



C/2024/3588

17.6.2024

**Request for a preliminary ruling from the College van Beroep voor het bedrijfsleven (Netherlands)
lodged on 28 February 2024 – Nederlandse Voedsel- en Warenautoriteit and Others v Stichting
Rookpreventie Jeugd**

(Case C-155/24, Nederlandse Voedsel- en Warenautoriteit and Others)

(C/2024/3588)

Language of the case: Dutch

Referring court

College van Beroep voor het bedrijfsleven

Parties to the main proceedings

Applicants: Nederlandse Voedsel- en Warenautoriteit Staatssecretaris van Volksgezondheid, Welzijn en Sport, Philip Morris Benelux BV, Philip Morris Investments BV, JT International Company Netherlands BV, Vereniging Nederlandse Sigaretten- & Kerftabakfabrikanten, Van Nelle Tabak Nederland BV, British American Tobacco International (Holdings) BV

Defendant: Stichting Rookpreventie Jeugd

Questions referred

1. Is Article 4(1) of Directive 2014/40/EU ⁽¹⁾ to be interpreted as meaning that ISO standards not published in the Official Journal of the European Union cannot, without exception, be enforced against individuals, including the Foundation, even if that individual was able to inspect those standards and obtain them (against payment)?
2. Is the unenforceability of Article 4(1) of Directive 2014/40/EU against individuals, in so far as that provision refers to ISO standards not published in the Official Journal of the European Union, to be understood as meaning that it is not permitted to refuse the right to respect the maximum emission levels for tar, nicotine and carbon monoxide laid down in Article 3(1) of the Directive?
3. Is the expression ‘consumed as intended’, which is included in the definition of ‘emissions’ in Article 2(21) of Directive 2014/40/EU, to be interpreted as meaning that it is approximated as closely as possible to human smoking behaviour, in which case the measurement would have to take into account the at least partial covering of the micro-ventilation holes in the cigarette filter and/or the volume and frequency of smoke, or does that expression refer only to the method of consuming cigarettes through a process of combustion?
4. a) If, in view of the answer to question 3, the ISO standards referred to in Article 4(1) of Directive 2014/40/EU are not suitable for measuring emission levels: a) does a high level of public health protection, in particular for young people, which Directive 2014/40/EU includes as one of its objectives, mean that the principles of legal certainty and legal precision of the applicable law do not preclude an alternative method of measurement from being enforced against tobacco manufacturers?

If, also having regard to the principles of legal certainty and legal precision of the applicable law, question 4a) is answered in the affirmative:

⁽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).

b) are Member States authorised to establish or apply an alternative measurement method themselves, whether temporarily or otherwise, and to enforce this alternative measurement method (also) against tobacco manufacturers, and

c) how does the application of an alternative measurement method relate to the (maximum) harmonisation and improved functioning of the internal market, which Directive 2014/40/EU includes amongst its objectives?

5. a) In the event that an alternative measurement method has to be applied, do the maximum emission levels of Article 3(1) of Directive 2014/40/EU remain fully applicable?

If question 5a) is answered in the negative:

b) are Member States authorised to adopt or apply themselves, whether temporarily or otherwise, alternative maximum emission levels and to enforce these (also) against tobacco manufacturers, and

c) how does the application of alternative maximum emission levels relate to the (maximum) harmonisation and improved functioning of the internal market, which Directive 2014/40/EU includes amongst its objectives?

6. a) If Member States are authorised to adopt or implement an alternative measurement method and that method can be enforced against tobacco manufacturers, in that case, does a high level of public health protection, in particular for young people, which Directive 2014/40/EU includes amongst its objectives, in combination with Article 23(2) of the Directive, mean in that case that cigarettes on the market in the Netherlands must be withdrawn from the market until a new measurement method has been established, such that it cannot be determined whether the cigarettes consumed as intended comply with the maximum emission levels?

If question 6a) is answered in the affirmative:

b) are tobacco manufacturers entitled to a transitional period in that case?

7. If an alternative measurement method has been established or implemented, whether or not in combination with alternative maximum emission levels, are tobacco manufacturers in that case entitled to a transitional period during which they can adapt to that alternative measurement method and any alternative maximum emission levels?
