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Judgment in Case E-16/10 *Philip Morris Norway AS v the Norwegian State, represented by the Ministry of Health and Care Services*

NATIONAL RULES PROHIBITING THE VISUAL DISPLAY OF TOBACCO PRODUCTS MAY IN CERTAIN CASES CONSTITUTE A MEASURE HAVING EQUIVALENT EFFECT TO A QUANTITATIVE RESTRICTION WITHIN THE MEANING OF ARTICLE 11 EEA

The advertising of tobacco products has been totally prohibited in Norway since the introduction of such a ban in 1973. In 2009 Norway adopted additional legislation, which extended the advertising prohibition to the visible display of tobacco products and smoking devices. This visual display ban allows for one exemption, in that it does not apply to dedicated tobacco boutiques.

Philip Morris, a tobacco company, brought a court action challenging the visual display ban. Oslo District Court (Oslo tingrett), which heard the case, requested an advisory opinion from the EFTA Court, asking whether Article 11 of the EEA Agreement should be understood to mean that a general prohibition against the visible display of tobacco products constituted a measure having equivalent effect to a quantitative restriction on the free movement of goods.

Assuming that there was such a restriction, the EFTA Court was also asked which criteria would be decisive to determine whether a display prohibition, based on the objective of reduced tobacco use by the public in general and especially amongst young people, would be suitable and necessary having regard to public health.

In its judgment delivered today, the EFTA Court declares that a visual display ban on tobacco products such as the one at issue in the case, constitutes a measure having equivalent effect to a quantitative restriction within the meaning of Article 11 EEA if, in fact, the ban affects the marketing of products from other EEA States to a greater degree than that of imported products that were, until recently, produced in Norway. The EFTA Court observes that it is for the national court to determine whether the application of national law has such an effect or whether such an effect cannot be clearly verified and, therefore, is too uncertain or indirect to constitute a hindrance of trade.

Concerning the justification of such a restriction, the Court states that legislation which aims at controlling the consumption of tobacco with a view to preventing the harmful effects caused to the health of humans by tobacco products clearly reflects health concerns recognised by Article 13 EEA. In this regard, the Court finds that a measure banning the visual display of tobacco products, such as the one at issue, by its nature seems likely to limit, at least in the long run, the consumption of tobacco in the EEA State concerned. Accordingly, in the absence of convincing

proof to the contrary, a measure of this kind may be considered suitable for the protection of public health.

The Court holds that it is for the national authorities to demonstrate that their rules are necessary in order to achieve the declared purpose and that that objective could not be achieved by less extensive prohibitions or restrictions, or by prohibitions or restrictions having less effect on intra-EEA trade. As regards further assessment of whether measures less restrictive than the visual display ban could ensure a similar result, the Court states that it is appropriate to leave this to the national court to decide on the basis of all the matters of law and fact before it. The review of proportionality and of the effectiveness of the measures taken relies on findings of fact which the referring court is in a better position to make than the EFTA Court.

The full text of the judgment may be found on the Internet at: www.eftacourt.int.

This press release is not an official document. Please note that the Court may not comment on the case.