ENSP
European Network for Smoking and Tobacco Prevention

EUROPEAN UNION MEMBER STATES SHALL PROHIBIT THE PLACING ON THE MARKET OF TOBACCO PRODUCTS WITH A CHARACTERISING FLAVOUR

20 MAY 2020

on Menthol Cigarettes

An EU wide ban on menthol cigarettes sales goes into effect on May 20 following the 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. [1]

The characterizing flavours regulation on tobacco products is one of the key changes for tobacco products sold in 27 EU Member States and UK since the introduction of Tobacco Products Directive (TPD) in 2016 as stated in the European Commission's press release: ***"Cigarettes and roll-your-own (RYO) tobacco products may no longer have characterising flavours such as menthol, vanilla or candy that mask the taste and smell of tobacco. In the case of products with more than a 3% market share (e.g. menthol), the ban will apply as of 2020"*** while cigars, cigarillos and snus are exempt from this ban. [2]

THE DIRECTIVE

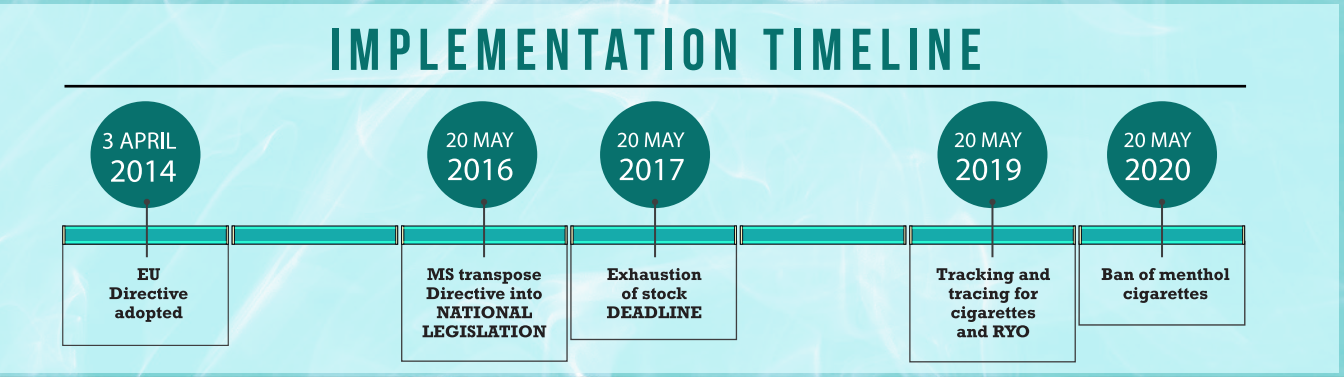
The ban on characterizing flavours of tobacco products will contribute to the general public health by discouraging people to start smoking or encouraging smokers to quit. The European Commission stresses out the importance of the European legislation alignment to meet its obligations under the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) of May 2003 and implement the guidelines provided for its Member States. [1]

The European Commission (EC), considered the new scientific evidence and applied new measures from a legislative point of view, on the market, in order to better protect the consumers. [3] Article 7 of the TPD on the regulation of ingredients specifically mentions that: *"Member States shall prohibit the placing on the market of tobacco products with a characterising flavour"*. Flavouring is prohibited also in filters, papers, packages, capsules or any technical features allowing modification of the smell or taste of the tobacco products concerned or their smoke intensity. [1]

The EC highlights the "specific flavours", such as cherry, menthol, vanilla, as *being very clearly noticeable in terms of smells, but also as being an added component that cannot be found in natural tobacco leaves.* [1]

The Directive's Article 7 "Regulation of ingredients" establishes the common ground of implementation for its Member States, mentioning the applicability on the products and the exceptions regarding the adjacent tobacco-free accessories. [1] To support its implementation, the Commission has adopted two separate normative acts displaying the mechanisms for determining flavoured products:

- Commission Implementing Regulation (EU) 2016/779 of 18 May 2016 laying down uniform rules as regards the procedures for determining whether a tobacco product has a characterizing flavour [4] and
- Commission Implementing Decision (EU) 2016/786 of 18 May 2016 laying down the procedure for the establishment and operation of an independent advisory panel assisting Member States and the Commission in determining whether tobacco products have a characterizing flavour. [5]



EVIDENCE-BASED DECISION

According to the WHO, the tobacco epidemic is one of the biggest public health threats the world has ever faced, killing more than 8 million people each year. More than 7 million of those deaths are the result of direct tobacco use while around 1.2 million are the result of non-smokers being exposed to second-hand smoke. [5] Moreover, the economic costs of tobacco use are substantial and include significant healthcare costs for treating the disease caused by tobacco use as well as the lost human capital that results from tobacco-attributable morbidity and mortality. [6]

The latest Eurobarometer report (2017) findings also highlights that from around 48% of the participants who smoke cigarettes, at least on a monthly basis smoke cigarettes with special characteristics, such as Menthol flavour (8%) or other flavours (7%). [7] These numbers suggest that characterising flavours ban is likely to directly affect at least one in ten smokers. Within the Members States, menthol cigarettes are most widely consumed in Finland (24%) and Denmark (20%) while younger respondents are slightly more likely to smoke menthol cigarettes (11%) than the average. [7]

Additionally, researchers have found that menthol, as an active compound interacting with other tobacco components, may not only damage or kill cells, but may also worsen cardiovascular effects compared to no menthol cigarettes. [8] It was also found that flavoured cigarette use is more common among youth and new smokers. [9]

ENFORCEMENT OF THE DIRECTIVE

The ban will apply on menthol cigarettes, but also on capsule, click on, click & roll, dual menthol cigarettes or roll-your-own that comes in the same packaging. However, the directive does not include mentholated papers and filters sold separately from RYO tobacco products.

There is no sell-through period of menthol cigarettes, meaning that from 20 May 2020 it will be forbidden to continue selling. Retailers must sell their remaining stock until the due date. [1]

ENSP MONITORING ACTIVITIES

As the due date for the flavoured tobacco products is approaching, tobacco industry has started encouraging the users to switch to vaping or other alternatives, as the directive does not affect them. Heated tobacco products, menthol or flavoured e-liquids flavours as well as other tobacco-free nicotine products are exempted from this decision.

Other industry tactics include, cardboard strips that can be inserted into a cigarette pack or pouch of rolling tobacco to impart a peppermint aroma and cigarillos-small cigars that are exempt from the ban-with capsules that release menthol at the push of a button. In additions, the U.K. Imperial, the maker of Rizla rolling paper, has already been selling menthol filter tips for loose tobacco for years, and now plans to offer these products in other European countries. (10)

Another worrying fact is that menthol product sales are not banned in Switzerland and other EU border countries and this could possibly fuel smuggling or encourage smokers to buy illegal menthol tobacco products. Illicit trade of tobacco products is a serious crime and all states must concentrate their efforts to combat it. (11)

The European Network for Smoking and Tobacco Prevention (ENSP), through its national members and partners, will support and monitor the full implementation of the characterizing flavours ban as requested by Directive 2014/40/EU.

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