

## Case C-302/00 Commission v France (Dark Tobacco) [2002]

**Facts:** The Commission brought an action under Article 226 EC for a declaration that by imposing a minimum reference price on all cigarettes and different tax rates on dark and light tobacco cigarettes the French Republic had failed to fulfil its obligations under the relevant Council Directives on tobacco taxes and under Article 95 of the EC Treaty.

**Held:** The relevant French law established that the price of 1000 units of a category of cigarettes sold under the same brand may not be inferior to that applied to the most popular product of that brand. The setting of a minimum retail selling price by public authorities has the effect of limiting the freedom of producers and importers to determine their maximum retail selling prices, since these cannot be lower than the compulsory minimum price, contrary to the wording of the relevant applicable Directive. The relevant French law provides a minimum tax rate higher for light-tobacco cigarettes, essentially imported products, than for dark-tobacco cigarettes, almost exclusively made in France. To examine the compatibility of this system of taxation with Article 95 it is necessary, first, to specify to what extent dark- and light-tobacco cigarettes can be regarded as similar products, and therefore whether they have similar characteristics and meet the same needs from the point of view of consumers. Dark- and light-tobacco cigarettes are similar, as they are manufactured from different types of the same base product, using comparable processes and satisfy the same needs of consumers. Although the relevant French law did not establish any formal distinction according to the origin of the products, the system of taxation was designed in such a way as to benefit a typical domestic product and handicap imported cigarettes to the same extent.