



Press and Information

Court of Justice of the European Union

**PRESS RELEASE No 98/18**

Luxembourg, 4 July 2018

Advocate General's Opinion in Case C-220/17  
Planta Tabak-Manufaktur Dr. Manfred Obermann GmbH & Co. KG v Land  
Berlin

**Advocate General Saugmandsgaard Øe proposes that the Court rule that the broad prohibition on the sale of tobacco products with characterising flavours complies with the principle of equal treatment**

*Furthermore he considers that the packaging of those products which can still be sold are not to indicate the flavour they contain*

Planta Tabak is a German family-owned business which manufactures and distributes various kinds of tobacco products. Before the new directive of 2014 on tobacco products<sup>1</sup> came into force, one of that company's specialities was flavoured roll-your-own tobacco. Mentholated tobacco accounted for the largest share of those products. Planta Tabak also distributes a small range of (mostly flavoured) cigarettes, waterpipe tobacco and, to a lesser extent, cigarillos, cigars and smokers' articles.

Planta Tabak disputes before the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) that the provisions of the German law relating to the prohibition on the placing on the market of tobacco products with a characterising flavour, health warnings and product presentation rules apply to the tobacco products it manufactures and distributes. Those provisions transpose the new directive of 2014 on tobacco products.

Since the Verwaltungsgericht entertains doubts as to whether the corresponding provisions of that directive are valid and how they should be interpreted, it referred a series of questions to the Court. By those questions, the Court was invited to examine certain aspects already discussed in its judgments of 4 May 2016,<sup>2</sup> by which it held that the directive is valid.

In today's Opinion, Advocate General Henrik Saugmandsgaard Øe confines his examination, as requested by the Court, to two aspects of the case.

He notes, first, that since 20 May 2016 the directive prohibits, in principle, the placing on the market of cigarettes and roll-your-own tobacco with a characterising flavour<sup>3</sup> due to the fact that those flavours mask or reduce tobacco smoke's harshness and contribute to promoting and sustaining tobacco use. However, the directive provides that tobacco products with a characterising flavour whose EU-wide sales volumes represent 3% or more in a particular product category may still be placed on the market until 20 May 2020.

**According to the Advocate General, that difference in treatment is justified and the extended prohibition on the sale of tobacco products with a characterising flavour is thus valid in the light of the principle of equal treatment.**

<sup>1</sup> Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ 2014 L 127, p. 1).

<sup>2</sup>Cases: [C-358/14](#) Poland v Parliament and Council and [C-547/14](#) Philip Morris Brands and Others, see also Press Release No [48/16](#).

<sup>3</sup> The directive also prohibits the placing on the market of tobacco products containing flavourings in any of their components such as filters, papers, packages, capsules or any technical features allowing modification of the smell or taste of the tobacco products concerned or their smoke intensity.

It was open to the EU legislature to gradually implement the objective of protecting human health by withdrawing from the market first of all 'niche products' before withdrawing the products that are well established among consumers. Consumers thus have time to change their habits, while the industry has the time necessary to adapt. Furthermore, it was reasonable for the legislature to consider that a sales volume of 3% in a particular product category reflects significant consumption patterns and production.

Second, as regards the tobacco products with a characterising flavour that can still lawfully be manufactured and distributed after 20 May 2016 (such as menthol cigarettes until 20 May 2020 and pipe tobacco, cigars and flavoured cigarillos without time limit), **the Advocate General notes that the directive prohibits any indication (even non-promotional) of the flavour<sup>4</sup> which those products contain, and that both on the unit packets and on the outside packaging and the products themselves.**

The legislature took the view that the mere indication of the presence of a flavour<sup>5</sup> on the labelling of unit packets, on the outside packaging and on the tobacco products themselves, can, in itself, minimise the harmful effects of that product on human health and, thereby, encourage its use.

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**NOTE:** The Advocate General's Opinion is not binding on the Court of Justice. 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 are now beginning their deliberations in this case. Judgment will be given at a later date.

**NOTE:** A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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<sup>4</sup> Or of a taste, smell, or other additive.

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