Reports of Cases

JUDGMENT OF THE COURT (First Chamber)

24 February 2022 *

(Reference for a preliminary ruling – Approximation of laws – Directive 2014/40/EU – Article 23(3) – World Health Organisation Framework Convention on Tobacco Control – Prohibition on selling tobacco products to minors – Rules on penalties – Effective, proportionate and dissuasive penalties – Obligation on sellers of tobacco products to verify the buyer's age when selling those products – Fine – Operation of a tobacconist's shop – Suspension of trading licence for a period of 15 days – Principle of proportionality – Precautionary principle)

In Case C-452/20,

REQUEST for a preliminary ruling under Article 267 TFEU from the Consiglio di Stato (Council of State, Italy), made by decision of 5 August 2020, received at the Court on 23 September 2020, in the proceedings

PJ

v

Agenzia delle dogane e dei monopoli – Ufficio dei monopoli per la Toscana,

Ministero dell'Economia e delle Finanze,

THE COURT (First Chamber),

composed of A. Arabadjiev (Rapporteur), President of the Chamber, I. Ziemele, T. von Danwitz, P.G. Xuereb and A. Kumin, Judges,

Advocate General: M. Szpunar,

Registrar: A. Calot Escobar,

having regard to the written procedure,

after considering the observations submitted on behalf of:

– PJ, by A. Celotto, avvocato,

* Language of the case: Italian.

– the Italian Government, by G. Palmieri, acting as Agent, and by A. Collabolletta, avvocato dello Stato,

– the Hungarian Government, by M. Fehér, G. Koós and R. Kissné Berta, acting as Agents,

– the European Commission, by C. Hödlmayr and A. Spina, acting as Agents,

after hearing the Opinion of the Advocate General at the sitting on 14 October 2021,

gives the following

Judgment

1 This request for a preliminary ruling concerns the interpretation of the principle of proportionality and the precautionary principle, Article 5 TEU, recitals 8, 21 and 60 and Article 1 and Article 23(3) of Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1, and corrigendum OJ 2015 L 150, p. 24).

2 The request has been made in proceedings between PJ, on the one hand, and the Agenzia delle Dogane e dei Monopoli – Ufficio dei monopoli per la Toscana (Customs and Monopolies Agency – Monopolies Office, Tuscany, Italy; 'the Customs Agency') and the Ministero dell'economia e delle finanze (Ministry of the Economy and Finance, Italy), on the other, concerning the lawfulness of a decision of the Customs Agency by which that agency imposed on PJ a financial penalty and an ancillary administrative penalty consisting of the suspension of his tobacconist's shop trading licence for a period of 15 days.

Legal context

International law

3 By Council Decision 2004/513/EC of 2 June 2004 (OJ 2004 L 213, p. 8), the World Health Organisation (WHO) Framework Convention on Tobacco Control, signed at Geneva on 21 May 2003 ('the FCTC'), was approved on behalf of the European Union. As set out in the preamble to the FCTC, the parties to that framework convention recognise that 'scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases'.

4 Article 16(1) and (6) of the FCTC provides:

'1. Each Party shall adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or 18. These measures may include:

(a) requiring that all sellers of tobacco products place a clear and prominent indicator inside their point of sale about the prohibition of tobacco sales to minors and, in case of doubt, request that each tobacco purchaser provide appropriate evidence of having reached full legal age;

(b) banning the sale of tobacco products in any manner by which they are directly accessible, such as store shelves;

(c) prohibiting the manufacture and sale of sweets, snacks, toys or any other objects in the form of tobacco products which appeal to minors; and

(d) ensuring that tobacco vending machines under its jurisdiction are not accessible to minors and do not promote the sale of tobacco products to minors.

…

6. Each Party shall adopt and implement effective legislative, executive, administrative or other measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations contained in paragraphs 1 to 5 of this Article.'

European Union law

5 Recitals 7, 8, 21, 48 and 60 of Directive 2014/40 state:

'(7) Legislative action at Union level is also necessary in order to implement the [FCTC] of May 2003, the provisions of which are binding on the Union and its Member States. The FCTC provisions on the regulation of the contents of tobacco products, the regulation of tobacco product disclosures, the packaging and labelling of tobacco products, advertising and illicit trade in tobacco products are particularly relevant. The Parties to the FCTC, including the Union and its Member States, adopted a set of guidelines for the implementation of FCTC provisions by consensus during various Conferences.

(8) In accordance with Article 114(3) of the Treaty [on] the Functioning of the European Union (TFEU), a high level of health protection should be taken as a base for legislative proposals and, in particular, any new developments based on scientific facts should be taken into account. Tobacco products are not ordinary commodities and in view of the particularly harmful effects of tobacco on human health, health protection should be given high importance, in particular, to reduce smoking prevalence among young people.

…

(21) In line with the purposes of this Directive, namely to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of health protection, especially for young people, and in line with Council Recommendation 2003/54/EC [of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control (OJ 2003 L 22, p. 31)], Member States should be encouraged to prevent sales of such products to children and adolescents, by adopting appropriate measures that lay down and enforce age limits.

…

(48) Moreover, this Directive does not harmonise the rules on smoke-free environments, or on domestic sales arrangements or domestic advertising, or brand stretching, nor does it introduce an age limit for electronic cigarettes or refill containers. In any case, the presentation and advertising of those products should not lead to the promotion of tobacco consumption or give rise to confusion with tobacco products. Member States are free to regulate such matters within the remit of their own jurisdiction and are encouraged to do so.

…

(60) Since the objectives of this Directive, namely to approximate the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products, cannot be sufficiently achieved by the Member States, but can rather, by reason of their scale and effects, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 TEU. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives'.

6 Article 1 of that directive provides:

'The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States concerning:

(a) the ingredients and emissions of tobacco products and related reporting obligations, including the maximum emission levels for tar, nicotine and carbon monoxide for cigarettes;

(b) certain aspects of the labelling and packaging of tobacco products including the health warnings to appear on unit packets of tobacco products and any outside packaging as well as traceability and security features that are applied to tobacco products to ensure their compliance with this Directive;

(c) the prohibition on the placing on the market of tobacco for oral use;

(d) cross-border distance sales of tobacco products;

(e) the obligation to submit a notification of novel tobacco products;

(f) the placing on the market and the labelling of certain products, which are related to tobacco products, namely electronic cigarettes and refill containers, and herbal products for smoking;

in order to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of protection of human health, especially for young people, and to meet the obligations of the Union under the [FCTC].'

7 Article 23(3) of that directive is worded as follows:

'Member States shall lay down rules on penalties applicable to infringements of the national provisions adopted pursuant to this Directive and shall take all measures that are necessary to ensure that these penalties are enforced. The penalties provided for shall be effective, proportionate and dissuasive. Any financial administrative penalty that may be imposed as a result of an intentional infringement may be such as to offset the economic advantage sought through the infringement.'

Italian law

8 The second paragraph of Article 25 of regio decreto n° 2316 Approvazione del testo unico delle leggi sulla protezione ed assistenza della maternità ed infanzia (Royal Decree No 2316 approving the consolidated law on the protection and assistance of motherhood and childhood) of 24 December 1934 (GURI No 47 of 25 February 1935, p. 811), as replaced by Article 24(3) of decreto legislativo n° 6 – Recepimento della direttiva 2014/40/UE sul ravvicinamento delle disposizioni legislative, regolamentari e amministrative degli Stati membri relative alla lavorazione, alla presentazione e alla vendita dei prodotti del tabacco e dei prodotti correlati e che abroga la direttiva 2001/37/CE (Legislative Decree No 6 transposing 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) of 12 January 2016 (GURI No 13 of 18 January 2016, p. 102) ('Legislative Decree No 6/2016'), provides:

'Anyone who sells tobacco products, electronic cigarettes or refill containers containing nicotine, or novel tobacco products, shall require the purchaser to produce an identity document when purchasing it, unless it is obvious that the latter is an adult.

Anyone who sells or supplies tobacco products or electronic cigarettes or refill containers containing nicotine or novel tobacco products to minors under the age of 18 shall be liable to a financial administrative penalty of EUR 500 to EUR 3 000 and a 15-day trading licence suspension. For repeat offences, a financial administrative penalty of EUR 1 000 to EUR 8 000 shall apply and the trading licence shall be revoked.'

The dispute in the main proceedings and the question referred for a preliminary ruling

9 PJ holds a tobacconist's shop trading licence authorising him to sell tobacco products subject to a State monopoly in Italy.

10 In February 2016, when carrying out an inspection, the Customs Agency found that PJ had sold cigarettes to a minor.

11 Pursuant to Article 24(3) of Legislative Decree No 6/2016, the Customs Agency imposed on PJ an administrative fine of EUR 1 000 and an ancillary administrative penalty consisting of the suspension of his tobacconist's shop trading licence for a period of 15 days.

12 PJ paid the fine imposed on him. However, he challenged the ancillary administrative penalty by which his tobacconist's shop trading licence was suspended before the Tribunale Amministrativo Regionale per la Toscana (Regional Administrative Court, Tuscany, Italy). That court dismissed PJ's action by a judgment of 27 November 2018.

13 PJ brought an appeal against the judgment of the Tribunale Amministrativo Regionale per la Toscana (Regional Administrative Court, Tuscany) before the Consiglio di Stato (Council of State, Italy), the referring court. He claimed that the legislation at issue in the main proceedings was incompatible with Directive 2014/40, in particular because the suspension of his trading licence was excessive and disproportionate, since it was imposed on him following a single first-time offence. PJ therefore considered that that legislation prioritised the precautionary principle in order to guarantee the right to the health of minors, which resulted in a breach of the principle of proportionality.

14 In that regard, the referring court considers that, when examining the proportionality of the penalties at issue in the main proceedings, account must be taken of the preponderance which Directive 2014/40 gives to the protection of the health of young people.

15 The referring court considers that, in the context of balancing on the one hand the interest in protecting the health of young people and on the other hand the right of economic operators to pursue a commercial activity consisting of selling tobacco products, Article 23(3) of Directive 2014/40 leaves it to the Member States to establish rules on penalties designed to achieve the objective of prohibiting tobacco consumption by minors. The referring court adds that, although that provision provides that the financial penalties imposed may be such as to offset the financial advantage obtained as a result of the infringement, the fact remains that the EU legislature did not exclude the possibility of imposing non-pecuniary administrative penalties.

16 In that context, the referring court takes the view that, by providing for the suspension of trading licences which allow economic operators to sell tobacco products, the Italian legislature, in accordance with the requirements of Directive 2014/40, put the interest of protecting human health before the trader's right to sell tobacco products. Therefore, the financial losses suffered by the traders as a result of that suspension are justified and reasonable.

17 In those circumstances, the Consiglio di Stato (Council of State) decided to stay the proceedings and to refer the following question to the Court of Justice for a preliminary ruling:

'Does the second paragraph of Article 25 of [Royal Decree No 2316 of 24 December 1934], as replaced by Article 24(3) of [Legislative Decree No 6/2016] – inasmuch as it provides that "anyone who sells or supplies tobacco products or electronic cigarettes or refill containers containing nicotine or novel tobacco products to minors under the age of 18 shall be liable to a financial administrative penalty of EUR 500 to EUR 3 000 and a 15-day trading licence suspension" – infringe the EU principle of proportionality and the precautionary principle, as set out in Article 5 TEU, in Article 23(3) of Directive 2014/40, and in recitals 21 and 60 of that directive, by giving precedence to the precautionary principle without mitigating it with the principle of proportionality, and thus disproportionately sacrificing the interests of economic operators to the protection of the right to health, thereby failing to ensure that a proper balance is struck between the different fundamental rights and, what is more, doing so by means of a penalty that, contrary to recital 8 of [that directive], does not effectively pursue the objective of discouraging smoking prevalence among young people?'

Consideration of the question referred

Preliminary observations

18 In the context of the procedure established by Article 267 TFEU providing for cooperation between national courts and the Court of Justice, it is for the latter to provide the national court with an answer which will be of use to it and enable it to determine the case before it. To that end, the Court may have to reformulate the questions referred to it. The Court has a duty to interpret all provisions of EU law which national courts require in order to decide the actions pending before them, even if those provisions are not expressly indicated in the questions referred to the Court by those courts (judgment of 12 December 2019, *Instituto Nacional de la Seguridad Social (Pension supplement for mothers)*, C-450/18, EU:C:2019:1075, paragraph 25 and the case-law cited).

19 In the present case, even if formally the referring court has limited its question to the interpretation of Article 5 TEU and the provisions of Directive 2014/40, that does not prevent this Court from providing the referring court with all the elements of interpretation of EU law that may be of assistance in adjudicating in the case pending before it, whether or not the referring court has referred to them in the wording of its question. In that regard, it is for the Court to extract from all the information provided by the national court, in particular from the grounds of the decision to make the reference, the points of EU law which require interpretation in view of the subject matter of the dispute (see, to that effect, judgment of 12 December 2019, *Instituto Nacional de la Seguridad Social (Pension supplement for mothers)*, C-450/18, EU:C:2019:1075, paragraph 26).

20 In the present case, as is apparent from the order for reference, following an inspection the Customs Agency found that PJ had sold cigarettes to a minor in breach of the prohibition on selling tobacco products to minors. Therefore, the Customs Agency imposed on him, on the basis of national law, a pecuniary administrative penalty and an ancillary administrative penalty consisting of the suspension of his tobacconist's shop trading licence for a period of 15 days.

21 Against that background, as regards, in the first place, the applicability of Article 5 TEU in the present case, it should be noted that it is apparent from the order for reference that, in referring to that article, the referring court asks, more specifically, about the interpretation of the principle of proportionality, as provided for in Article 5(4) TEU.

22 In that regard, it should be borne in mind that that provision relates to the action of the institutions of the European Union. In accordance with the first subparagraph of Article 5(4) TEU, under the principle of proportionality, the content and form of Union action is not to exceed what is necessary to achieve the objectives of the Treaties. As regards the second subparagraph of that provision, it concerns the institutions of the Union and requires them to comply with the principle of proportionality when they act in the exercise of a competence (order of 13 February 2020, *MAK TURS*, C-376/19, not published, EU:C:2020:99, paragraph 18 and the case-law cited).

23 In the present case, the national provision is in Legislative Decree No 6/2016, adopted by the Italian legislature, and concerns the imposition of administrative penalties in the event of infringement of the prohibition on selling tobacco products to minors in Italy. In those circumstances, Article 5(4) TEU does not apply to a situation such as that at issue in the main proceedings.

24 In the second place, as regards the applicability of Directive 2014/40 and Article 23(3) thereof, in the present case it must be noted, first, that, according to recital 21 of that directive, in accordance (i) with its purpose, namely to facilitate the smooth functioning of the internal market for tobacco and related products, taking as a base a high level of health protection, especially for young people, and (ii) with Council Recommendation 2003/54, Member States should be encouraged to prevent sales of such products to children and adolescents, by adopting appropriate measures that lay down and enforce age limits.

25 Nevertheless, as the Advocate General observed, in essence, in point 51 of his Opinion, that encouragement was not reflected in Directive 2014/40 in the form of a provision imposing an obligation to adopt measures prohibiting the sale of tobacco products to minors.

26 It is apparent from recital 48 of that directive that it does not harmonise the sales arrangements for tobacco on national markets. That recital also states that Member States are free to regulate such matters within the remit of their own jurisdiction and are encouraged to do so.

27 In those circumstances, as the Advocate General observed, in essence, in point 45 of his Opinion, it must be concluded that Directive 2014/40 did not harmonise those aspects of the sale of tobacco products relating to the sale of such products to minors.

28 As a result, neither Article 23(3) of Directive 2014/40 nor that directive is applicable in the present case.

29 In the third place, it should be borne in mind that the FCTC was approved on behalf of the European Union by Decision 2004/513.

30 In that regard, the Court has repeatedly held that an international agreement entered into by the European Union is, from its entry into force, an integral part of EU law (judgment of 6 October 2020, *Commission* v *Hungary (Higher education)*, C-66/18, EU:C:2020:792, paragraph 69 and the case-law cited). It follows, as the Advocate General observed in point 55 of his Opinion, that the FCTC is an integral part of EU law.

31 It is apparent from Article 16(1) of the FCTC, entitled 'Sales to and by minors', that each party to the FCTC is to adopt and implement effective legislative, executive, administrative or other measures at the appropriate government level to prohibit the sales of tobacco products to persons under the age set by domestic law, national law or 18. Under paragraph 6 of that article, each party to the FCTC is to adopt and implement effective legislative, executive, administrative or other measures, including penalties against sellers and distributors, in order to ensure compliance with the obligations set out in paragraphs 1 to 5 of that Article 16 of the FCTC.

32 In those circumstances, it is necessary to conclude that a national provision such as that at issue in the main proceedings must, in principle, be assessed in the light of the requirements laid down in Article 16 of the FCTC.

33 As the Advocate General observed, in essence, in point 59 of his Opinion, since the FCTC is an integral part of EU law, its implementation must comply with the principle of proportionality, as a general principle of EU law.

34 As regards, in the fourth and last place, the applicability of the precautionary principle in the present case, it should be borne in mind that that principle means that, where there is uncertainty as to the existence or extent of risks, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent (see, to that effect, judgment of 6 May 2021, *Bayer CropScience and Bayer* v *Commission*, C-499/18 P, EU:C:2021:367, paragraph 80). In that regard, it is sufficient to note, first, that none of the parties to the proceedings denies the risks linked to the consumption of tobacco products for smoking and, second, that it is apparent from the preamble to the FCTC that scientific evidence has unequivocally established that tobacco consumption and exposure to tobacco smoke cause death, disease and disability, and that there is a time lag between the exposure to smoking and the other uses of tobacco products and the onset of tobacco-related diseases. Therefore, as the Advocate General observed in point 65 of his Opinion, that principle does not apply to the situation at issue in the main proceedings.

35 In those circumstances, the question referred must be understood as asking, in essence, whether the principle of proportionality precludes national legislation which, in the case of a first infringement of the prohibition on selling tobacco products to minors, provides, in addition to the imposition of an administrative fine, for the suspension, for a period of 15 days, of the trading licence authorising the economic operator who has infringed that prohibition to sell such products.

The Court's reply

36 According to settled case-law, in the absence of harmonisation of EU legislation in the field of penalties applicable where conditions laid down by arrangements under such legislation are not complied with, Member States are empowered to choose the penalties which seem to them to be appropriate. They must, however, exercise their powers in accordance with EU law and its general principles, and, consequently in accordance with the principle of proportionality (see, to that effect, judgment of 6 October 2021, *ECOTEX BULGARIA*, C-544/19, EU:C:2021:803, paragraph 84 and the case-law cited).

37 In particular, the administrative or punitive measures permitted under national legislation must not go beyond what is necessary to attain the objectives legitimately pursued by that legislation (see, to that effect, judgment of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 39 and the case-law cited, and order of 12 July 2018, *Pinzaru and Cirstinoiu*, C-707/17, not published, EU:C:2018:574, paragraph 27 and the case-law cited).

38 In general, when there is a choice between several appropriate measures, recourse must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued (see, to that effect, judgments of 19 October 2016, *EL-EM-2001*, C-501/14, EU:C:2016:777, paragraph 39, and of 6 May 2021, *Bayer CropScience and Bayer* v *Commission*, C-499/18 P, EU:C:2021:367, paragraph 166).

39 In that context, the Court has stated that the severity of the penalties must be commensurate with the gravity of the infringements for which they are imposed, in particular by ensuring a genuinely dissuasive effect, while respecting the general principle of proportionality (order of 12 July 2018, *Pinzaru and Cirstinoiu*, C-707/17, not published, EU:C:2018:574, paragraph 28 and the case-law cited).

40 Although it is for the referring court, which alone has jurisdiction to interpret and apply national law, to decide whether, in the present case, in relation to the infringement committed, the suspension of the tobacconist's shop trading licence, in addition to the fine imposed, is proportionate to the attainment of the legitimate objective pursued by the prohibition on selling tobacco products to minors, namely the protection of human health and the reduction, in particular, of smoking prevalence among young people, the fact remains that the Court may provide it with all the criteria for the interpretation of EU law which may enable it to determine whether that is the case (see, to that effect, judgment of 11 February 2021, *K. M. (Sanctions imposed on the master of a vessel)*, C-77/20, EU:C:2021:112, paragraph 39).

41 In the present case, it is apparent from Article 24(3) of Legislative Decree No 6/2016 that the Italian legislature provided for a combination of penalties in the case of a first infringement of the prohibition on selling tobacco products to minors, consisting of, first, the imposition of a financial penalty and, second, the suspension of the offender's tobacconist's shop trading licence for a period of 15 days.

42 As regards this accumulation of penalties, the Italian Government observes that, under the previous rules on penalties, which provided for only purely financial penalties, economic considerations led retail sellers of tobacco products to take the risk of being penalised for infringing the prohibition on selling such products to minors. The imposition of only a fine would therefore not have made it possible to reduce the consumption of tobacco by young people.

43 In that regard, it should be noted, first, that Article 16(6) of the FCTC does not preclude the possibility of imposing, in addition to an administrative fine, non-pecuniary administrative penalties, such as the suspension of the licence of an economic operator who has infringed the prohibition on selling tobacco products to minors.

44 Second, it must be held that, in order for such a penalty to ensure a genuinely dissuasive effect, while respecting the general principle of proportionality, offenders must actually be deprived of the economic advantages resulting from infringements linked to the sale of tobacco products to minors and the penalties must be capable of producing results proportionate to the seriousness of such infringements, thereby effectively discouraging further infringements of the same kind.

45 In those circumstances, it appears that a system of penalties, such as that at issue in the main proceedings, which provides, in addition to the imposition of an administrative fine, for an ancillary administrative penalty consisting of the suspension of the tobacconist's shop trading licence of the economic operator concerned may significantly undermine, or even eliminate, economic considerations which may lead tobacco retailers to sell tobacco products to minors despite the prohibition on such sales.

46 Thus, the penalties laid down by the Italian legislature appear, first, to offset the financial advantage obtained as a result of the infringement and, second, to encourage economic operators to comply with the measures prohibiting the sale of tobacco products to minors.

47 A system of penalties such as that at issue in the main proceedings therefore appears appropriate for attaining the objective of protecting human health and reducing in particular smoking prevalence among young people, as set out in the FCTC.

48 As to whether the severity of the penalties provided for by the national legislation exceeds the limits of what is necessary in order to attain the objectives legitimately pursued by the legislation at issue, it is necessary, in the first place, to examine the possible effects of the suspension of the tobacconist's shop trading licence of the economic operator concerned on his or her legitimate right to pursue a business activity.

49 In that regard, it must be borne in mind that, as is apparent from Article 35 of the Charter of Fundamental Rights of the European Union and from Article 9 TFEU, Article 114(3) TFEU and Article 168(1) TFEU, a high level of human health protection must be ensured in the definition and implementation of all the European Union's policies and activities (judgment of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, paragraph 157).

50 In accordance with settled case-law, the objective of the protection of health takes precedence over economic considerations, the importance of that objective being such as to justify even substantial negative economic consequences (judgment of 22 November 2018, *Swedish Match*, C-151/17, EU:C:2018:938, paragraph 54).

51 It must therefore be held, as the Advocate General noted, in essence, in point 75 of his Opinion, that suspension of the tobacconist's shop trading licence for a limited period of time in the case of a first infringement of the prohibition on selling tobacco products to minors cannot, in principle, be regarded as a disproportionate interference with the legitimate right of economic operators to exercise their business activity.

52 In the second place, as regards the procedure for determining penalties in the present case, it must be observed, first, that, although Article 24(3) of Legislative Decree No 6/2016 provides for the suspension, for a fixed period of 15 days, of a tobacconist's shop trading licence, it also provides that that suspension is to be accompanied, in the case of a first infringement of the prohibition on selling tobacco products to minors, by fines that vary according to the gravity of the infringement in question, which brings about a certain gradation and progressiveness in the determination of the penalties which may be imposed.

53 It appears that that provision lays down a procedure for determining fines which allows them to be set by weighing up all the circumstances of the case in question, in particular the gravity of the unlawful conduct of the economic operator concerned.

54 In those circumstances, as the Advocate General observed, in essence, in point 79 of his Opinion, the balance between the severity of the penalties and the gravity of the infringement concerned appears to be ensured by the fines accompanying the suspension of the offender's tobacconist's shop trading licence, which vary according to the gravity of the infringement in question. In the present case, the amount of the fine imposed on the applicant in the main proceedings was EUR 1 000, that is to say an amount corresponding to the lower limits of the amounts provided for in the case of a first offence.

55 Second, it must be observed that the suspension of the trading licence provided for is only for a period of 15 days.

56 It is therefore apparent that that ancillary penalty, taken in its context, constitutes a measure which, in the case of a first infringement of the prohibition on selling tobacco products to minors, seeks, in particular, to penalise the infringement committed by tobacco retailers and to deter them from infringing that prohibition again by eliminating economic considerations which

may lead those retailers to sell tobacco products to minors despite the prohibition on such sales, without leading to the revocation of the licence, the latter being provided for, as is apparent from Article 24(3) of Legislative Decree No 6/2016, only in the case of a repeat offence.

57 In those circumstances, in view of the gravity of the infringement and subject to the verifications that it is for the referring court to carry out, it does not appear that a system of penalties such as that at issue in the main proceedings which, in order to deprive offenders of the economic advantages resulting from the infringement of the prohibition on selling tobacco products to minors and deter them from infringing that prohibition, provides, in addition to the imposition of an administrative fine, for the suspension of a tobacconist's shop trading licence for a fixed period of 15 days, in the case of a first infringement, exceeds the limits of what is necessary to ensure attainment of the objective of protecting human health and reducing, in particular, smoking prevalence among young people.

58 In the light of the foregoing considerations, the answer to the question referred is that the principle of proportionality must be interpreted as not precluding national legislation which, in the case of a first infringement of the prohibition on the sale of tobacco products to minors, provides, in addition to the imposition of an administrative fine, for the suspension, for a period of 15 days, of the trading licence authorising the economic operator who has infringed that prohibition to sell such products, provided that such legislation does not exceed the limits of what is appropriate and necessary in order to attain the objective of protecting human health and reducing, in particular, smoking prevalence among young people.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (First Chamber) hereby rules:

The principle of proportionality must be interpreted as not precluding national legislation which, in the case of a first infringement of the prohibition on the sale of tobacco products to minors, provides, in addition to the imposition of an administrative fine, for the suspension, for a period of 15 days, of the trading licence authorising the economic operator who has infringed that prohibition to sell such products, provided that such legislation does not exceed the limits of what is appropriate and necessary in order to attain the objective of protecting human health and reducing, in particular, smoking prevalence among young people.

[Signatures]