

Regulation of electronic nicotine delivery systems (e-cigarettes): national and international legal challenges

Description for the general public

The focus of the proposed research is on regulation of electronic cigarettes. In particular, it intends to address three key problems. Firstly, the aim of the research is to determine the optimal regulatory model that can be used by states with respect to these products. Currently, individual countries employ different regulatory strategies ranging from total importation and sales bans, through imposition of certain marketing restrictions (e.g. prohibition of advertising or sales to minors), to treatment of e-cigarettes as medicinal products (which requires prior registration before placing products on the market). Some countries do not pay any special attention to e-cigarettes and simply treat them as ordinary goods. Secondly, I want to determine whether and to what extent we should harmonize, either at the international or EU level, rules on electronic cigarettes. Intuitively it seems that in the contemporary globalized world, such harmonization may be necessary to ensure effective regulation at the municipal level (e.g. a national ban on advertising of e-cigarettes can be easily circumvented by broadcasting television program from another country). Thirdly, the objective of the research is to identify and analyze existing legal constraints which may affect the regulatory freedom of states in this policy area. A typical example of such limitation is adoption of harmonized rules at the European Union level which limit diversity of regulatory solutions at the level of Member States.

In the course of the research I will analyze various rules applicable to electronic cigarettes in different jurisdictions and investigate why countries opted for different regulatory models. I will also enquire into their scientific justification (e.g. in terms of effectiveness and rationality of adopted measures) and look at the activities undertaken by international institutions (including the European Union) in this area as well as at various legal proceedings initiated against specific regulatory solutions.

The research topic attracted my attention due to several reasons. There is no doubt that it has practical significance. Consumption of tobacco products is one of the greatest challenges of modern times. Despite growing awareness of health risks connected with smoking, many people either do not want to or cannot quite the addiction. According to many scientists, electronic cigarettes can be attractive option for this group as they constitute healthier, as compared to traditional cigarettes, alternative. Opponents of such a strategy, however, point out that such products can also produce their own risks (e.g. they may facilitate entry of adolescents into nicotine addiction). Determining how states should act in such controversial situations is not only interesting from purely intellectual point of view but it also has far reaching practical implications for the protection of public health in a specific country. At the same time, it should be noted that regulatory freedom of states is not absolute. It is restricted by international commitments of countries (e.g. resulting from their trade agreements), European law (in the case of EU members) as well as certain constitutional guarantees (e.g. on freedom of expression, which, depending on the country may also cover the freedom of speech for marketing communications). Determining what states can do is important not only because it enables implementation of effective policy but also because it allows us to understand the reasons behind certain political decisions. The examination of ENDS regulations can also bring out various issues of a more theoretical character concerning the relationship between different norms of international law (e.g. how states should behave if different international agreements envisage different treatment of electronic cigarettes).