

Court of Justice of the European Communities: Advocate General's Opinion in Case C-380/03 (Tobacco Advertising Directive)

IRIS 2006-7:1/4

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Advocate General Léger has argued in his closing submissions that the claim lodged by Germany against the Directive on advertising and sponsorship of tobacco products in media other than television (2003/33/EC) should be dismissed (Case C-380/03) (see IRIS 2005-7: 10).

Germany had already challenged a previous, similarly entitled Directive of 6 July 1998 (98/43/EC) in the ECJ on the grounds that its legal basis was incorrect (Case C-367/98) and had succeeded in having it completely annulled. In September 2003 Germany made a fresh application for annulment of the follow-up Tobacco Advertising Directive of 23 May 2003. Germany argued firstly that the choice of Article 95 EC as a legal basis for the contested Directive was incorrect. It contended that the adoption of Articles 3 and 4 of the Directive failed to comply with Article 95 - empowering the Community to take measures for the approximation of national provisions which have as their object the establishment and functioning of the internal market. In its view, none of the prohibitions listed in these Articles actually contributed to eliminating obstacles to the free movement of goods and freedom to provide services or to removing appreciable distortions of competition.

The Advocate General argued, however, that existing obstacles in the internal market entirely justified the choice of the legal basis. He made the point, in his Opinion, that when the contested Directive was adopted there remained significant differences between the Member States' rules on tobacco advertising and sponsorship. Because they were often concerned with a prohibition or restriction, these differences in the press sector would inevitably have had the effect of impeding not only the free movement of goods, but also the freedom to provide services. Such national prohibitions or restrictions were also likely to preclude the circulation of radio programmes and electronic communications. The same was true with regard to sponsorship.

The Advocate General therefore considered that Article 95 EC was a suitable basis on which to seek to end this significant fragmentation of the internal market. He also pointed out that, in accordance with the principle of the free movement of goods, the Directive did not allow the Member States to impose more stringent provisions in relation to advertising or sponsorship on the grounds that they were

necessary in order to protect public health.

Advocate General's Opinion in Case C-380/03, 13 June 2006

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:62003CC0380:EN:HTML>

