



Press and Information

Court of Justice of the European Union

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Judgment in Case C-220/17

Planta Tabak-Manufaktur Dr. Manfred Obermann GmbH & Co. KG v Land
Berlin

The prohibition in stages at EU level of cigarettes and roll-your-own tobacco containing flavourings is valid

That prohibition does not infringe the principles of legal certainty, equal treatment and proportionality, nor that of the free movement of goods

The German undertaking Planta Tabak manufactures and markets tobacco products, in particular flavoured roll-your-own tobacco.

It applied to the Verwaltungsgericht Berlin (Administrative Court, Berlin, Germany) for a declaration that certain provisions of German law relating to the prohibition of flavourings, shock photographs and the prohibition of advertising of flavourings are not applicable to its products. Those provisions transpose the 2014 directive on tobacco products,¹ whose validity Planta Tabak contests.

As the Verwaltungsgericht Berlin had doubts as to the validity and interpretation of the relevant provisions of the directive, it put a number of questions to the Court of Justice.

By today's judgment the Court finds that the prohibition of placing cigarettes and roll-your-own tobacco containing flavourings on the market from 20 May 2016, where their EU-wide sales volume is less than 3% in the cigarette and roll-your-own tobacco categories, and from 20 May 2020 in all other cases, is valid.

The fact that the directive does not specify the products whose sales volumes represent 3% or more, and does not lay down a specific procedure for determining them, does not mean that the directive infringes **the principle of legal certainty**. The procedure to be followed to determine whether a particular tobacco product reaches the 3% limit must be established in accordance with the national law of the Member State concerned.

Distinguishing according to sales volume is objectively justified and does not therefore infringe **the principle of equal treatment**. **The EU legislature was entitled to proceed by stages and to allow consumers of products representing a high sales volume adequate time to switch to other products.**

The prohibition of placing tobacco products containing flavourings on the market also does not go manifestly beyond what is necessary for ensuring a **high level of protection of human health, especially of young people**, and does not therefore infringe **the principle of proportionality**. It is not disputed that some flavourings are particularly attractive to young people and facilitate initiation of tobacco consumption.²

Furthermore, although the prohibition at issue constitutes a restriction on **the free movement of goods**, such a restriction is justified by the balancing of its economic consequences against the requirement to ensure a high level of protection of human health.

¹ 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, and corrigendum OJ 2015 L 150, p. 24).

² [C-358/14](#) Poland v Parliament and Council, see also Press Release No [48/16](#).

As regards the periods for transposition of the directive into national law, the Court rules that the Member States are not authorised to determine transposition periods additional to those provided for in the directive.

The Court finds in this respect that **the period of two years that was available to the Member States for adopting the necessary provisions to transpose the directive and ensure that the economic operators affected would have adequate time to adapt to the requirements of the directive is sufficient from the point of view of the principle of proportionality.**

As regards the prohibition of using information referring to taste, smell, flavourings or other additives, the Court explains that the directive requires the Member States to prohibit the use of such information even where that information is not promotional information and the use of the ingredients concerned is still permitted. The EU legislature did not intend to draw a distinction between promotional and non-promotional information.

As regards the prohibition of using trade marks referring to a flavouring on the labelling of unit packets, the outside packaging and the tobacco product itself, the Court finds that that prohibition does not amount to a deprivation of property, but only to a limitation of the right to property. The directive leaves the proprietors of such trade marks free to make use of them in any other way, in particular by wholesale.

In addition, since tobacco products having a characterising flavour facilitate initiation of tobacco consumption and affect consumption patterns, that prohibition is liable to make them less attractive and meets objectives of general interest recognised by the EU, by contributing to ensuring a high level of protection of public health.

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 judgment is published on the CURIA website on the day of delivery.

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