

Fiasco (updated): flavours allowed but flavour labelling to be banned (...no longer)

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You can't say that! Europe poised to ban flavour labelling

Updated 7 February 2014 to include related fiasco over smokeless tobacco flavours.

Updated 17 February 2014 to reflect correction of anomaly for e-cigarettes in lawyer linguist editing of the text (based on leaked unpublished work in progress document)

Whoops! A [comment left by 'godek'](#) spotted the following in the text of the [text of the Tobacco Products Directive as it applies to e-cigarettes](#):

Article 18 - paragraph 4

4. Member States shall require manufacturers and importers to ensure that:

(a)[...]

(b) unit packets and any outside packaging of electronic cigarettes and refill containers:

i. include a list of all ingredients contained in the product in descending order,

and an indication of nicotine content and delivery per dose, the batch number and a recommendation to keep out of reach of children;

ii. do not include elements or features referred to in [Article 12](#), with the exception of [paragraph 1\(a\) of Article 12](#) concerning the nicotine content;

Then cross reference to Article 12, which controls description on tobacco products - and is written to support the ban on flavours in tobacco products.

Article 12

Product presentation

1. The labelling of a unit packet and any outside packaging and the tobacco product itself shall not include any element or feature that:

(a) promotes a tobacco product or encourages its consumption by creating an erroneous impression about its characteristics, health effects, hazards or emissions; labels shall not include any information about nicotine, tar or carbon monoxide content;

(b) [...]

*(c) refers to taste, smell, **any flavourings** or other additives or the absence thereof;*

Oh dear. As 12.1(c) is not exempted in the reference from 18.4(b)ii it looks like it will be illegal to add any 'element or feature' to e-cigarette or refill container packaging that refers to flavourings - even though flavourings will be permitted (unless banned by members states). But recital 13 establishes the following worthy and sensible aim:

The greatest possible transparency of product information should be ensured for the general public...

...but not to the point of saying what the flavour is? How will producers of flavoured electronic cigarettes and refill containers label their these products?

How will users know what they are buying, storing and using...? How will vendors know which product is which at the point of sale and when in stock? Or does it amount to a *de facto* ban through chaos and confusion?

Update 17 February 2014: looks like they've fixed this - key changes are highlighted. I think they noticed that the requirement to list the ingredients (i) was inconsistent with not saying what the flavour is (ii) so the text has been amended during the 'lawyer-linguist' polishing of the sacred steaming turd:

Article 18.4 updated

4. Member States shall require manufacturers and importers to ensure that:

(a)[...]

(b) unit packets and any outside packaging of electronic cigarettes and refill containers:

i. include a list of all ingredients contained in the product in descending order of the weight, and an indication of the nicotine content of the product and the delivery per dose, the batch number and a recommendation to keep the product out of reach of children;

ii. without prejudice to point b(i), do not include elements or features referred to in Article 12, with the exception of Article 12(1)(a) and (c) concerning information on the nicotine content and flavourings;

iii. [...]

Smokeless (and some other) tobacco products

Updated 7/2/14 This mess also applied to tobacco products , including smokeless tobacco... **update 17/2/14** and this has not been fixed in the lawyer linguist exercise so far. Again smokeless tobacco products are far safer alternatives to smoking, but rely for their appeal in part on flavours. It is good that flavours will

be allowed, but ridiculous that saying so on the packaging will be banned. The construction of Article 6 allows for flavours in tobacco products other than cigarettes and roll-your own tobacco (ie. including smokeless, pipe tobacco, cigars etc):

Article 6

6.1. Member States shall prohibit the placing on the market of tobacco products with a characterising flavour.

6. 10. Tobacco products other than cigarettes and roll-your-own tobacco shall be exempted from the prohibitions laid down in paragraphs 1 and 5.

But then Article 12, which bans descriptions that include flavours, refers to *all* tobacco products:

Article 12

Product presentation

1. The labelling of a unit packet and any outside packaging and the tobacco product itself shall not include any element or feature that:

*...(c) refers to taste, smell, **any flavourings** or other additives or the absence thereof;*

I doubt this is deliberate - it would be unbelievably stupid or cynical if it was. It is more likely a consequence of making rushed legislation and using the short-cut of cross-referencing to provisions that were designed for entirely different products.

It's very hard for anyone to hold all of those different article in their head simultaneous, but writing legislation in this way makes the negotiators more vulnerable to such crass errors.

But we are where we are, and the text is the text: I think this would need an amendment to fix it, but I hear this is now impossible without going to second reading. The process from here is quite convoluted and doesn't welcome

amendments - see the [excellent explanation by Martin Callanan MEP](#). I simply don't know what this will mean. I wonder if anyone does? It may be trivial. It may be serious. But it's definitely a fiasco. Mistakes like this support the case for taking time to do a proper job, and to have proposals open to consultation, justification, impact assessment and scrutiny.