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Judgment of the Court of Justice in Case C-167/05

Commission of the European Communities v. Kingdom of Sweden

**DIFFERENT TAX TREATMENT OF BEER AND WINE IN SWEDEN DOES NOT
INFRINGE COMMUNITY LAW**

Given the difference in selling price between a litre of wine and a litre of beer, the difference in excise duty is not liable to influence consumer behaviour.

The Swedish legislation governing excise duty on alcoholic beverages treats beer and wine differently in terms of the excise duty to be applied. The Commission takes the view that the difference in the tax treatment of beer and wine is liable to afford indirect protection to beer (mainly produced in Sweden) to the detriment of wine (mainly imported from other Member States), which is contrary to Community law. It therefore brought an action for failure to fulfil obligations against Sweden before the Court of Justice of the European Communities.

The Court points out that wine and beer are, to a certain extent, capable of meeting identical needs, which means that a certain measure of mutual substitutability must be acknowledged. The Court states that the decisive competitive relationship between wine and beer, a popular and widely consumed beverage, must be established by reference to those wines which are the most accessible to the public at large, that is to say, generally speaking, the lightest and least expensive varieties. Thus, the Court considers that, in the present case, only wines in the intermediate category (with an alcoholic strength of between 8.5 vol. and 15% vol. and a final selling price ranging between SEK 49 and SEK 70) share a sufficient number of characteristics with “strong” beer (which has an alcoholic strength equal to or higher than 3.5% vol.) to represent an alternative choice for the consumer and thus be in competition with strong beer.

On the basis of a comparison of the levels of taxation in relation to alcoholic strength (the most pertinent basis for comparison in the present case), the Court notes that a wine with an alcoholic strength of 12.5% vol. is subject to taxation per percentage of alcohol by volume which is approximately 20% higher per litre than that on the beer with which it is in competition. Wine which is in competition with strong beer is therefore subject to higher taxation than that beer.

However, the Court considers that the fact that wine is taxed more heavily is not liable to influence the market in question and does not have the effect of affording indirect protection to Swedish beer. In that regard, the Court points out that the price difference between the two products is virtually the same before taxation as after it (a litre of wine of 12.5% vol. costing just over twice the price of a litre of beer). In that context, the Court finds that the Commission has

not shown that the difference between the price of strong beer and the price of wine in competition with that beer is so slight that the difference in the excise duty applicable to those products in Sweden is likely to influence consumer behaviour.

Consequently, the Court dismisses the Commission's action.

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Languages available: CS, DE, EN, FR, HU, LV, PL, SV

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-167/05>

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

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