

December 23, 2016

EC, 23 December 2016, JT International SA, industrial operating company of tobacco and matches, Philip Morris company France SA and Others

In 399,117, 399,789, 399,790, 399,824, 399,883, 399,938, 399,997, 402,883, 403,472, 403,823, 404,174, 404,381, 404,394

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The Council of State ruling to disputes (Litigation Section, 9th and 10th bedrooms combined) on the report of the 9th chamber of the Litigation Section

Meeting of 7 December 2016 - Reading of December 23, 2016

Given the following:

1. Under our 399117 and 403472, respectively, by two applications registered on 25 April and 13 September 2016 the Secretariat of the Judicial Council of State, an additional memory recorded September 13, 2016 under No. 399117 and by a reply recorded December 2, 2016 under the two numbers, the company JT International SA request to the State Council:

1) set aside for judicial decree of 21 March 2016 concerning the Neutral package of cigarettes and certain tobacco products and the Decree of 11 August 2016 concerning the manufacture, presentation and sale to the use of tobacco products, vapotage of products and smoking products made from plants other than tobacco, as well as the decrees of 21 March 2016 concerning the conditions of neutrality and standardization of packaging and paper cigarettes and tobacco rolling and August 22, 2016 relating to tobacco products, the vapotage and smoking based on plants other than tobacco and the paper for rolling cigarettes;

2) to charge the state the sum of 5000 euros under the provisions of Article L. 761-1 of the Code of Administrative Justice.

2. Under our 399 789, 399 790 applications registered by the Secretariat of the Judicial Council of State May 13, 2016, registered supplementary statements November 15, 2016 and reply briefs recorded December 2, 2016, and under no 404,174 by an application lodged on 7 October 2016 the national Society of industrial exploitation of tobacco and matches application to the State Council:

1) set aside for judicial decree of 21 March 2016 concerning the Neutral package of cigarettes and certain tobacco products and the Decree of 11 August 2016 concerning the manufacture, presentation and sale to the use of tobacco products, vaporage of products and smoking products herbal products other than tobacco, as well as the decree of 21 March 2016 on neutrality conditions and standardization of packaging and paper cigarettes and rolling tobacco ;

2) to charge the state the sum of EUR 10 000 under Article L. 761-1 of the Code of Administrative Justice.

3. Under the No 399 824, for a request and a reply, registered on 17 May and 1 December 2016 at the Secretariat of the Judicial Council of State, and under number 402883, for an application recorded August 26, 2016, Philip Morris France SA and others ask the Council of State:

1) set aside for judicial decree of 21 March 2016 concerning the Neutral package of cigarettes and certain tobacco products and the Decree of 11 August 2016 concerning the manufacture, presentation and sale to the use of tobacco products, vaporage of products and smoking products herbal products other than tobacco;

2) alternatively, only to cancel the decree of March 21, 2016 codified in Article R. 3512-26 of the Code of Public Health;

3) to be borne by the State the payment to each of the applicants, the sum of 5000 euros under Article L. 761-1 of the Code of Administrative Justice.

4. Under our 399 883, for a query and two additional submissions, registered on 18 May, 15 June and 27 September 2016 at the Secretariat of the Judicial Council of State, and, under number 403823, for an application registered on 27 September 2016, the national Confederation of tobacconists France asked the Council of State:

1) set aside for judicial decree of 21 March 2016 concerning the Neutral package of cigarettes and certain tobacco products and the Decree of 11 August 2016 concerning the manufacture, presentation and sale to the use of tobacco products, vaporage of products and smoking products made from plants other than tobacco, as well as the decrees of 21 March 2016 concerning the conditions of neutrality and standardization of packaging and paper cigarettes and tobacco rolling and arrested on 15 and 18 April 2016 which amended the previous;

2) in the alternative, to stay the proceedings and ask the Court of Justice of the European Union of the questions on the scope of the harmonization effected by Directive 2014/40 / EU of 3 April 2014 and the compatibility of national legislation requiring the registration of single brand name, to the exclusion of any figurative sign, on tobacco products 2 of Article 24 of Directive 2014/40 / EU of 3

April 2014 , Article 2 of Directive 2008/95 / EC of 22 October 2008 and 2 of Article 1 of Regulation (EC) 207/2009 of 26 February 2009;

5. Under the No 399 938, for a request and a reply, registered on 20 May and 1 December 2016 at the Secretariat of the Judicial Council of State, and under number 404381 with a request registered on 11 October 2016 the Republic Technologies France company request to the State Council:

1) set aside for judicial decree of 21 March 2016 concerning the Neutral package of cigarettes and certain tobacco products and the Decree of 11 August 2016 concerning the manufacture, presentation and sale to the use of tobacco products, vapotage of products and smoking products herbal products other than tobacco, as well as the decree of 21 March 2016 on neutrality conditions and standardization of packaging and paper cigarettes and rolling tobacco ;

2) to charge the state the sum of 5000 euros under Article L. 761-1 of the Code of Administrative Justice.

6. Under the No 399 997, for an application, additional memory and a reply registered on 23 May, 12 October and 2 December 2016 the Secretariat of the Judicial Council of State, and under number 404 394, for an application filed October 12, 2016, British American Tobacco France asked the Council of State:

1) set aside for judicial decree of 21 March 2016 concerning the Neutral package of cigarettes and certain tobacco products and the Decree of 11 August 2016 concerning the manufacture, presentation and sale to the use of tobacco products, vapotage of products and smoking products herbal products other than tobacco, as well as the decree of 21 March 2016 on neutrality conditions and standardization of packaging and paper cigarettes and rolling tobacco ;

2) to charge the state the sum of 5000 euros under Article L. 761-1 of the Code of Administrative Justice.

Considering the other documents in the file;

Viewed:

- the Constitution;
- Declaration of the Rights of Man and Citizen of 1789;
- The European Convention of Human Rights and Fundamental Freedoms and its first protocol;
- The Charter of Fundamental Rights of the European Union;

- The Treaty of Rome;
- Regulation (EC) 6/2002 of 12 December 2001;
- Regulation (EC) 207/2009 of 26 February 2009;
- Directive 2008/95 / EC of the European Parliament and of the Council of 22 October 2008;
- Directive 2014/40 / EU of the Parliament and the European Council of 3 April 2014;
- Directive 2015/1535 / EU of the Parliament and the European Council of 9 September 2015;
- The Paris Convention of 20 March 1883;
- The Agreement on Aspects of Intellectual Property Rights adopted at the trade April 15, 1994;
- The code of intellectual property;
- The tax code;
- The code of public health;
- Law n ° 2016-41 of January 26, 2016;
- Ordinance No. 2016-623 of 19 May 2016
- DC Decision No. 2015-727 of 21 January 2016 the Constitutional Council;
- Judgment C-547/14 of 4 May 2016 the Court of Justice of the European Union;
- The Code of Administrative Justice;

Having heard in public session:

- the report by Simon Chassard auditor;
 - The conclusions of Ms Marie-Astrid of NICOLAZO Barmon, rapporteur public;

The word has been given before and after the findings, the CPS Spinosi, Elder, counsel for the company JT International Sa to CPC Baraduc, Duhamel, Rameix, counsel for the company National Confederation of tobacconists in France;

Considering the memorandum for the deliberations, recorded December 7, 2016, presented for the national society to industrial exploitation of tobacco and matches under Nos 399789, 390790 and 404174.

Considering the memorandum for the deliberations, recorded December 8, 2016, presented for the British American Tobacco France under number 399 997.

Whereas:

1. The above mentioned requests are directed against the provisions of the same orders and same detained. It should attach them to rule by a single decision.

2. The provisions of the Decree of March 21, 2016 attack under Nos 399117, 399789, 399824, 399883, 399938 and 399997 have been codified in Articles R. 3511-17 to R. 3511-29 of the Code of Public Health. Subsequent to the introduction of requests, the Decree of 11 August 2016 on the manufacture, presentation, sale and use of tobacco products, vapotage of products and smoking products made from other plants tobacco proceeded, repeating them verbatim without any modification other than pure form, a new codification of the provisions of the Decree of 21 March 2016, which now feature in Articles R. 3512-17 to R. 3512-29 of the code of public health. Under Nos 402883, 403472, 404174, 404381, 404394, the applicants, as a consequence, the annulment of the decree of August 11, 2016. They must be regarded as asking, in all these numbers, cancellation provisions now feature in Articles R. 3512-17 to R. 3512-29 of the code of public health and those orders of 21 March 2016 and of 22 August 2016 implementing them.

3. Article 27 of the Law of 26 January 2016 modernizing our health system, originally codified in Article L. 3511-6 of the code of public health, provided that "The conditioning units, the outer package and overpacks cigarettes and rolling tobacco, cigarette paper and paper for rolling cigarettes are neutral and standardized. / A decree in Conseil d'Etat their conditions of neutrality and uniformity, including shape, size, texture and color, and how to register trademarks and trade names on these media. ". Since the entry into force of the Ordinance of 19 May 2016 transposing Directive 2014/40 / EU of the European Parliament and the Council of 3 April 2014 on the approximation of laws, regulations and administrative provisions of the Member States relating to manufacture, presentation and sale of tobacco products and related products such provisions have been included in Article L. 3512-20 of the code of public health, which provides that "Notwithstanding the provisions of Article 575 D General tax code, the conditioning units, external packaging and secondary packaging of cigarettes and rolling tobacco, cigarette paper and paper for rolling cigarettes are neutral and standardized. ". For the purposes of these provisions introducing a type regulation "neutral package", the regulatory authority has enacted the provisions codified in Articles R. 3512-17 to R. 3512-29 of the Code of Public Health, which aim to regulate the appearance of packaging, packaging and outer packaging of cigarettes and rolling tobacco. The impugned provisions include that "conditioning units and outer packages of cigarettes and rolling tobacco are of one color shade and can include a bar code" that "prohibited all methods to undermine neutrality and uniformity of the conditioning units, outer packaging or overpack, particularly to give them auditory characteristics, olfactory or specific visual "and that" in addition to the health warnings under Article L. 3511-6 the same code, only the following details shall appear in legible and uniform manner on a packaging unit or a pack of cigarettes or rolling tobacco: / 1. the name of the brand; / 2 The name of the trademark; / 3 ° The name, mailing address, email address and the manufacturer's telephone number; / 4 ° The number of cigarettes contained or indication of the weight in grams of rolling tobacco content; / ".

On the intervention, in cases Nos 399117, 399997, 403472 and 404394 of the company Tannpapier GmbH:

4. Tannpapier GmbH has a sufficient interest to intervene in support of the JT International SA and British American Tobacco France. Thus, its actions are admissible.

The claims for the annulment of Articles 17 R. 3512 to R. 3512-29 of the Code of Public Health and the Decree of 21 March 2016 on neutrality conditions and standardization of packaging and paper cigarettes and rolling tobacco:

On the external legality of the contested decisions:

Regarding the legality of the communication procedure prescribed by Directive 2015/1535 / EU of the Parliament and the European Council of 9 September 2015:

5. Pursuant to Article 5 of Directive 2015/1535 / EU of the European Parliament and the European Council on 9 September 2015 providing an information procedure in the field of technical standards and regulations and rules on services of information society, applicable at the date of the contested provisions, a member State wishing to adopt a new technical regulation within the meaning of the Directive must, unless otherwise expressly provided by it, to communicate the project to the European Commission in conditions set by this article. He must make a new communication under the same conditions if he brings to the project technical regulation "in a meaningful way, changes that will have the effect of changing its scope, shortening the timetable for originally envisaged for implementation, adding specifications or requirements, or making the latter more restrictive. " Under Article 6 of that directive: '1. Member States shall postpone the adoption of a draft technical regulation for three months from the date of receipt by the Commission of the communication referred to in Article 5, paragraph 1. (...) ". Constitutes a technical regulation within the meaning of the Directive, in the words of f) of Article 1 ", technical specifications and other requirements or rules on services, including administrative provisions that apply, the observance is compulsory de jure or de facto, in the marketing, provision of services, establishment of a service operator or use in a member State or a major part thereof, as well as, subject to those referred to in Article 7, the laws, regulations and administrative provisions prohibiting the manufacture, importation, marketing or use of a product or prohibiting the provision or use of a service or s' establishment as a service provider. ".

6. It is supported by several of the applicants that the contested provisions differ from the draft decree notified to the European Commission May 7, 2015 under the reference 2015/241 / F.

7. First, the fact that after the flow of the three-month period provided for by Article 6 of the directive, the notified rules were adopted under the division of powers rule prevailing in France between Prime Minister and departmental authorities, in the form of a decree by the State Council and a ministerial order has no bearing on the legality of the notification procedure.

8. Secondly, on the one hand, the contested provisions, codified on this point in Article R. 3512-20 of the Code of Public Health, provide that "all processes are forbidden to undermine the neutrality and uniformity of the conditioning units, outer packaging or overpack, particularly to impart characteristics of auditory, olfactory or specific visual. " Article 6 of the Decree of 21 March 2016 also provides that "The list of methods mentioned in the second paragraph of Article R. 3511-20 of the Code of Public Health includes: / a) inks activated contact with heat; / B) inks designed to gradually appear over time; / C) fluorescent inks that appear in certain lights; / D) detachable tabs; / E) folding or sliding elements. ". It appears from the evidence that these provisions have just taken, with regard to prohibited procedures, the scope of the 1 and 2 of Article 6 of the Notice draft decree to the Commission. Moreover, it appears from the evidence that the 3 of Article 3 of the communiqué draft decree provided that "The name of the brand and if any of the trademark may be affixed inside the unit packet of cigarettes and rolling tobacco "while the impugned provisions, codified on this point in Article R. 3512-27 of the code of public health, provide that 'brand names and trade name can not be placed inside the packaging unit and the pack of cigarettes and rolling tobacco. " This change made after communication of the draft decree to the Commission nevertheless can not be regarded as significant within the meaning of Article 5 of Directive 2015/1535 / EU since the ban on affixing the name the brand and the brand name inside the packaging is in the light of the objective pursued by the contested texts, the need for the ban on entry of this name and that name inside the packaging and therefore did not alter the meaning or scope of the reported provisions. Finally, if the applicants argue that the provisions codified in Articles R. 3512-22 and R. 3512-24-II-II, on compliance with health warnings size characteristics specified in Article L. 3512-22 of the the same code, differ in substance from those that have been notified to the European Commission, the latter simply maintain on this point the precise transposition of Directive 2014/40 / EU of 3 April 2014 on the approximation of regulations the manufacture, presentation and sale of tobacco products and therefore did not have to be the subject of a communication under the technical rules.

9. Third, the fact that Article 2 of the decree of March 21, 2016 states that "non-compliant tobacco products with the provisions of this decree can be released for consumption as defined in 1 of I of Article 302 D of the General tax code, within six months following the effective date of this decree, "while Article 13 of the draft to the European Commission statement decree merely provided a down period compliance of six months, without reference to Article 302 D of the General tax code, has not had the effect of shifting in time the entry into force of the contested Decree.

10. Consequently, the plea alleging that the disputed documents were adopted following an irregular procedure for want of a new communication to the European Commission, must be dismissed.

Regarding the alleged procedural defects and competence:

11. First, when a decree must be taken in the Council of State, the text adopted by the Government may be different from both the project he had submitted to the State Council and the text adopted

by this latest. According to the documents, including a copy of the minute of the Social Section of the State Council, produced by the Prime Minister, no provision of the decree which annulment is sought differs from both the submitted project the Council of State and the text adopted by it. Consequently, the plea of breach of the rules governing the review by the Council of State decree projects must be rejected.

12. Second, it appears from the evidence that the regulatory authority has defined with sufficient precision in the contested decree, the rules it intended to rely to ensure the neutrality and standardization of packaging, packaging and wrappers of tobacco products, in accordance with Article 27 of the law of 26 January 2016 to modernize our health system, mentioned in point 3 above. He was free to return at a later ministerial decree the task of specifying the procedures for implementing these rules, particularly with regard to color shades, barcode features and interiors, tear strips, processes affecting the uniformity of packaging, the specific features of cuboid packaging and the definition of the location of the information to be included on these media. The plea alleging that the author of this decree disregarded the scope of its jurisdiction can therefore only be rejected.

13. Third, the II of Article R. 3512-20 of the Code of Public Health provides what "forbidden inside the conditioning units, external packaging and outer packaging or insert any element in except, in the case of rolling tobacco, rolling papers and filters. " The Section II of Article R. 3512-26 of the Code states: "When II.-conditioning units or external rolling tobacco packaging also contains rolling papers and filters, the following information may, if appropriate, be added: / 1 "contains rolling papers and filters"; / 2 "contains rolling papers"; / 3 "contains filters. " Finally, under Article III of the R. 3512-26: "A decree of the Minister of Health establishes the location of entries allowed in I and II on the unit packaging or outer packaging, as well as their characteristics" . If the Minister for Health was explicitly empowered under the above provisions, to fix the location of the particulars provided in I and II of Article R. 3512-26 of the Code of Public Health, he was also responsible for the implementation of the Decree of 21 March 2016 adopted in implementation of Article L. 3512-20 code of public health, which requires neutrality and uniformity of conditioning, so that he could competently provide, at a) of article 11 of the contested decree, that "rolling paper filters and the filters or rolling papers and filters are not visible before the opening of the unit packaging or the pack of rolling tobacco. " Therefore, the plea that these provisions would be marred by incompetence can only be rejected.

14. The provisions of Article R. 3512-21 of the Public Health Code provide that "I. The cigarette paper, paper for rolling cigarettes and the filter envelope are of one color shade . The manufacturer may choose for the filter envelope, between two color shades. / II.-An order of the Minister of Health sets the color shades mentioned in I. ' . Article 4 of the decree of March 21, 2016 taken for the application of these provisions provides that "(...) / Paper or envelope mentioned in the first paragraph of Article R. 3511-21 of the Code of aforementioned public health can be colored imitation cork. " The paper covering the filters of cigarettes ensures the junction, via an industrial adhesive, the wound roll of tobacco in the cigarette paper and the filter itself. If the paper covering the envelope of filters present different intrinsic characteristics to the cigarette paper, whose neutrality is provided for by Article L. 3512-20 code of public health, it is comparable to the

application of those provisions to the cigarette paper, given the intention of the legislature to ensure the complete neutrality and uniformity of tobacco products. Indeed, in the absence of such neutrality, the aim of the legislator is not reached. The result is that the regulatory authority had the power to enact the provisions of Article R. 3512-21 of the Code of Public Health.

Regarding the absence of countersignature of the minister of finance and public accounts:

15. Under Article 22 of the Constitution: "The acts of the Prime Minister shall be countersigned, where appropriate, by the ministers responsible for their implementation." The provisions of the contested decrees do not necessarily involve the intervention of regulatory or individual measures that the Minister of Finance and Public Accounts is competent to sign or countersign. Under these conditions, the absence of countersignature of the Minister of Finance and Public Accounts, which was not responsible for the operation of the contested decrees, will not reflect these irregularities decrees.

On the legality of the contested decisions:

Regarding the alleged violation of Articles 2, 4, 16 and 17 of the Declaration of Human and Civic Rights and the constitutional objective of clarity and intelligibility of the law:

16. It is submitted that the impugned provisions do excessive damage to the property rights guaranteed by Articles 2 and 17 of the Declaration of human rights and citizens in that they prohibit manufacturers to affix the figurative marks or semi-figurative they hold on the unit packaging, outer packaging and outer packaging of tobacco products. It is also argued that these provisions violate the freedom of enterprise that follows from Article 4 of the Declaration of Human and Civic Rights and the guarantee of rights under Article 16. As found the constitutional Council decision No. 2015-727 DC of 21 January 2016, Article 27 of the Act to modernize our health system, entrusting the regulatory authority care to specify the implementation modalities of the obligation of neutrality and consistency in packaging of tobacco products it has imposed, did not allow the latter to prohibit the application of registered trademarks and the trademark on the packaging of tobacco products, which are necessary so that they can be positively identified by their buyers. However, with this decision, the Constitutional Council has not ruled out that the regulatory authority, on the referral of the law, can competently, without infringing the right to property and freedom of enterprise, and to ensure respect for the 'neutrality goal set by the legislature, prohibit the application of figurative marks and semi-figurative these packages in that they may constitute a form of advertising. Therefore, the applicants are not justified in claiming that the regulations they challenge would be contrary to the constitutional principles they invoke.

17. Article 575 D of the General Tax Code provides that "In conditions and from a date set by decree, packaging units for retail sale of tobacco must be coated with a tax representative brand right intake. "And that" until the entry into force of the tax brand, suppliers must clearly display printed

on each packaging unit to the information required by the administration, "which appear in Article 56 of Annex IV AQ to this code. Even as the provisions of Article L. 3511-6 of the code of public health, cited in paragraph 3 above, do not include the restriction, now in Article L. 3512-20 of the Code, in the version of the order of 19 May 2016, that the neutrality and standardization of packaging units, packaging and outer packaging must be carried out "without prejudice to Article 575 D of the General tax code" the contested regulations did not object and could not legally have the effect of exempting manufacturers of compliance with this section of the tax code. Therefore, the National Society of industrial exploitation of tobacco and matches is not justified in arguing that by failing to recall the need to respect these provisions, the contested provisions have infringed the constitutional objective of clarity and intelligibility of the law.

As regards compliance of the contested provisions with international commitments of France:

Regarding the compliance of the provisions of Article L. 3512-20 of the Code of Public Health at the Paris agreement of 20 March 1883 for the Protection of Industrial Property and the agreement on aspects of human related intellectual property to trade adopted April 15, 1994:

18. Under Article 6 quinquies of the Paris Agreement of 20 March 1883: "A. 1) A trademark or trade regularly registered in the country of origin will be accepted for filing and protected as is in the other EU countries, subject to the reservations indicated in this Article. Such countries may, before proceeding to final registration, require the production of a certificate of registration in the country of origin issued by the competent authority. No authentication shall be required for this certificate. / (...) / B. trademarks or trade referred to in this article may not be refused registration or invalidated except in the following cases: / i) they are likely to affect rights acquired by third parties in the country where protection is claimed; / ii) when they are devoid of any distinctive character, or consist exclusively of signs or indications which may serve, in trade, to designate the kind, quality, quantity, intended purpose, value, location of origin of products or the time of production, or have become customary in the current language or in the bona fide and established trade practices of the country where protection is claimed; / lii) when they are contrary to morality or public order and in particular likely to mislead the public. It is understood that a mark can not be considered contrary to public order for the sole reason that it does not conform to a provision of the legislation on marks, except if such provision itself relates public order. (...) ". Moreover, under Article 15-1 of the Agreement on Aspects of Intellectual Property Rights for Trade: "Any sign, or any combination of signs, capable of distinguishing the goods or services of a undertaking from those of other companies be capable of constituting a trademark or trade. Such signs, in particular words, including personal names, letters, numerals, figurative elements and combinations of colors as well as any combination of such signs, shall be eligible for registration as trademarks or of business. In cases where the signs are not inherently capable of distinguishing the relevant goods or services, Members may make registrability depend on distinctiveness acquired through use. Members may require, as a condition of registration, that signs be visually perceptible. ". These provisions are intended to ensure that any sign capable of distinguishing the products or services to be vested by States parties to these conventions, the character of a mark, but they have neither the purpose nor the effect of prohibiting States parties to regulate the use of a regular trademark. The provisions of Article L. 3512-20 of the Public Health Code are not inconsistent with these stipulations when it remains open

to economic operators within the ambit of the provisions of national law, to apply for registration any mark corresponding to a tobacco product and obtain, where appropriate, the protection by the trademark judge.

19. Under Article 7 of the Paris Convention of 20 March 1883: "The nature of the goods to which a trademark or trade must be applied shall in no case impede the registration of the brand. ". Under Article 15 4 of the Agreement of 15 April 1994: "The nature of the products or services to which a trademark or trade to be applied shall in no circumstances an obstacle to the registration of the mark. ". These provisions, which are intended to prohibit States parties to refuse the registration of a trademark or trade for a reason relating to the nature of the product corresponding to the mark, are applicable only the registration of the mark and the provisions of Article L. 3512-20 of the public health code have neither the purpose nor the effect of allowing a State to refuse registration of a trademark for such pattern.

20. Under Article 10 bis of the Paris Convention of 20 March 1883: "1) The EU countries are required to ensure that nationals of the Union effective protection against unfair competition. / 2) constitutes an act of unfair competition any act of competition contrary to honest practices in industrial or commercial matters. / 3) in particular shall be prohibited: / i) all acts likely to create confusion by any means with the establishment, goods or industrial or commercial activities of a competitor; / ii) false allegations in the course of trade capable of discrediting the establishment, goods or industrial or commercial activities of a competitor; / lii) indications or allegations the use, in the course of trade is liable to mislead the public into error about the nature, mode of manufacture, characteristics, suitability for use or quantity goods. ". Moreover, under Article 16-1 of the Agreement of 15 April 1994: "The holder of a trademark or registered trade will have the exclusive right to prevent all third parties not having his consent from use during trade identical or similar signs for goods or services identical or similar to those for which the mark or trade mark is registered where such use would result in a likelihood of confusion. In case of use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights and does not affect the possibility of Members making rights available for use. "And under Article 16-3 of the same agreement:" Article 6 bis of the Paris Convention (1967) shall apply, mutatis mutandis, to goods or services which are not similar to those for which a name or trade mark is registered, provided that the use of the mark for those goods or services indicates a link between those goods or services and the registered trademark owner, provided that the use is likely to harm the interests of the registered trade mark. ". These provisions aim to ensure trademark owners effective protection against acts of unfair competition committed by a private company against another private company as well as the ability to prohibit, in cases where an infringement or use fraud was detected, the use of the mark they have regularly filed. It does not follow, however no such provisions that States are deprived of the power to regulate the use of a mark, after filing, provided that the holders of this brand retain the faculties started by articles 10 bis of the Convention of Paris and 16-1 of the agreement of 15 April 1994.

21. Under Article 19 of the Agreement of 15 April 1994: "If it is required to make use of a trademark or trade to maintain a registration, the registration may be canceled that after a continuous period of non-use of at least three years, unless the trademark owner gives valid reasons based on the

existence of obstacles to such use. Circumstances beyond the will of the trademark owner that constitute an obstacle to the use of the mark, such as import restrictions or other government requirements for goods or services protected by the mark will be considered as valid reasons for non-use. / When subject to the owner's control, the use of a trademark or trade with another person will be considered a use of the trademark for purposes of maintaining the registration. ". These provisions, which authorize the cancellation of the registration of a trademark only after an uninterrupted period of three years during which the mark has not been used and indicate that the use under control the trademark owner must be regarded as a use of the mark, also provide that the requirements imposed by governments are considered valid reasons for non-use. These provisions do not, in any event, to prohibit the regulation of the use of a duly filed, such as that provided by the provisions of Article L. 3512-20 of the public health code. Indeed, under the influence of the past, holders of figurative marks and semi-figurative matching of tobacco products retain the right to argue, if this decline was requested before the judge of the brand, the lack of use is proven by compliance with requirements imposed by the national legislature and therefore does encoureraient no risk of forfeiting their rights in those marks.

22. Finally, under Article 8.1 of the Agreement of 15 April 1994: "Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this agreement. "And under Article 20:" The use of a trademark or trade in the course of trade shall not be unjustifiably encumbered by special requirements, such as use of another brand, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without establishing a link between the two, the trademark distinguishing the specific goods or services in question of that business. ". It is argued that tobacco product brands can not be treated differently from other marks on products harmful to human health, and that, therefore, Article 8.1 supra does not allow a State to establish restrictions on specific use on tobacco product brands. Nevertheless, these provisions do not in any event prohibit States parties to exercise the option, which is always open to them to adopt measures necessary to protect public health, which can not be applied, the where appropriate, depending on the objective, to certain categories of products.

23. It follows from the above that the applicants are incorrect in arguing that the provisions they attack would be inconsistent with the provisions of Article L. 3512-20 of the Public Health Code, interpreted in the light of the stipulations invoked the Paris Convention of 20 March 1883 and those of the agreement on aspects of intellectual property rights for trade adopted on 15 April, 1994.

Regarding the alleged violation of Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms:

24. Under Article 1 of Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms: "Every natural or legal person is entitled to respect for his property. No one

shall be deprived of his possessions except in the public interest and in accordance with the law and the general principles of international law. / The preceding provisions shall not affect the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest ".

25. If the contested provisions have the effect of prohibiting, within the geographical area they cover, affixing any figurative sign on the containers and packaging of cigarettes and rolling tobacco, they preserve the right to do it include the name of the brand and the name of the trademark. In addition, the figurative and semi-figurative marks can continue to be affixed to online communication and publications services referred to in 1 and 2 of Article L. 3512-4 of the code of public health. Similarly, if the right to use these marks is regulated by the contested provisions, property rights holders in recent retain the right, if necessary, dispose. The ownership of tobacco brands is not affected in essence, but only in its working conditions. Therefore, the impugned provisions do not deprive the people manufacturing and marketing tobacco products of their ownership of the trademarks.

26. However, in view of their effects, the contested provisions must be regarded as regulating the use of property within the meaning of the second paragraph of Article 1 of Protocol No. 1 cited in paragraph 24. The provisions of this article not preclude the enactment by the competent authority for regulation of the use of property for purposes of general interest, have the effect of affecting the conditions of exercise of property rights. It is up to the competent court, in assessing the conformity of such rules with the provisions of this article, firstly to consider all its effects, on the other hand, and according to the circumstances of the case , to determine whether there is a reasonable relationship of proportionality between the limitations noted in the exercise of property rights and public interest requirements which are at the origin of this decision.

27. First, the contested provisions aim, given the effects of the consumption of tobacco products, not disputed by the applicants, in terms of dependence and prevalence of serious diseases caused by toxic agents, mutagenic and carcinogenic content in these products, to reduce consumption. They pursue therefore an objective of protecting public health and also contribute to the achievement of the objective of controlling health spending.

28. Secondly, the applicants argue that the contested provisions are not likely to reduce tobacco consumption and is therefore not proportionate to the objective pursued. In support of their appeals, they produce several studies and expert reports, which state that the regulations requiring complete neutrality tobacco product packaging are ineffective if they ignore the springs of the act of smoking, they are likely to have consequences for the illicit trade of tobacco products and that they have no effect on tobacco consumption in the countries in which they were adopted. It is nevertheless clear from other studies and expert reports cited by the Minister of Health, as entirely plain packaging may reduce the attractiveness of tobacco products and to change the perception of consumers. If the effects of regulations imposing a maximum standardization of packaging on tobacco use and illicit trade in tobacco products are difficult to quantify a priori, such regulations must nevertheless be regarded as being able only to help reduce forward consumption tobacco

products and therefore as to guarantee the achievement of the objectives of protection of public health and control of health spending, pursued by the legislature. Thus, given the importance of these objectives, it does not appear from the records that the contested provisions would bear the applicants, given their overall situation, excessive and disproportionate burden.

29. Therefore, being given the special importance attached to the protection of public health, and even though no compensation mechanism has been expected nor legislators nor the regulatory power did by adopting the contested provisions infringe the right balance should be struck between the demands of the general interest and the protection of property rights guaranteed by Article 1 of Protocol 1 to the European Convention for the protection of human rights and fundamental freedoms.

As regards the alleged violations of the principle of legality of offenses and to freedom of expression protected by the European Convention of Human Rights and Fundamental Freedoms:

30. First, Article 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms stipulates that "No one shall be convicted of any act or omission which, at the time it was committed did not constitute a criminal offense under national or international law. Similarly it is not inflicted heavier penalty than the one applicable at the time the offense was committed. ". Contrary to what is argued, the provisions of Article L. 3512-20 of the Public Health Code that impose neutrality and standardization of packaging, packaging and outer packaging, implemented by the contested provisions, have defined sufficiently precise obligations for tobacco manufacturers, whose ignorance is sanctioned by the 7 ° of Article L. 3515-3 of the same code. The plea alleging breach of the principle that offenses can not therefore be rejected.

31. Second, under 1 of Article 10 of the European Convention of Human Rights and Fundamental Freedoms "1. Everyone has the right to freedom of expression. This right includes freedom to hold opinions and freedom to receive and impart information and ideas without interference by public authority and regardless of frontiers (...) ". However, the Convention recognizes that States may adopt the measures constitute interference in the freedoms it guarantees, provided that they are required by law, justified by a legitimate aim and proportionate to this purpose. The prohibition to affix figurative and semi-figurative marks on packages of cigarettes and rolling tobacco continues, as has already been said, the legitimate aim of protecting public health. This prohibition is responding to a pressing social need and, in view of elements that have been shown in paragraphs 27, 28 and 29, it does not bear a disproportionate interference with freedom of expression of the applicants.

As regards compliance of the contested provisions in the law of the European Union:

As regards the alleged violations of freedom of expression, freedom of enterprise, the right to property, the principle of equality and the principle of legality of offenses as protected by the Charter of Fundamental Rights of the European Union :

32. Article 16 of the Charter of Fundamental Rights of the European Union states that "freedom of business in accordance with Community law and national laws and practices." The contested provisions do not prohibit either manufacture or sale of tobacco products, but simply to regulate marketing conditions. This means can not, in any event, be rejected.

33. The applicants rely on Article 20 of the Charter of Fundamental Rights of the European Union, which states that "all persons are equal before the law", to argue that the contested provisions infringe the principle of equality therefore that they apply different treatment to the tobacco manufacturers and other manufacturers exerting adverse effects on human health, such as alcohol-containing products, which are nevertheless placed in similar situations. However, tobacco manufacturers and other manufacturers exerting adverse effects on human health are not, given the intensity of the effects induced by smoking on human health, placed in a situation similar, so it is open to Parliament, with the aim to strengthen the protection of public health, they apply different treatments. This means can not, in any event, be rejected.

34. The arguments raised by the applicants, and alleging infringement of Articles 11, 17 and 52 of the Charter of Fundamental Rights of the European Union, relating respectively to freedom of expression and information, the right to property and the principle of legality and proportionality of criminal offenses should in any event be dismissed on the same grounds as those indicated in paragraphs 27 to 29, 30 and 31.

Regarding the lack of knowledge of legal certainty:

35. It is argued that the provisions of Article R. 3512-20 of the Public Health Code to the effect that: "I. Are prohibited all methods to undermine the neutrality and uniformity units packaging, outer packaging or overpack, particularly to give them auditory characteristics, specific olfactory or visual. / An order of the Minister of Health shall establish a list of the main methods banned. "Combined with those of Article 6 of the Decree of 21 March 2016, which set list, without limitation, prohibited methods do not define comprehensively and sufficiently precise processes that are subject to a prohibition. However, these combined provisions prohibiting all processes affecting the neutrality and uniformity of packaging, the fact that Article 6 of the Order attacked only sets a non-exhaustive list of prohibited methods remains no impact on the compliance of these provisions with the principle of legal certainty. Similarly, as has been stated in paragraph 17 above, the contested provisions apply without prejudice to Article 575 D of the General Tax Code and Article 56 of Annex IV AQ to this code. Consequently, and in any event, the plea of breach of the principle of legal certainty can only be rejected.

Regarding the alleged incompetence of the national legislature to adopt provisions affecting the use of figurative marks:

36. It follows from the case law of the Court of Justice of the European Union, notably its judgment *Daiichi Sankyo Ltd (aff. C-414/11)* of 18 July 2013, that among the standards adopted by the European Union IP, only those having a specific link with international trade are likely to fall within the definition of "commercial aspects of intellectual property" referred to in 1 of Article 207 of the Treaty on the functioning of the EU and, consequently, the exclusive competence of the Union. It follows that Member States are not deprived of the power to legislate in the field of intellectual property rights to those aspects not specifically linked with international trade.

37. In the present case, it is argued that the French legislature was not competent to adopt the provisions of Article L. 3512-20 of the Public Health Code provided that the latter affecting inmates intellectual property rights by tobacco product manufacturers, they fall within the scope of the agreement on aspects of intellectual property rights to trade. Nevertheless, these provisions do not present a specific link with international trade. The national legislature was not competent to enact.

Regarding the violation of Article 34 of the Treaty on the Functioning of the European Union:

38. Article 34 of the Treaty on the Functioning of the European Union prohibits quantitative restrictions on imports between Member States and all measures having equivalent effect. This prohibition applies to all legislation of the Member States capable of hindering directly or indirectly, actually or potentially, trade within the European Union.

39. The contested provisions, which set the conditions to be met by packaging of tobacco products sold on the French market, are constitutive of a measure having equivalent effect to quantitative restrictions within the meaning of Article 34 of the Treaty. However, Article 36 of the Treaty allows to maintain restrictions on the free movement of goods justified on health protection grounds and on the lives of people, which are fundamental requirements recognized by the law of the European Union provided they are suitable for securing the attainment of the legitimate objective pursued and not go beyond what is necessary to achieve it. It also follows the interpretation of the Treaty given by the Court of Justice of the European Union, including the *Commission v / Germany (aff. C-141/07)* of 11 September 2008, in appreciation respect the principle of proportionality in the field of public health, should be taken into account that Member States may decide at what level they wish to ensure the protection of public health and how that level is to be achieved. This level may vary from one Member State to another, some discretion is granted to Member States and that one of them imposes less strict rules than those imposed by another Member State does not mean that they are disproportionate.

40. The applicants argue that the contested provisions are not likely to reduce tobacco consumption and is not to be regarded as appropriate for attaining the objective pursued. However, as was stated in paragraph 28 above, the contested provisions should be regarded as not being that contribute to eventually reduce the consumption of tobacco products.

41. The applicants then maintain that the said device "neutral package" is not strictly necessary for the purpose is achieved. They argue in this regard that the strict transposition of Directive 2014/40 / EU of 3 April 2014 on the approximation of manufacturing-related regulations, presentation and sale of tobacco products, which in particular requires that the area devoted to warnings sanitary be increased to 65% of the total area available packaging and prohibits all elements, including logos and stylized entries, which conveyed a misleading information about the harmful nature of tobacco, is sufficient to achieve the objective. However, it is not apparent from the evidence that a satisfactory packaging to the minimum standards laid down in Directive 2014/40 / EU as reduce the attractiveness and thus the consumption of tobacco products, also a packaging complies with these rules, but additionally completely neutralized, presented in a neutral color, uniform and devoid of any figurative or semi-figurative mark.

42. Accordingly, the applicants are not justified in claiming that the provisions they attack méconnaîtraient Article 34 of the Treaty on the Functioning of the European Union.

Regarding the alleged violation of Article 13 and the 1 and 2 of Article 24 of Directive 2014/40 / EU of the European Parliament and the Council of 3 April 2014 on the approximation of laws, regulations administrative action in Member States concerning the manufacture, presentation and sale of tobacco products and related products:

43. Article 13 of Directive 2014/40 / EU of 3 April 2014 provides that: "1. The labeling of packaging units, and any outside packaging of the tobacco product itself may not include any element or device that: / a) contribute to promoting a tobacco product or encourages its consumption by giving an erroneous impression about its characteristics, health effects, hazards or emissions; labels do not include any information on the nicotine content, tar or tobacco product carbon monoxide; / B) suggests that a given tobacco product is less harmful than others, or is intended to reduce the effect of certain harmful components of smoke or has revitalizing properties, energy, healing, rejuvenating, natural, organic or has beneficial effects on health or lifestyle; c) evokes a taste, a smell, a flavoring or other additive, or lack thereof; d) resembles a food or cosmetic product; e) / suggests that a given tobacco product is more readily biodegradable or has other benefits for the environment. / 2. conditioning units and any outside packaging does not suggest economic benefits through vouchers printed for discount offers, free distribution, promotion type of "two for the price of one" or similar offers. / 3. The elements and devices which are prohibited under paragraphs 1 and 2 may include the messages, symbols, names, trademarks, figures or others. ". Furthermore, Article 24 of that directive provides that: "1. Member States may not, for considerations relating to aspects regulated by this Directive and subject to paragraphs 2 and 3 of this Article, prohibit or restrict the making on the tobacco market and related products as long as they comply with this Directive. / 2. This Directive shall affect the right of a Member State to maintain or establish new requirements, applicable to all products placed on the market, regarding the standardization of packaging of tobacco products, where justified on public health grounds, given the high level of protection of human health present the Directive makes certain. The measures are proportionate and do not constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States. These measures shall be notified to the Commission, accompanied by the reasons their maintenance or establishment. ".

44. Primarily, the applicants argue that the contested provisions were adopted on the basis of legislation contrary to Article 1 of 24 of Directive 2014/40 / EU of 3 April 2014 and the 2 of the same Article is contrary to the Treaty of Rome in that it allows the introduction by Member States, more restrictive labeling and packaging measures than those provided for in chapter II of title II of the directive, without guaranteeing the free movement of products complying with it. Nevertheless, it follows from the judgment of the Court of Justice of the European Union, Philip Morris Brands Ltd and Others v / Secretary of State for Health (aff. C-547/14) of 4 May 2016 that Article 2 24 of Directive 2014/40 / EU of 3 April 2014 must be interpreted as meaning that Member States may maintain or introduce new requirements regarding aspects of the packaging of tobacco products that are not already harmonized by this Directive. Therefore, according to this interpretation, Member States may not oppose the importation of tobacco products that would comply with Directive 2014/40 / EU of 3 April 2014 for aspects of packaging that it regulates, but retain the right, additionally, establish additional rules on those of the directive without infringing 1 of Article 24 of the latter.

45. Moreover, contrary to what is argued, the combined provisions of Articles 13 and 24 of the Directive does not prohibit Member States to regulate the appearance of the shell of the cigarette filter.

46. In the alternative, the applicants claim that the provisions they attack were enacted on the basis of legislation contrary to the 2 of Article 24 of Directive 2014/40 / EU of 3 April 2014 which requires that regulations new adopted by States are proportionate. However, as was stated in paragraphs 28 and following, 40 and 41 above, the contested provisions are appropriate to secure the attainment of the objective pursued and do not go beyond what is necessary for that this objective.

Concerning the alleged breach of Article 2 of Directive 2008/95 / EC of 22 October 2008 to approximate the Member States' legislation on trademarks:

47. Under Article 2 of Directive 2008/95 / EC of the Parliament and of the Council of 22 October 2008 to approximate the laws of Member States on trade marks "mark may consist of any signs capable of being represented graphically , particularly words, including personal names, designs, letters, numerals, the shape of goods or of their packaging, provided that such signs are capable of distinguishing the goods or services of a company those of other undertakings ". These stipulations, devoid of limitation, are intended to identify signs capable of distinguishing the goods or services of one undertaking from those of another company and therefore constitute trade marks. The contested provisions which provide that persons selling tobacco products can no longer show on packages of cigarettes and rolling tobacco as the brand name and the name of the trademark associated with the exclusion of figurative signs of the brands they operate, have neither the purpose nor the effect of prohibiting the brand qualification is recognized signs could be so characterized under Article 2 of Directive 2008/95 / EC of 22 October 2008. it is also clear that no article of Directive 2008/95 / EC of 22 October 2008 is intended to prohibit Member States to regulate the use of trademarks which it clarifies the definition. The plea must therefore be rejected.

Regarding the alleged violation of Regulation (EC) 207/2009 of 26 February 2009 on the brand of the European Union and Regulation (EC) 6/2002 of 12 December 2001 on Community designs:

48. Under Article 1 of Regulation (EC) 207/2009 of 26 February 2009 on the brand of the European Union: "The brand of the European Union have a unitary character. It produces the same effects throughout the Community: it shall not be registered, transferred or be surrendered, a decision revoking the rights of the owner or invalidity, and its use can not be prohibited, as for the Community. ". Similarly, under Article 1 of Regulation (EC) 6/2002 of 12 December 2001 on Community designs: "The Community design has a unitary character. It produces the same effects throughout the Community. It can not be registered, transferred, be waived or invalidity decision and its use may be prohibited for the Community. This principle shall apply unless otherwise provided in this regulation. ". Finally, pursuant to 1 of Article 15 of Regulation (EC) 207/2009 of 26 February 2009: "If, within a period of five years from the registration, the trademark of the European Union has not been the holder to genuine use in the Community for the products or services for which it is registered, or if such use has been suspended during an uninterrupted period of five years, the brand of the Union Europe is subject to the sanctions provided for in this Regulation, unless proper reasons for non-use. / Shall also constitute use within the meaning of the first paragraph: / a) the use of the mark in the European Union in a form differing in elements which do not alter the distinctive character of the mark in the form in which -ci was registered; / B) affixing of the trademark of the European Union on products or their packaging in the Community solely for export purposes. ".

49. First, the decrees and the decree attacked not impose any general and absolute ban on the use of trademarks in the European Union held by the tobacco companies, as has been stated in paragraph 25 above.

50. Secondly, Article 9.2 of Regulation (EC) 207/2009 of 26 February 2009 provides that the holder of the exclusive right on an EU trade mark is entitled to prevent all third parties, in the absence of his consent from using in the life of the brand of the constitutive sign of business for goods or services when "a) the sign is identical to the mark of the European Union and is used for products or services identical to those for which the trademark of the European Union is registered; / B) that sign is identical or similar to the mark of the European Union and is used for products or services identical or similar to the goods or services for which the trademark of the European Union is recorded, if there is a risk confusion in the public mind; the likelihood of confusion includes the likelihood of association between the sign and the mark; / C) that sign is identical or similar to the mark of the European Union, regardless of whether the goods or services for which it is used are identical, similar or not similar to those for which the trade mark of the European Union registered, where the latter has a reputation in the EU and that the use of that sign without due cause takes unfair advantage of the distinctive character or the repute of the trademark of the European Union or is detrimental. ". These provisions aim to enable the holder the exclusive right to prevent counterfeiting or use would harm the identification of its products or services or to the reputation of the mark of the European Union to have regularly filed. The provisions of Articles 1 of Regulations (EC) 207/2009 of 26 February 2009 and (EC) 6/2002 of 12 December 2001, which establish the

unitary character of the mark in the European Union, is to prevent, for the owner of an exclusive right to a trademark duly registered with the Office of the European Union for intellectual property seeking by way of the infringement action a prohibition use of that mark, that such a prohibition of use will not be imposed for one of the Member States of the European Union, imposing a possible prohibition of use is pronounced across the European Union. These combined provisions do not preclude a Member State to regulate all or part of the use of a trademark in the European Union for its own territory, on grounds related to the need to protect public health, since the regulation of the exclusive right of the holder has an adequate, necessary and proportionate.

51. Third, it follows from the provisions of 1 of Article 15 of Regulation (EC) 207/2009 of 26 February 2009 that genuine use of a trademark is lost if the trademark of the European Union recorded n has not been a use for goods or services on which it is intended to be applied for a period of five years, except that holders of that mark could justify a pattern that prevented d 'make normal use during this period. The applicants argue that the contested provisions, which prohibit them to affix the figurative marks and semi-figurative marks corresponding to the EU regularly recorded on packaging, packaging and outer packaging of tobacco products, imply that they incur the sanctions provided for by Regulation (EC) 207/2009 of 26 February 2009, including the forfeiture of their rights to the marks. However, in case of forfeiture of demand for these brands presented in accordance with Article 50 of Regulation (EC) 207/2009 of 26 February 2009, at the Office of the European Union for the intellectual property, trademark holders retain the right to argue that the prohibition by the national law of a member State of the use of these trademarks has prevented them from making serious use and therefore continue to benefit from the all entitlements created under the Regulations on trademarks whose use was regulated by one of the member states. Thus, the plea must be rejected.

As regards compliance of the contested provisions in Article L. 3512 20 of the Code of Public Health and the Code of Intellectual Property:

Concerning the alleged breach of Article L. 3512-20 of the Code of Public Health:

52. The applicants argue that the contested provisions are marred by incompetence, violation of Article L. 3512-20 and lack of legal basis since the Government was not entitled to set the terms registration marks on the packaging of tobacco products, could prohibit the registration of figurative and semi-figurative marks on the packaging. And has held the Constitutional Council decision No. 2015-727 DC of 21 January 2016, as was stated in paragraph 16 of this decision, Article 27 of the Act to modernize our health system by entrusting the regulatory authority care to specify the implementation modalities of the obligation of neutrality and consistency in packaging of tobacco products it has imposed, did not allow the latter to prohibit the application of registered trademarks and the trademark on the packaging of tobacco products, which are necessary for the latter can be positively identified by their buyers. However, with this decision, the Constitutional Council has not ruled out that the regulatory authority, on the referral of the law, can competently, without infringing the right to property and freedom of enterprise, and to ensure respect for the 'neutrality goal set by the legislature, prohibit the application of figurative marks and semi-figurative these

packages as they are a form of advertising. It thus follows the provisions of Article L. 3512-20 code of public health as interpreted by the Constitutional Council that the authors of the impugned provisions could lawfully provide that could appear on these media that the names used to distinguish products, excluding any figurative sign.

With regard to the infringement of Articles L. 711-1, L. 714-5 and L. 713 1 of the Code of Intellectual Property:

53. Article L. 711-1 of the Code of Intellectual Property provides that "The trademark, trade or service is a sign capable of graphic representation serving to distinguish the goods or services of a natural or legal person . / Particular, may constitute such a sign: / a) denominations in all forms such as words, words, surnames and geographical names, pseudonyms, letters, numerals, abbreviations; / (...) / C) figurative signs such as drawings, labels, seals, selvages, reliefs, holograms, logos, synthesized images; forms, including those of the product or its packaging or those that identify a service; arrangements, combinations or shades of colors. ". These provisions aim to clarify, without limitation, the signs are capable of distinguishing the goods or services of one undertaking from those of another company and therefore to constitute marks. The contested provisions which provide that companies marketing tobacco products can no longer show on packages of cigarettes and rolling tobacco as the brand name and the name of the brand name associated, excluding signs figurative of the brands they operate, have neither the purpose nor the effect of prohibiting the brand qualification is recognized signs could be so characterized under Article L. 711-1 of the code intellectual property. Furthermore, the mention of brand names and trade name corresponding to a given product is enough to allow identification of the goods and to distinguish them from each other, so there is no risk possible confusion between several different types of the same tobacco product.

54. Article L. 713-1 of the Code of Intellectual Property provides that "trademark registration confers on its holder a right of ownership on the mark for the goods and services he has designated. ". The inmate property rights under this article, on a regular trademark gives its holder an action against any third party who would undermine, in good or bad faith. As was stated in paragraph 25 above, the contested provisions do not deprive the applicants of their property rights on brands they own, but to regulate the use of those . Moreover, the provisions referred to Article L. 713-1 of the Code of Intellectual Property, which have the object and effect of allowing the property right holder to ensure the protection of this right and prevent counterfeiting or fraudulent use of the brand he regularly filed, do not preclude government intervention to regulate the right to property, provided that such regulation is, as stated, in accordance with the principles governing protection. If regulation of property rights caused by the contested provisions constitutes an infringement of property rights enshrined in Article L. 713-1 of the Code of intellectual property, it is not less, and that noted above, justified by the objective pursued.

55. Article L. 714-5 of the Code of Intellectual Property provides that "liable to revocation of his rights on the trademark owner who, without just grounds, has not made genuine use, for products and services covered by the registration during an uninterrupted period of five years (...) ". As has

been said in paragraphs 21 and 51 above, trademark holders retain the right, if the forfeiture of their brands is requested before the judge on the basis of the above provisions of Article L. 714-5 of the code of intellectual property, to argue just as grounds that the restrictions on the use of those marks resulting from the provisions of Article L. 3512-20 of the code of public health and the impugned provisions, prevented to make genuine use and, therefore, to continue to benefit from all the rights constituted, under the code of intellectual property, trademark whose use was regulated.

Regarding the prohibition to affix the brand name and the trademark on the outer packaging of tobacco products:

56. The National Society of industrial exploitation of tobacco and matches argues that the contested decrees are illegal in that they prohibit affixing the brand name and the name of the trademark on the outer packaging of tobacco products. Article L. 3512-20 of the Public Health Code provides that "conditioning units, external packaging and secondary packaging of cigarettes and rolling tobacco, cigarette paper and paper for rolling cigarettes are neutral and uniform "and the constitutional Council in its decision n ° 2015-727 DC of 21 January 2016, found that if Article 27 of the law of modernization of our health system, which these laws are derived, imposed neutrality and standardization of unit, external packaging and outer packaging of tobacco products, it did not prohibit each of these supports comprises the registration of the mark. For the implementation of these provisions, Article R. 3512 26-I predicted that the brand name and the name of the brand name could appear only on the packaging units and the external packaging of tobacco products and the provisions of Article R. 3512-19-II of the code have expected that overpacks are clear, transparent and colorless and can only be affixed bar code and a square or a black rectangle to cover the bar code on the packaging units included therein. Thus, the regulatory authority could legally hold, since overpacks are clear, transparent and colorless and therefore allow see-through packaging unit, which includes the registration of the brand name and trade name, that they would not be directly affixed to the outer packaging of tobacco products.

As regards compliance of the Decree of 21 March 2016 on neutrality conditions and standardization of packaging and paper cigarettes and rolling tobacco to the Decree of 21 March 2016:

57. Sections 1 and 2 of the Decree of 21 March 2016 adopted in implementation of Article R. 3512-26 of the Public Health Code provide that "The conditioning unit and the pack of cigarettes and rolling tobacco: / a) color are Pantone 448 C, matt / finishing (...) / "and" the mention of the brand name and, if appropriate, trade name can appear only once: / (...) / These statements are printed the following characteristics: a) alphabetic and / or numeric characters, if necessary, an ampersand; / B) tiny, the first letter of a word may be capitalized; / C) In the center of the surface and, when it contains a health warning, the center of the available area; / D) on a line, weighted Helvetica, normal and regular, color Pantone Cool Gray 2C matte finish; / E) Police 14 maximum for the brand name and police 10 maximum for the name of the trademark. / (...) /".

58. These provisions impose particular the use of color or shade "Pantone 448 C, matt finish." The choice thus arrested by the regulatory authority ensures neutrality, understood as non-distinctive sign may encourage the consumption of tobacco products, as well as the standardization of packaging and packaging. Moreover, it is argued that these provisions would make it difficult to identify the products concerned, it is not apparent from the evidence that the choices made by the order for color and font authorized mentions méconnaîtraient Article R. 3512-26 of the code of public health. The plea must be dismissed.

The claims of the company Republic Technologies France for the annulment of Articles R. 3512-20 and R. 3512-26-II-II of the Code of public health and Article 11 of the Decree of 21 March 2016 as they allow tobacco batch sales for the rolling of cigarettes and rolling papers:

59. Section II of Article R. 3512-20 of the Public Health Code provides that "is also prohibited inside the conditioning units, external packaging and outer packaging or insert any item except, s' regarding the rolling tobacco, rolling papers and filters "and II of Article R. 3512-26 of the code has meanwhile that" When the conditioning units or external rolling tobacco packages also contain rolling papers and filters, the following information may, if appropriate, be added: / 1 "contains rolling papers and filters"; / 2 "contains rolling papers"; / 3 "contains filters. " Moreover, under Article 11 of the Decree of 21 March 2016 concerning the conditions of neutrality and standardization of packaging and paper cigarettes and rolling tobacco: "The packaging unit or packaging outside rolling tobacco containing, in addition to tobacco, both rolling papers and filters and rolling papers or filters with the following characteristics: / a) rolling papers and filters and rolling papers or filters are not visible before the opening of the packaging unit or the pack of rolling tobacco; / B) conditioning unit and the pack may include, as applicable, the following: 'contains rolling papers and filters ', " contains rolling papers, "or" contains filters " printed once. (...) ".

60. The practice of selling tobacco batch to roll with rolling papers and filters was, until the intervention of the challenged provisions, nor permitted nor prohibited by any law or regulation. While prices of fine-cut tobacco is subject to approval by ministerial order on the basis of Article 572 of the Tax Code, paper prices are for rolling cigarettes, meanwhile, freely determined by paper manufacturers to roll and by the operators of tobacco stores.

61. Article L. 3512-4 of the Public Health Code states: "Propaganda or advertising, direct or indirect, of tobacco, tobacco products, ingredients defined in Article L. 3512 -2, and any free distribution or sale of a tobacco product at a lower price than that which has been approved in accordance with Article 572 of the tax code are prohibited. / (...) "And 2 of Article 13 of Directive 2014/40 / EU provides that:" The conditioning units and any outside packaging does not suggest economic benefits through vouchers printed for tenders reduction of free distribution, promotion type of "two for the price of one" or other similar deals. " The applicant submits that the inscription on the containers and packaging of tobacco for rolling cigarettes, the particulars provided for in Article 11 of the contested order, constitutes a prohibited promotional offer. However, the bundling of rolling tobacco and rolling paper does not have the character of indirect advertising or promotional offer, since rolling papers inserted in the packages can not be sold at a lower price at its cost, as well as

prohibit the provisions of Article L. 420-5 of the commercial code, and may not be offered to the consumer. The mere fact that the consumer selling price may, in the case of a sale by lot of tobacco and rolling paper, be lower than the selling price of tobacco and paper sold separately, resulting in the possibility for paper manufacturers to roll, to tobacco manufacturers to freely set the price of paper for rolling cigarettes they sell, is neither a promotional offer or a measure of indirect advertising of tobacco. The plea must therefore be rejected.

62. Section 572 of the Tax Code provides that: "The retail price of each product expressed in units 1000 or 1000 grams, is unique for the whole territory and freely determined by manufacturers and suppliers Chartered. It is applicable after being approved by a joint order of the Ministers of Health and of the budget, under conditions defined by decree in Council of State. It can not however be confirmed if it is less than the sum of the cost price and all taxes. / (...) ". Article 572 bis of the Code also states: "The retail price of products sold by resellers mentioned in the first paragraph of Article 568 and the products supplied to travelers by resellers buyers designated twelfth paragraph of Article is freely determined, however without price being lower than the retail price expressed per 1 000 units or 1000 grams listed in the approval order (...). " These provisions necessarily imply that tobacco manufacturers have the approval of price alone tobacco product contained in the packaging, so that only the price to be subject, in the case of sale by lot of tobacco and rolling papers, an approval by ministerial order. The impugned provisions have neither the purpose nor the effect of allowing manufacturers to submit for approval an overall price corresponding to rolling tobacco and cigarette paper for rolling cigarettes, whose own selling price must in any case be added to the price approved by the ministerial authority that is achieved the overall sale price of the lot. Thus, contrary to what the applicant company, the contested provisions do not operate to prevent the full application of Articles 572 and 572 bis of the General Tax Code. The plea must therefore, also be rejected.

63. Finally, the contested provisions are not intended to mandate the sale by lot of tobacco for rolling cigarettes and cigarette paper, and the mere fact, as was stated in paragraph 61, that the selling prices lot of consumers can be less than the selling price of tobacco and separately sold paper is not to taint the contested provisions of illegality. The plea alleging that the contested provisions are contrary to the general sense of the legislation against smoking can therefore only be rejected.

64. It follows from all the foregoing, without any need to order a measure of expertise to determine whether the contested provisions are proportionate either to the Court of Justice of the European Union for a preliminary ruling, that the applicants are not justified in seeking the annulment of decrees and orders attacked. Their claims for the application of the provisions of Article L. 761-1 of the Code of Administrative Justice can not, therefore, being dismissed.

DECIDES:

Article 1: The interventions of the company are admitted Tannpapier GmbH.

Article 2: The requests of the National Society of industrial exploitation of tobacco and matches, the company JT International SA, Philip Morris France and other companies, British American Tobacco

France, Republic Technologies France company and the National Confederation of tobacco growers in France are dismissed.

Article 3: This decision shall be notified to the company Tannpapier GmbH, the company JT International SA, the companies Philip Morris France and others, the British American Tobacco France, the National Society of industrial exploitation of tobacco and matches, the company Republic Technologies France, the national Confederation of tobacco growers in France, the Prime Minister, the Minister of social Affairs and health.