



## Philip Morris Brands SARL et al. v. Secretary of State for Health

Case C-547/14

**Country:** United Kingdom

**Region:**

**Year:** 2006

**Court:** Court of Justice of the European Union (Second Chamber)

### Facts

The case before the Court of Justice of the European Union (â€œCJEUâ€•) arose in the form of a request from the High Court of England and Wales. The request was made for a preliminary ruling on various questions relating to the validity of Directive 2014/40/EU 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 (the â€œDirectiveâ€•), which the Member States were obliged to implement subject to certain transitional measures, on or before 20 May 2016. The case came before the High Court of England and Wales in the form of a judicial review brought by Philip Morris and British American against the â€œintention and obligationâ€• of the Secretary of State for Health to implement the Directive.

The High Court referred numerous questions to CJEU, some of which were found to be inadmissible by the CJEU for a preliminary ruling. The referred questions challenge the validity of various provisions of the Directive on grounds of the violation of the principle of proportionality; infringement of Article 11 of the Charter of Fundamental Rights of the European Union (the â€œCharterâ€•) which protects freedom of expression; and infringement of Article 114 of the Treaty on the Functioning of the European Union (â€œTFEUâ€•) which enables the European Parliament and Council to adopt the measures which have as their object the establishment and functioning of the internal market.

The applicants in the judicial review before the High Court argued that the directive was invalid, in whole or in part. The ground was an infringement of Articles 114 TFEU, 290 TFEU and 291 TFEU which sets out the scope of the EU's authority to legislate and the principles of law in the nations coming under the European Union, the principles of proportionality and subsidiarity. The Article 11 of the Charter of Fundamental Rights of the European Union (â€œthe Charterâ€™) enshrines certain political, social, and economic rights for European Union (EU) citizens and residents into EU law.

The CJEU ruled in favor of the Respondent upholding all aspects of the TPD and noted that the EU may act to prevent obstacles to the trade of tobacco products while also ensuring a high level of public health protection.

### Decision and Reasoning

The CJEU analyzed the various arguments presented by both the parties and gave the following rulings:

- The court held that Article 24(2) of the TPD, which dealt with regulations pertaining to the packaging of tobacco products, was valid as this article was in compliance with the aim of Article 114 of the TFEU which was to â€œachieve the objective of improving the conditions for the functioning of the internal marketâ€•.
- The court held that Article 24(3) of the TPD on the prohibition of a certain unlawful category of tobacco by the Member States was valid. The court noted that Article 24(3) was not covered by harmonization measures in the TPD and therefore, was not subject to rules under Article 114 of the TFEU.
- The court held that Chapter II of Title II (labeling and packaging) of the TPD was valid. Chapter II of Title II harmonized standards of the labeling and packaging and such provisions were authorized under Article 114 of the TFEU since they were designed to promote the functioning of the internal market.
- The court held that Article 7 of the TPD, which regulated the characterizing flavor of tobacco products, was valid since the characterizing flavor may increase the addictiveness of tobacco products. In order to prevent impairment of free movement as well as to protect public health, Article 7 was properly adopted on the basis

of Article 114 of the TFEU.

- The court held that Article 18 of the TPD was valid as on the one hand, it provided that the Member States may prohibit cross-border distance sales of tobacco products so as to protect people's health especially the young people; while on the other hand, it set out rules applicable to all Member States which did not prohibit such sales. Such provisions were within the scope of discretion granted by Article 114 of the TFEU to the EU legislature to decide which aspects of cross-border distance sales should be harmonized.

- The court held that Article 13(1) of the TPD, which regulated the labeling of tobacco products, was valid. TPD was intended to facilitate the smooth functioning of the internal market based on a high level of protecting human health, especially for young people. Display of certain information would be misleading and encourage the consumption of tobacco products no matter if such information was accurate. Therefore, such a strict interpretation was consistent with the purpose of TPD.

Article 13(1) of the TPD also did not violate Article 11 of the Charter or the principle of proportionality. Although Article 11 of the Charter affirmed the freedom of expression and information, including freedom of using labeling and packaging and Article 52(1) provided that the limitation on exercise of freedoms must comply with the principle of proportionality, the court held that: (i) Article 13(1) did not impair the essence of a business's freedom of expression because labeling of products only constituted one part of the communication; (ii) such interference was made to pursue an objective of general interest recognized by EU, which was to protect public health; and (iii) the second sentence of Article 35 of the Charter also required a high level of human health protection. The court noted that human health protection weighed over the interests claimed under Article 11. Such prohibition was valid and reasonable.

### Decision Excerpts

“A high level of protection of that kind requires that consumers of tobacco products, who are a particularly vulnerable class of consumers because of the addictive effects of nicotine, should not be encouraged to consume those products by means of, albeit factually accurate, information, which they may interpret as meaning that the risks associated with their habits are reduced or that the products have certain benefits.” (Para 144)

“The interference with the freedom of expression and information that has been found to exist meets an objective of general interest recognized by the European Union, namely, the protection of health. Given that it is undisputed that tobacco consumption and exposure to tobacco smoke are causes of death, disease, and disability, the prohibition laid down in Article 13(1) of Directive 2014/40 contributes to the achievement of that objective in that it is intended to prevent the promotion of tobacco products and incitements to use them.” (Para 152)

“As regards (i) the appropriateness of large combined health warnings, the Guidelines for Implementation of Article 11 of the FCTC explain, in point 7, that, in comparison with small, text-only health warnings, larger warnings with pictures are more likely to be noticed, better communicate health risks, provoke a greater emotional response and increase the motivation of tobacco users to quit and to decrease their tobacco consumption. Such warnings are also more likely to retain their effectiveness over time and are particularly effective in communicating health effects to low-literacy populations, children and young people.” (Para 204)