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Press and Information

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Judgment of the Court of Justice in Case C-366/04

*Georg Schwarz v Bürgermeister der Landeshauptstadt Salzburg*

**IT IS PERMISSIBLE FOR AUSTRIA TO PROHIBIT THE SALE OF UNWRAPPED CHEWING-GUM FROM AUTOMATIC VENDING MACHINES**

*The ban is justified on grounds of public health protection.*

In Austria the sale of sugar confectionery or similar products made using sugar substitutes from vending machines without wrapping is prohibited.

In spite of this ban, Mr Schwarz marketed various kinds of unwrapped chewing-gum in vending machines in Salzburg (Austria), for which the mayor of the city of Salzburg brought proceedings against him.

Mr Schwarz then lodged an appeal against those decisions with the Unabhängiger Verwaltungssenat Salzburg (Independent Administrative Chamber, Salzburg) in which he claimed that the Austrian rules on confectionery hygiene were incompatible with Community law and, in particular, with the free movement of goods.

In those circumstances that court referred a question to the Court of Justice for a preliminary ruling.

In its judgment, the Court of Justice finds, first of all, that the packaging of confectionery distributed by vending machines has not been harmonised by the food hygiene directive<sup>1</sup>. National measures in this field must, therefore, be assessed against the yardstick of the EC Treaty provisions relating to the free movement of goods.

Next, the Court observes that the provision of Austrian law constitutes an impediment to the free movement of goods. Importers wishing to put confectionery on sale in vending machines in Austria have to package it, which makes its importation into that Member State more

<sup>1</sup> Council Directive 93/43/EEC of 14 June 1993 on the hygiene of foodstuffs (OJ 1993 L 175, p. 1).

expensive. Furthermore, vending machines designed for non-packaged goods cannot be used for packaged goods.

Nevertheless, the Court considers that the ban at issue is **justified** because it constitutes an **adequate and proportionate measure for the protection of public health**. As a matter of fact, non-packaged confectionery has in the past been found to be exposed in vending machines both to pathogenic germs and to moisture and insects.

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

*Languages available: DE, EN, ES, FR, IT, HU, PL, SL*

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

*<http://curia.eu.int/jurisp/cgi-bin/form.pl?lang=en>*

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

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