

TRIBUNAL DE JUSTICIA DE LAS COMUNIDADES EUROPEAS
SOUDNÍ DVŮR EVROPSKÝCH SPOLEČENSTVÍ
DE EUROPÆISKE FÆLLESSKABERS DOMSTOL
GERICHTSHOF DER EUROPÄISCHEN GEMEINSCHAFTEN
EUROOPA ÜHENDUSTE KOHUS
ΔΙΚΑΣΤΗΡΙΟ ΤΩΝ ΕΥΡΩΠΑΪΚΩΝ ΚΟΙΝΟΤΗΤΩΝ
COURT OF JUSTICE OF THE EUROPEAN COMMUNITIES
COUR DE JUSTICE DES COMMUNAUTÉS EUROPÉENNES
CÚIRT BHREITHIÚNAIS NA gCÓMHPHOBAL EORPACH
CORTE DI GIUSTIZIA DELLE COMUNITÀ EUROPEE
EIROPAS KOPIENU TIESA



ÞPOS BENDRIJŪ TEISINGUMO TEISMAS
İRÓPAI KÖZÖSSÉGEK BÍRÓSÁGA
IL-QORTI TAL-GUSTIZZJA TAL-KOMUNITAJIET EWROPEJ
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS
SÚDNY DVOR EURÓPSKÝCH SPOLEČENSTEV
SODIŠČE EVROPSKIH SKUPNOSTI
EUROOPAN YHTEISÖJEN TUOMIOISTUIN
EUROPEISKA GEMENSKAPERNAS DOMSTOL

Press and Information

PRESS RELEASE No 100/06

12 December 2006

Judgment of the Court of Justice in Case C-380/03

Federal Republic of Germany v European Parliament and Council of the European Union

**THE COURT DISMISSES THE ACTION BROUGHT BY GERMANY
CHALLENGING THE DIRECTIVE ON TOBACCO ADVERTISING**

*The prohibitions of advertising and sponsorship meet the conditions for them to be adopted
for the purpose of the establishment and functioning of the internal market*

Germany brought an action before the Court of Justice of the European Communities for the annulment of two articles of the directive¹ on advertising and sponsorship in respect of tobacco products in media other than television. These articles prohibit (i) the advertising of tobacco products in the press and other printed publications, in information society services and in radio broadcasts and (ii) the sponsorship of radio programmes by tobacco companies. Only publications intended for professionals in the tobacco trade and publications from non-member countries which are not principally intended for the Community market are exempted.

In support of its action, Germany contended in particular that those prohibitions could not be adopted on the basis of Article 95 of the EC Treaty. This article authorises the Community to adopt measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market. According to Germany, the conditions justifying recourse to Article 95 EC were not met. In its view, none of the prohibitions contributes to eliminating obstacles to the free movement of goods or to removing appreciable distortions of competition.

The Court has today held that the conditions warranting the choice of Article 95 EC as legal basis were in fact met.

It observes that, at the time of the Directive's adoption, disparities existed between national rules on advertising and sponsorship in respect of tobacco products which justified

¹ Articles 3 and 4 of Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (OJ 2003 L 152, p. 16).

intervention by the Community legislature. Those disparities were such as to impede the free movement of goods and the freedom to provide services. They also meant that there was an appreciable risk of distortions of competition.

The Court also finds that the contested articles of the Directive do in fact have as their object the improvement of the conditions for the functioning of the internal market.

It points out that the term ‘printed publications’ covers only publications such as newspapers, periodicals and magazines. This excludes bulletins produced by local associations, programmes for cultural events, posters, telephone directories and various leaflets and prospectuses.

Since the conditions for recourse to Article 95 EC were met, the selection of that legal basis cannot be called into question by the fact that public health protection may have prompted the choices made by the Community legislature when adopting the Directive. The Court points out in this regard that the Community is required by the Treaty to ensure a high level of human health protection. The express prohibition of any harmonisation of Member States’ legislation in that health field does not preclude a harmonising measure adopted on another basis from having an impact on human health protection.

The Court also rejects the argument that the contested provisions are disproportionate.

In this respect, the Court finds in particular that the Community legislature could not exempt local or regional publications without rendering the field of application of the prohibition on advertising unsure and uncertain. So far as concerns the alleged prejudice to the fundamental right of freedom of the press and of expression, it observes that the prohibitions leave journalistic freedom of expression unimpaired and do not exceed the limits of the discretion accorded to the Community legislature.

Unofficial document for media use, not binding on the Court of Justice.

Languages available: ES, CS, DE, EL, EN, FR, IT, HU, NL, SK, SL, PL, PT

The full text of the judgment may be found on the Court’s internet site

<http://curia.europa.eu/jurisp/cgi-bin/form.pl?lang=EN&Submit=rechercher&numaff=C-380/03>

It can usually be consulted after midday (CET) on the day judgment is delivered.

For further information, please contact Christopher Fretwell

Tel: (00352) 4303 3355 Fax: (00352) 4303 2731

Pictures of the delivery of the judgment are available on EbS “Europe by Satellite”, a service provided by the European Commission, Directorate-General Press and Communications,

L-2920 Luxembourg, Tel: (00352) 4301 35177 Fax: (00352) 4301 35249

or B-1049 Brussels, Tel: (0032) 2 2964106 Fax: (0032) 2 2965956