



Press release

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Court ruling: Dutch enforcement agency must act against 'rigged' cigarette

The Rotterdam court today has ruled that the 'rigged' cigarette is illegal and that the Dutch Food and Consumer Product Safety Authority (NVWA in Dutch) must take enforcement action.

"This means that the NVWA will have to withdraw all current filter cigarettes from the store shelves", says pulmonologist Wanda de Kanter, chairman of Youth Smoking Prevention that started the case. "The tobacco industry will simply have to make new cigarettes with far fewer carcinogens that will comply with the legal maximum emissions measured with a new measuring method."

The court ruled that the sale of filter cigarettes for which it has not been established that they meet the legally prescribed maximum emission standards would be a violation of the law. The Court found that "this means that the NVWA wrongfully rejected the request to take enforcement action", according to the court, because "there are strong indications that the cigarettes sold in the Netherlands do not meet the aforementioned limit values".

The ruling may have huge impact on the tobacco market in the whole of the European Union since it is entirely based on an earlier [judgement](#) by the European Court of Justice delivered in response to preliminary questions raised by the Court in Rotterdam. In the Netherlands the Dutch Food and Consumer Product Safety Authority will now have to enforce and remove all rigged cigarettes from the store shelves.

Current emissions exceed legal limits

This [case](#) revolves around the fact that filter cigarettes are much more harmful and addictive than the tobacco industry make us believe, because smokers inhale much more tar, nicotine and carbon monoxide (TNCO) than is determined by official measurements. Cigarette filters have tiny holes through which air is drawn in during these measurements, which dilutes the toxins. Smokers cover these holes with their mouth and fingers, so that in practice they inhale much more toxic and addictive substances than legally permissible.

Because cigarettes in practice emit more tar, nicotine and carbon monoxide than the legally prescribed maximums of 10, 1 and 10 mg respectively, the current cigarettes do not comply with the law. [Research from 2018](#) by the National Institute for Public Health and the Environment using an alternative measurement method that better approximates smoking behaviour (known as the Canadian Intense method) showed that the TNCO emissions from cigarettes are 2 to sometimes even 26 times higher than the legal maximums. That is why Youth Smoking Prevention asked the NVWA in 2018 to remove from the shops all cigarettes that are more harmful than the law allows.

The NVWA refused this, relying on the ISO measurement method prescribed by law (and now declared inadequate by the court), after which Youth Smoking Prevention, together with 14 other parties, asked the court to rule on this. In March 2020, the Rotterdam Court referred questions to the European Court of Justice for a preliminary ruling, in order to obtain clarifications from the highest European Court on the exact relationship between the prescribed measuring methods and



the emission standards that are aimed at protecting public health. Both are prescribed by the Tobacco Products Directive (2014/40/EU).

On February 22, 2022, the Court of Justice of the EU delivered a [judgment](#) that, while the tobacco industry may continue to be bound by the existing ISO measurement method, the same measurement method cannot be relied on against private individuals because these 'rules' are not formally published in the European Official Journal. The Court ruled that citizens must be able to rely on cigarette emissions not exceeding the given legal standards. To determine this, a method that better approximates the smoker's actual smoking behaviour must be used.

In today's Judgment the Rotterdam court applied the decision of the European Court of 22 February and found that Youth Smoking Prevention at the time had rightly objected to the NVWA's decision to base enforcement on the ISO measurement method. The NVWA now has been given six weeks to proceed with the enforcement of tobacco legislation using a more appropriate measurement method.

'NVWA has to get to work'

In a response, Mr. Phon van den Biesen, lawyer for Youth Smoking Prevention, says: "This ruling means that the NVWA now really has to get to work. RIVM, NVWA and the State Secretary for Health, Welfare and Sports agree – with Youth Smoking Prevention – that an adequate measurement method has been established by the World Health Organization and that this method is therefore preferable to the ISO method that is not publicly available; so go ahead and enforce the law!"

Pulmonologist Wanda de Kanter, Chair of Youth Smoking Prevention, states: "This is extremely important news, because it means the definitive end to the rigged cigarette. The judge clearly puts an end to the combination of the filter cigarette and a fraudulent measurement method for the emissions of tar, nicotine and carbon monoxide. Through this combination, the tobacco industry has been able to make and keep people addicted for years, but this judgement makes it clear that this practice cannot last. The NVWA must immediately remove all cigarettes from the shelves. And in fact, I can't see why this wouldn't apply to the whole of the European Union."

The ruling of the Dutch court (in Dutch) can be found on rechtspraak.nl

The ruling is summarised in a [press release](#) (in Dutch) of the court

More information on the entire case (in English) can be found on rookpreventiejeugd.nl

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