must take as a base a high level of protection of human health, especially for young people. The accuracy of the measurements obtained by means of that method must be verified by laboratories approved and monitored by the competent authorities of the Member States as referred to in Article 4(2) of Directive 2014/40. It is for the national court to determine whether the methods actually used to measure the emission levels comply with Directive 2014/40, without taking account of Article 4(1) thereof.

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

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¹⁰ That provision states that, in setting and implementing their public health policies with respect to tobacco control, the parties to the convention are to act to protect those policies from interests of the tobacco industry in accordance with national law.

¹¹ That requirement is laid down in particular in Article 114(3) TFEU.

¹² Article 24 of the Charter relates to the rights of the child, while Article 35 of the Charter concerns health care.