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COMMISSION DECISION

of 15 December 2023

approving a methodology for the technical assessment of test products assisting in determining tobacco products with a characterising flavour and repealing Decision 2021/C 89 I/01

(C/2023/1608)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Commission Implementing Decision (EU) 2016/786 of 18 May 2016 laying down the procedure for the establishment and operation of an independent advisory panel assisting Member States and the Commission in determining whether tobacco products have a characterising flavour ([1]), and in particular Article 9(2) thereof,

Whereas:

(1) Directive 2014/40/EU of the European Parliament and of the Council ([2]) prohibits the placing on the market of certain tobacco products (cigarettes, roll-your-own tobacco and heated tobacco products) with characterising flavours.

(2) Commission Implementing Regulation (EU) 2016/779 ([3]) laid down uniform rules as regards the procedures for determining whether a tobacco product has a characterising flavour.

(3) In accordance with Implementing Decision (EU) 2016/786, the independent advisory panel ('the panel') is to specify and, as appropriate, update the methodology for the technical assessment of tobacco products referred to it by a Member State or the Commission for an opinion as to whether or not they have a characterising flavour ('test products').

(4) By Commission Decision 2021/C 89 I/01 ([4]), the Commission approved a methodology for the technical assessment of test products assisting in determining tobacco products with a characterising flavour applicable to cigarettes and roll-your-own tobacco.

(5) Following the adoption of Commission Delegated Directive (EU) 2022/2100 ([5]) that amended Article 7(12) of Directive 2014/40/EU in order to withdraw the exemptions from the prohibitions of the placing on the market of tobacco products with a characterising flavour or containing flavourings in any of their components such as filters, papers, packages, capsules or any technical features allowing modification of the smell or taste of the tobacco products concerned or their smoke intensity, for heated tobacco products, the panel updated the methodology referred to in the Annex to Decision 2021/C 89 I/01, extending its scope to heated tobacco products.

([1]) OJ L 131, 20.5.2016, p. 79.

([2]) 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 L 127, 29.4.2014, p. 1) amended by Commission Delegated Directive (EU) 2022/2100 of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products (OJ L 283, 3.11.2022, p. 4).

([3]) Commission Implementing Regulation (EU) 2016/779 of 18 May 2016 laying down uniform rules as regards the procedures for determining whether a tobacco product has a characterising flavour (OJ L 131, 20.5.2016, p. 48).

([4]) Commission Decision of 11 March 2021 approving a methodology for the technical assessment of test products assisting in determining tobacco products with a characterising flavour (2021/C 89 I/01) (OJ C 89 I, 16.3.2021, p. 1)

([5]) Commission Delegated Directive (EU) 2022/2100 of 29 June 2022 amending Directive 2014/40/EU of the European Parliament and of the Council as regards the withdrawal of certain exemptions in respect of heated tobacco products (OJ L 283, 3.11.2022, p. 4).

(6) Consequently, on 31 August 2023, the panel adopted, following a written procedure, an updated draft methodology for the technical assessment of test products for the purpose of determining whether tobacco products have a characterising flavour, entitled 'Methodology to support the decision whether a tobacco product has a characterising flavour. Application to cigarettes, roll-your-own tobacco and heated tobacco products'.

(7) In accordance with Article 9(2) of Implementing Decision (EU) 2016/786 the draft methodology for the technical assessment of test products for the purpose of determining whether tobacco products have a characterising flavour and any subsequent update is to be submitted to the Director-General for approval and is only applicable after such approval has been given.

(8) Once the updated methodology is approved, Decision 2021/C 89 I/01 should be repealed and replaced accordingly,

HAS DECIDED AS FOLLOWS:

Article 1

The methodology for the technical assessment of test products, assisting in determining tobacco products with a characterising flavour, set out in the Annex to this Decision is hereby approved.

Article 2

Decision 2021/C 89 I/01 is repealed.

Done at Brussels, 15 December 2023.

For the Commission
Sandra GALLINA
Director-General
Directorate-General for Health and Food Safety

ANNEX

Methodology to support the decision whether a tobacco product has a characterising flavour

Application to cigarettes, roll-your-own tobacco and heated tobacco products

Approved by Independent Advisory Panel on characterising flavours in tobacco products on 31 August 2023 following the written procedure.

This report provides the methodology to support the decision whether a tobacco product has a characterising flavour. The methodology is applicable to cigarettes, roll-your-own tobacco and heated tobacco products, in line with Directive 2014/40/EU, as amended by Commission Delegated Directive (EU) 2022/2100.

This methodology is prepared by the Independent Advisory Panel on characterising flavours in tobacco products (IAP), established by Commission Implementing Decision (EU) 2016/786 of 18 May 2016 laying down the procedure for the establishment and operation of an Independent Advisory Panel assisting Member States and the Commission in determining whether tobacco products have a characterising flavour, taking into consideration the input from the Technical Group (set up in accordance with Article 12(1) of Implementing Decision (EU) 2016/786) and the best available practices in this field.

In line with Article 19(1)(f) of Implementing Decision (EU) 2016/786, the Commission will publish the methodology on the following dedicated IAP website and provide a link to this website from the Register of Commission Expert Groups. For more information:

IAP website: https://ec.europa.eu/health/tobacco/products/characterising_flavours/panel_en

Register of Commission Expert Groups:

https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups/consult?lang=en&groupID=3452

DISCLAIMER

The reports/opinions of the Independent Advisory Panel on characterising flavours in tobacco products (IAP) present the views of the independent scientists who are members of IAP. The reports/opinions are published by the European Commission in the original language only.