



Université franco-allemande  
Deutsch-Französische Hochschule

# Proteus/WaCoPaS-Projekt 2007- Warsaw-Cologne



The Case 2007

## „Tobacco Directive- Healthy or Wealthy?“

### "Kommissionsvorschlag zur Verschärfung der Anti-Tabak-Richtlinie"

The participants in the Moot Court are invited to act as judges of the European Court of Justice, Advocate Generals, representatives of the European Parliament, the European Commission, and the Member States.

The scenario is set in the frames of the proceedings for annulment of Directive 2006/66/EC of the European Parliament and of the Council of 26 March 2006 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the combating of adverse effects of consume of tobacco products. The Directive is fiction, and any cohesion between the Directive and any Directive to be adopted by the European institutions under the same natural number, are a pure coincidence.

The students, according to their roles, are invited either to defend the Directive, or to advocate its annulment or, as the case may be, to give an opinion or the judgment on the matter.

Annexed the Directive 2006/66/EC

Directive 2006/66/EC of the European Parliament and of the Council  
of 26 March 2006 on the approximation of the laws, regulations and  
administrative provisions of the Member States relating to the combating  
of adverse effects of consume of tobacco products

(Text with EEA relevance)

**THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE  
EUROPEAN UNION,**

Having regard to the Treaty establishing the European Community, and in  
particular Articles 95, 152 and 153 thereof,

Having regard to the proposal from the Commission(1),

Having regard to the opinion of the European Economic and Social  
Committee(2),

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the  
Treaty(3),

Whereas:

(1) There are differences between the Member States' laws, regulations  
and administrative provisions on the combating of adverse effects of  
consume of tobacco products. These effects cross the borders of the  
Member States as the sale of international brands of tobacco forms part of  
the internal market. The differences in national legislation are likely to give  
rise to the diversified level of protection of European Union citizens  
against adverse effects of consume of tobacco products. In the case of  
liability of producers and distributors of tobacco products to consumers,  
these differences are likely to increase the notorious practices of forum  
shopping.

(2) Those barriers should be eliminated and, to this end, the rules relating  
to the combating of adverse effects of consume of tobacco products  
should in specific cases be approximated. In particular, there is a need to  
lay down common minimum standards of court protections that consumer  
of tobacco products who suffer from certain illnesses may enjoy  
throughout the European Union.

(3) Article 95(3) of the Treaty requires the Commission, in its proposals for  
the establishment and functioning of the Internal Market concerning  
health, to take as a base a high level of protection. Within their respective  
powers, the European Parliament and the Council also seek to achieve  
this objective. The legislation of the Member States to be approximated is  
intended to protect public health by regulating the responsibility for  
adverse effects of consume of tobacco, an addictive product responsible  
for over half a million deaths in the Community annually, thereby avoiding  
a situation where addicted smokers are left without any effective  
remedies.

(4) The Commission should draw up a report on the implementation of  
this Directive. Provision should be made in the relevant Community  
programmes to monitor the effects of this Directive on public health.

(5) Member States should take adequate and effective steps to ensure  
control of the implementation of measures adopted pursuant to this  
Directive in compliance with their national legislation, as provided for in

Commission Communication to the European Parliament and the Council on the role of penalties in implementing Community Internal Market legislation and in the Council Resolution of 29 June 1995 on the effective uniform application of Community law and on the penalties applicable for breaches of Community law in the Internal Market<sup>(4)</sup>. Such means should include provision for intervention of persons or organisations with legitimate interest in the suppression of activities that are not in conformity with this Directive.

(6) The remedies provided for under this Directive should be without prejudice to any other penalty or remedy provided under national law.

(7) Advertising of tobacco products is covered by 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.

(8) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of the proper functioning of the Internal Market to lay down rules on the combating of adverse effects of consume of tobacco products. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(9) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure respect for the fundamental right of property,

HAVE ADOPTED THIS DIRECTIVE:

### **Article 1-Subject-matter and scope**

1. The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the combating of adverse effects of consume of tobacco products:

(a) through the imposition of a public charge, whereas the revenues shall be dedicated to the eradication of adverse health effects of the consume of tobacco products;

(b) through laying down common minimum standard of substantive and procedural rights of victims of the addicting effect of tobacco;

(c) through imposing stricter requirements related to the retail sale of tobacco; and

(d) through the control of minimum and maximum prices of tobacco in order to eliminate illicit retail distribution, illegal trafficking in tobacco and illegal imports of tobacco;

(e) through eliminating the availability of smoking areas in public places, thereby protecting the population of non-consumers of tobacco products;

### **Article 2-Definitions**

For the purposes of this Directive, the following definitions shall apply:

(a) "tobacco products" means all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco;

(b) "retail sale" means any form of distribution of tobacco products to its final consumers, done for commercial purposes by any natural or legal person;

### **Article 3-Tobacco levy**

1. Retail sale of tobacco products shall be subject to a public charge (tobacco levy). The retail sellers of tobacco products shall be responsible for calculating and collecting the tobacco levy. Member States shall determine the amount of the tobacco levy, which shall not be lower than 10 % of the gross retail price nor higher than 15 % of the gross retail price. In any case shall the tobacco levy be lower than the equivalent of 0,75 EUR per single package of tobacco products.

2. The revenues from the tobacco levy shall be the income of the budget of the European Community. These revenues shall be spent in equal parts for the control of external borders of the European Union, financing non-governmental organizations carrying out programmes related to combating the adverse effects of smoking and the establishment and financing of the European Clean Lungs Institute.

3. Member States shall adopt such laws and regulations as may be necessary in order to secure the undisturbed collection of the revenues from the tobacco levy.

4. Member States shall introduce minimum and maximum retail sale prices for tobacco products. Member States shall communicate any proposal of the minimum and maximum retail sale prices to the European Commission, who shall observe that the differences in retail sale prices of tobacco products within the European Community does not exceed 7.5 % per the same quantity of essentially similar tobacco products.

### **Article 4-List of tobacco illnesses**

A list of tobacco illnesses is laid down in Annex 1 to this Directive.

### **Article 5-Liability of tobacco manufacturers and distributors**

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, the manufacturers and distributors of tobacco products are be liable jointly and severally for the adverse health effects, which may result to any natural person because of the consume of tobacco products manufactured or marketed by such manufacturers and distributors, if these health effects are the result of one of tobacco illnesses enumerated in Annex 1 to this Directive.

2. In particular, Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that the victims of consume of tobacco products shall be entitled to obtain, from manufacturers and distributors of tobacco products, periodic payments, to cover necessary medical treatment and any potential loss resulting from the decrease occupational capability, and a lump sum payment to cover the cost of detoxication or any therapy intended to break addiction to tobacco products.

### **Article 6-Remedies and enforcement**

1. Member States shall ensure that judicial and/or administrative procedures, including where they deem it appropriate conciliation procedures, for the enforcement of obligations under this Directive are available to all persons who consider themselves wronged because the consume of tobacco products has been the cause of one of the tobacco illnesses listed in Annex 1 to this Directive.

2. Member States shall ensure that associations, organisations or other legal entities which have, in accordance with the criteria laid down by their national law, a legitimate interest in ensuring that the provisions of this Directive are complied with, may engage, either on behalf or in support of the complainant, with his or her approval, in any judicial and/or administrative procedure provided for the enforcement of obligations under this Directive.

3. Paragraphs 1 and 2 are without prejudice to national rules relating to time limits for bringing actions as regards non-contractual liability.

### **Article 7-Burden of proof**

1. Member States shall take such measures as are necessary, in accordance with their national judicial systems, to ensure that, when persons who consider themselves wronged because the consume of tobacco products has been the cause of one of the tobacco illnesses listed in Annex 1 to this Directive establish, before a court or other competent authority, facts from which it may be presumed that the adverse health consequences may have been caused by the consume of tobacco products, it shall be for the respondent to prove that there has been no causal link between the consume of the tobacco products, manufactured or marketed by the respondent, and the occurrence of the tobacco illness with the plaintiff.

2. Paragraph 1 shall not prevent Member States from introducing rules of evidence which are more favourable to plaintiffs.

3. Paragraph 1 shall not apply to criminal procedures.

4. Paragraphs 1, 2 and 3 shall also apply to any legal proceedings commenced in accordance with Article 6(2).

5. Member States need not apply paragraph 1 to proceedings in which it is for the court or competent body to investigate the facts of the case.

### **Article 8-Sale of tobacco products to minors**

1. The sale of tobacco products to minors shall be prohibited.

2. Member States shall provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

### **Article 9-Smoking in public places**

1. Consume of tobacco products in public places shall be prohibited.

2. Member States shall provide for effective, proportionate and dissuasive sanctions in case of breaches of the obligations under this Directive.

### **Article 10-Combating illegal trafficking and illegal imports of tobacco products**

Member States shall take all steps to combat illegal trafficking in tobacco from third countries, illegal production of tobacco in the territories of the Member States and illegal imports of tobacco products from third countries.

### **Article 11-Free movement of products**

Member States shall not prohibit or restrict the free movement of products on conditions that which comply with this Directive.

### **Article 12-Implementation**

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 April 2007 at the latest. They shall forthwith inform the Commission thereof.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by the Member States.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

**Article 13-Entry into force**

This Directive shall enter into force on the day of its publication in the Official Journal of the European Union.

**Article 14-Addressees**

This Directive is addressed to the Member States.

Done at Brussels, 26 March 2006.

For the European Parliament

The President

Nicolas Tinna

For the Council

The President

Luke Ystrike

**Annex 1**

List of tobacco illnesses

1. Lung cancer