Court of Justice of the European Communities: Permissibility of National Requirements for Examining and Labelling Films

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Against the background of a procedure for a preliminary ruling requested by the Koblenz District Court (see IRIS 2006-9: 5), the Court of Justice of the European Communities (ECJ) has decided that Article 28 of the EC Treaty does not stand in the way of domestic provisions that prohibit the sale and delivery of picture storage media that have not been examined and classified for youth protection purposes by the relevant body. However, this does not apply when the legal procedure for examining, classifying and labelling picture storage media is difficult to access, or is not concluded within a reasonable time, or when the decision to turn down the application cannot be challenged.

In the legal dispute concerned, Dynamic Medien Vertriebs GmbH is demanding that Avides Media AG cease the Internet distribution of Japanese cartoons imported from the United Kingdom. The films carry a British Board of Film Classification (BBFC) age rating but have not been examined by the German Freiwillige Selbstkontrolle der Filmwirtschaft (Voluntary Self-Regulation Body for the Film Industry – FSK) to determine their age classification.

For the Koblenz District Court, the main question was whether domestic rules making the distribution of DVDs and videos in the mail-order market dependent on their bearing labels confirming that they have been examined by a national body with regard to their suitability for young people, are compatible with the principle of the free movement of goods.

In its judgment, the ECJ states that, in its opinion, the domestic rules at issue in the dispute do not constitute mere selling arrangements but a measure that has an effect equivalent to a quantity restriction within the meaning of Article 28 of the EC Treaty and, accordingly, constitute interference with the free movement of goods (unlike Advocate General Mengozzi's final motions, see IRIS 2007-10: 4). In the ECJ's view, the interference is justified in order to safeguard the effective protection of young people. Since the rules relating to this protection have not been harmonised, it is up to the member states to determine their own level of protection and the relevant examination mechanisms. However, their discretion is limited by the obligations for member states that arise under Community law, so that the German provisions must be examined with regard to their proportionality.

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They are, the ECJ says, proportionate if the examination procedure is readily accessible to the supplier and can be completed within a reasonable period and, if it leads to a refusal, the decision can be challenged before the courts.

The Koblenz District Court now has to reach a decision on the dispute on the basis of these criteria.

Judgment of the Court of Justice of the European Communities, case C-244/06, 14 February 2008

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