

**Priority question for written answer P-002573/2022  
to the Commission**

Rule 138

**Krzysztof Jurgiel (ECR)**

**Subject:** Amendment of Directive 2014/40/EU by delegated act – possible overstepping of powers granted to the Commission

On 29 June 2022, the European Commission adopted the final version of the implementing act for Directive 2014/40/EU. In the course of the work on the act, a number of Member States raised concerns regarding the overstepping of powers conferred on the Commission.

Experts point out that the Commission, in delegated act C(2022) 4367 final, introduces a new legal category and legal definition in a lower-ranking legal act which has not been subject to the legislative procedure foreseen for the Directive. These actions may constitute a breach of Article 290 TFEU and of the settled case-law of the CJEU. To date, DG SANTE has not responded to the allegations of exceeding the scope of the delegated powers, in particular concerning the creation of a new category of products subject to prohibitions or restrictions.

Therefore, in view of the need for the Commission's legislative work to respect the rule of law, I would like to ask the following questions concerning the draft delegated act:

1. Is the Commission entitled to define new product categories in the above-mentioned delegated act, and does this not overstep the powers conferred on it by Directive 2014/40/EU?
2. Is the insertion in the draft delegated act of a definition which does not exist in Directive 2014/40/EU and a change in the wording of the provisions of that Directive compatible with the judgment of the CJEU in Case C-296/14<sup>1</sup>?
3. Why does the Commission plan to ban the use of characterising flavours in modern tobacco products within 11 months, even though the period for traditional cigarettes was four years?

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<sup>1</sup> In the light of that judgment, 'for reasons of regulatory clarity and transparency of the legislative process, the Commission may not, in the context of the exercise of a power to supplement a legislative act within the meaning of Article 290(1) TFEU, add an element to the actual text of that act. Such an incorporation would be liable to create confusion as to the legal basis of that element, given that the actual text of a legislative act contains an element arising from the exercise, by the Commission, of a delegated power which does not entitle it to amend or repeal that act'