

The European Court of Justice

OF THE COURT

30 MAY 2007

In Case C-347/06

Czech Republic represented Levent SABANOĞULLARI and Romain MOLLIN

Supported by France, Ireland, Poland, Spain, Hungary, the Netherlands

v.

Council of the European Union, represented by Britta SCHIEBEL and Thomas LILAMAND

And the Federal Republic of Germany represented by Marlene GOTTWALD and Aleksander IVANOV

Interveners,

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

THE COURT,

Composed of, Jean-Christophe DUNIN-WASOWICZ (President), Vaclav LEBEDA (Rapporteur), Michael CHATZIPANAGIOTIS, Tristan MALLET and Bruno STOREZ

Advocate General:

Benoit LEVE, Sophie FINKENAUER, Ralf SCHLINDWEIN and Emilien GASC

Registrar Annette FRÖLICH

Having regard to the Report of the Hearing,

After hearing oral arguments from the parties represented on 29 and 30 of May 2007

After hearing the Opinion of the Advocate General at today's sitting

Gives the following:

JUDGEMENT

On the admissibility

1. Art. 230§4 establishes an exception of the general rule of art.230 and shall thus be interpreted narrowly. The Treaty does not provide for every interested person who would not be directly and individually concerned to bring actions before the Court of Justice on the grounds of art.230.
2. The present Directive provides with general rules that shall be implemented by the Member States. The BEUC cannot be considered as directly and individually concerned by the present Directive. Therefore, the BEUC's application is not admitted by the Court.
3. Article 230 names specific bodies entitled to bring an action for annulment. Although this Court in *Green Part v. European Parliament* in 1986 admitted the European Parliament as one of these specific bodies, the same cannot be applied to the EESC. The European Parliament is the only directly legitimated institution of the European Union. As a consequence the EESC application is inadmissible

On the breach of procedure

4. The directive invokes articles 95, 152 and 153 EC as legal basis. All those provide as a requirement the consultation of the EESC. The Court of justice has consistently held that "in order for such an infringement of the right to be heard to result in annulment, it is necessary to establish that had it not been for such an irregularity, the outcome of the procedure might have been different". In essence, the lack of consultation of EESC would not have significantly changed the outcome of the procedure. Therefore, the claim that the directive 2006/66/EC should be annulled on that ground is not sustainable.

On the legal basis

5 The argument of the legal basis, in general, has its importance to the extend that it presents the relation between the filed of intervention and the tool introduced to realized the objectives that have been established. That is valid under the condition that the Community has in both fields the competence to legislate. The present directive has been adopted under the procedure of article

95, which foresees qualified majority. However, this directive has more than one legal basis, i.e this directive is based on the establishment and functioning of the internal market (95), public health (152) and consumer protection (153). At the same time, the directive contains separable provisions.

6 In order to decide whether the provisions of the directive have been adopted under the appropriate procedure and comply with the Treaty, the Court has to examine the legal basis of the individual provisions.

For the Court:

Article 3 introduces a new tax because it is financially related without a specific consideration. It is imposed by a public authority, produces revenue and it can be enforced. This does not fall under article 95, 152 and 153. Therefore the introduction of a new tax is declared void. According to article 95-2 fiscal provisions are exempted from the scope of application from this article

Articles 5, 6 and 7: These articles aim at approximating national legislations in order in order to improve the free competition in the EC and, therefore, the better functioning of the internal market. Consequently, they have been adopted legally.

Articles 8 and 9: These provisions are clearly related to health policy and consumer protection. Therefore they should have been adopted according to the procedure foreseen in articles 152 and 153. Consequently, they haven't been adopted legally and should be annulled.

Article 10 and 11 help the functioning of the internal market and therefore are valid.

On subsidiarity

The objective of the present directive is to approximate the laws, regulations and administrative provisions of MS related to the combating of the adverse effects of tobacco products, necessary for the achievement of the objective of the functioning of the internal market. Such aim cannot be reasonably achieved on national level. Therefore the principle of subsidiarity has been respected.

On proportionality

In accordance with the 3rd paragraph of article 5 of the Treaty, the actions of the community shall not go beyond of what is necessarily to achieve the objectives of the treaty. Article 3-4 provides for an introduction of minimum and maximum

retail prices for tobacco products in the MS whereas the differences in those prices shall not exceed 7,5%. Setting of maximum retail prices goes beyond the principle of proportionality. Article 7 of the present directive, in inverting the burden of proof, not only would not give realistic possibility for manufactures or distributors of tobacco products to defend themselves it also goes beyond what is necessary to achieve the objectives of the Treaty.

On those grounds

THE COURT

Hereby

ANNULS articles 3, 7, 8 and 9 of the present directive e