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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



3ENDRIJŲ TEISINGUMO TEISMAS  
J KÖZÖSSÉGEK BÍRÓSÁGA  
IL-QORTI TAL-ĠUSTIZZJA TAL-KOMUNITAJIET EWROPEJ  
HOF VAN JUSTITIE VAN DE EUROPESE GEMEENSCHAPPEN  
TRYBUNAŁ SPRAWIEDLIWOŚCI WSPÓLNOT EUROPEJSKICH  
TRIBUNAL DE JUSTIÇA DAS COMUNIDADES EUROPEIAS  
SÚDNY DVOR EURÓPSKÝCH SPOLOČENSTIEV  
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EUROOPAN YHTEISÖJEN TUOMIOISTUIN  
EUROPEISKA GEMENSKAPERNAS DOMSTOL

## Press and Information

### PRESS RELEASE No 48/06

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Advocate General's Opinion in Case C-380/03

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

### **ADVOCATE GENERAL PHILIPPE LÉGER PROPOSES THAT THE COURT OF JUSTICE SHOULD DISMISS THE ACTION BROUGHT BY GERMANY AGAINST THE TOBACCO ADVERTISING DIRECTIVE**

*The Advocate General concludes that the legal basis chosen for the directive is appropriate for putting an end to divergence in the national rules on tobacco advertising, which was contributing significantly to the fragmentation of the internal market.*

Germany has brought an action before the Court of Justice of the European Communities seeking partial annulment of the directive<sup>1</sup> on the advertising and sponsorship of tobacco products in media other than television.<sup>2</sup> Germany claims, in particular, that the choice as a legal basis of Article 95 of the EC Treaty, which authorises the Community to adopt the measures for the approximation of the national provisions which have as their object the establishment and functioning of the internal market, is incorrect.

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<sup>1</sup> 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).

<sup>2</sup> This was the third action brought by Germany for annulment of a directive relating to tobacco products. Germany had brought an action for annulment of Directive 98/43/EC, the title of which is identical, which led to the annulment in whole of that directive by judgment of the Court of Justice of 5 October 2000 in *Germany v European Parliament and Council*, on the ground that the choice of legal basis for the directive was incorrect (see Press Release No 72/00, <http://www.curia.eu.int/en/actu/communiques/index.htm>). It was in the wake of that judgment that Directive 2003/33 was adopted.

Germany had also sought partial annulment of Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products (OJ 2001 L 194, p. 26). The Court held that that action was manifestly inadmissible as it was out of time. However, the Court was called upon to assess the validity of that directive when it ruled on a number of references for preliminary rulings from a United Kingdom court and from a German court.

First of all, the Advocate General observes that when the contested decision was adopted there remained significant differences between national rules on the advertising and sponsorship of tobacco products.

The Advocate General then examines the effects which those differences have on the internal market.

As regards press advertising of tobacco products, the Advocate General considers that those differences between national rules, most of which seek to limit or prohibit such advertising, inevitably have the effect of impeding not only the free movement of goods but also the freedom to provide services. Having regard to the trend in these national rules towards ever greater restrictions, it was highly likely that such obstacles would intensify and extend to new Member States.

In addition, national measures prohibiting or limiting advertising of tobacco products are liable to preclude the circulation between Member States of radio programmes and electronic communications (covered by information society services) where those programmes or communications contain advertisements for such products.

Likewise, the sponsorship of radio programmes by operators in the tobacco market did not escape the trend of national laws towards ever greater restrictions on the means of promotion for such products. Differences between national rules in this regard had already emerged when the contested decision was adopted or were in all likelihood about to emerge. Such differences are liable to restrict the freedom to provide services.

In the Advocate General's view, all these obstacles justify the choice of legal basis for the directive made by the Community legislature. In effect, **the provision of the EC Treaty aimed at the approximation of the provisions of the Member States which have as their object the establishment and functioning of the internal market is appropriate for putting an end to the divergent development of national rules in this field, which was contributing significantly to the fragmentation of the internal market.**

Last, the Advocate General emphasises that the directive genuinely has as its objective the elimination or prevention of obstacles to free movement. It provides, in that regard, that Member States may not prohibit or restrict the free movement of products which comply with the directive and does not give Member States the option to lay down stricter requirements concerning the advertising or sponsorship of tobacco products which they deem necessary to guarantee the health protection of individuals .

Consequently, the Advocate General proposes that the Court of Justice should dismiss the action brought by Germany.

**IMPORTANT: The Advocate General's Opinion is not binding on the Court. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court of Justice are now beginning their deliberations in this case. Judgment will be given at a later date.**

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

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

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

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

*It can usually be consulted after midday (CET) on the day of delivery.*

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