JUDGMENT OF THE COURT (Grand Chamber)

5 June 2007 *

In Case C-170/04,

REFERENCE for a preliminary ruling under Article 234 EC, by the Högsta domstolen (Sweden), made by decision of 26 March 2004, received at the Court on 6 April 2004, in the proceedings

Klas Rosengren,

Bengt Morelli,

Hans Särman,

Mats Åkerström,

Åke Kempe,

Anders Kempe,

Mats Kempe,

* Language of the case: Swedish.

Björn Rosengren,

Martin Lindberg,

Jon Pierre,

Tony Staf,

v

Riksåklagaren,

THE COURT (Grand Chamber),

composed of P. Jann, President of the First Chamber, acting as President, C.W.A. Timmermans, A. Rosas, R. Schintgen, J. Klučka, Presidents of Chambers, J.N. Cunha Rodrigues, R. Silva de Lapuerta, M. Ilešič, J. Malenovský (Rapporteur), U. Lõhmus, E. Levits, A. Ó Caoimh and L. Bay Larsen, Judges,

Advocate General: A. Tizzano, subsequently P. Mengozzi,
Registrar: C. Strömholm, subsequently J. Swedenborg, Administrators,

having regard to the written procedure and further to the hearing on 30 November 2005,

after considering the observations submitted on behalf of:

— K. Rosengren, B. Morelli, H. Särman, M. Åkerström, Å. Kempe, A. Kempe, M. Kempe, B. Rosengren, M. Lindberg, J. Pierre and T. Staf, by C. von Quitzow, juris doktor, and U. Stigare, advokat,

— the Swedish Government, by A. Kruse and K. Wistrand, acting as Agents,

— the Finnish Government, by A. Guimares-Purokoski, acting as Agent,

— the Norwegian Government, by T. Nordby and I. Djupvik, acting as Agents,

— the Commission of the European Communities, by L. Ström van Lier and A. Caeiros, acting as Agents,

— the EFTA Surveillance Authority, by N. Fenger and A.T. Andersen, acting as Agents,

after hearing the Opinion of Advocate General Tizzano at the sitting of 30 March 2006,

having regard to the order of 14 June 2006 reopening the oral procedure and further to the hearing on 19 September 2006,

after considering the observations submitted on behalf of:

— K. Rosengren, B. Morelli, H. Särman, M. Åkerström, Å. Kempe, A. Kempe, M. Kempe, B. Rosengren, M. Lindberg, J. Pierre and T. Staf, by C. von Quitzow, juris doktor, and U. Stigare, advokat,

— the Swedish Government, by A. Kruse and K. Wistrand, acting as Agents,

— the Finnish Government, by A. Guimares-Purokoski and E. Bygglin, acting as Agents,

— the Norwegian Government, by T. Nordby, I. Djupvik and K. Fløistad, acting as Agents,

— the Commission of the European Communities, by L. Ström van Lier and A. Caeiros, acting as Agents,

— the EFTA Surveillance Authority, by N. Fenger and A.T. Andersen, acting as Agents,

after hearing the Opinion of Advocate General Mengozzi at the sitting on 30 November 2006,

gives the following

Judgment

1 The reference for a preliminary ruling concerns the interpretation of Articles 28 EC, 30 EC and 31 EC.

2 This reference was made in the context of proceedings between K. Rosengren, B. Morelli, H. Särman, M. Åkerström, Å. Kempe, A. Kempe, M. Kempe, B. Rosengren, M. Lindberg, J. Pierre and T. Staf, on the one hand, and the Riksåklagaren (Public Prosecutor), on the other, concerning the seizure of cases of wine imported into Sweden contrary to the Alkohollagen (Law on alcohol) (SFS 1994:1738) of 16 December 1994 ('alkohollagen').

National legal context

3 In Chapter 1, headed 'Preliminary provisions', the alkohollagen provides that it applies to the production, marketing and importation of alcoholic beverages and to the sale of those products.

4 Pursuant to Chapter 1, Paragraph 8:

'Sale means any form of supply of beverage for payment.

Sales to consumers are known as retail sales or, if the reference is to consumption on the premises, a service included in catering. Any other sale is known as wholesale.'

5 Chapter 4 of the alkohollagen, entitled 'Wholesale trade', provides, in Paragraphs 1 and 2:

'Paragraph 1 — Wholesale of spirits, wine or strong beer may be undertaken only by persons who are approved warehouse-keepers or who are registered recipients of such goods in accordance with Paragraph 9 or 12 of the lagen om alkoholskatt (Law on taxation of alcohol) ([SFS] 1994:1564) [of 15 December 1994]. It follows that the right to sell as a wholesaler applies only to drink included in the approval to act as a warehouse-keeper or registration as a recipient pursuant to the provisions of the lagen om alkoholskatt.

In addition to the provisions of the first paragraph, wholesale of spirits, wine and strong beer may be undertaken by the retail sales company in accordance with the provisions of the third subparagraph of Chapter 5, Paragraph 1.

Without prejudice to the provisions of the first subparagraph, holders of catering permits may sell individually goods covered by the permits to any person authorised to undertake wholesale of those goods.

Paragraph 2 — Spirits, wine and strong beer may be imported into Sweden only by persons authorised under the first subparagraph of Paragraph 1 to undertake wholesale of those goods and by the retail sales company in order that it may fulfil its obligations under Chapter 5, Paragraph 5.

Without prejudice to the provisions of the first subparagraph, spirits, wine and strong beer may be imported:

...

2. by any traveller of at least 20 years of age or by any person who works on some means of transport and has reached that age, for personal consumption or for that of his family or as a gift to a friend or relative for his personal consumption or for that of his family;

...

4. by any individual of at least 20 years of age, or by a professional transporter for an individual, of at least 20 years of age, travelling to Sweden if the drinks are intended for his personal consumption or for that of his family;

5. by any individual of at least 20 years of age, or by a professional transporter for an individual of at least 20 years of age, who received the drinks by way of a will or testament, if the drinks are intended for his personal consumption or for that of his family, and

6. as a single present sent, by the intermediary of a professional transporter, from an individual resident in another country to an individual resident in Sweden of at least 20 years of age for his personal consumption or for that of his family.

...'

6 Chapter 5 of the alkohollagen, headed 'Retail sale', confers on a State-owned company specially constituted for that purpose a monopoly over retail sales in Sweden of wine, strong beer and spirits. The company thus designated is Systembolaget Aktiebolag ('Systembolaget'), all shares in which are held by the Swedish State.

7 The activities, operations and regulation of that company are laid down in an agreement concluded with the State.

8 Chapter 5, Paragraph 5, provides:

'Spirits, wine or strong beer not held in stock shall be obtained on request, provided that the retail sale company does not consider that there are grounds precluding it.'

9 Chapter 10, Paragraph 10, of the alkohollagen provides that unlawful import and export of alcoholic beverages attract penalties pursuant to the lagen om straff för smuggling (Law on smuggling) of 30 November 2000 (SFS 2000:1225) ('smugglingslagen'), which provides that wine fraudulently imported is to be declared forfeit unless that would be manifestly unreasonable.

The dispute in the main proceedings and the questions referred for a preliminary ruling

10 From their place of residence in Sweden, the appellants in the main proceedings ordered, by correspondence and without intermediary, cases of bottles of wine produced in Spain.

11 Those cases, imported into Sweden without being declared to customs, were confiscated on the ground that they had been unlawfully imported in contravention of the alkohollagen.

12 By judgment of 3 January 2002, the Tingsrätt (District Court) in Göteborg (Sweden) confirmed the confiscation of the goods. The Hövrätten för Västra Sverige (Court of Appeal for Western Sweden) dismissed the appeal lodged against that judgment by the appellants in the main proceedings.

13 The appellants in the main proceedings therefore appealed to the Högsta domstolen (Supreme Court). The latter took the view that its decision depended on the compatibility of the Swedish legislation with the EC Treaty, as the issue in question concerned the prohibition in principle on all residents against directly importing alcoholic beverages into Sweden, without personally undertaking the transport thereof.

14 It is against that background that the Högsta domstolen decided to stay proceedings and to refer the following questions to the Court for a preliminary ruling:

'(1) Can it be held that the ... ban on [direct] imports [on the orders of private individuals] constitutes part of the retail monopoly's manner of operation and that on that basis it is not precluded by Article 28 EC and is to be examined only in the light of Article 31 EC?

(2) If the answer to Question 1 is yes, is that ban ... in such a case compatible with the conditions laid down for State monopolies of a commercial character in Article 31 EC?

(3) If the answer to Question 1 is no, is Article 28 EC to be interpreted as meaning that it in principle precludes [that] ... ban on imports despite the obligation of the Systembolaget to obtain, upon request, alcoholic beverages which it does not hold in stock?

(4) If the answer to Question 3 is yes, can such a ban ... be considered justified and proportionate in order to protect health and life of humans?'

The questions referred for a preliminary ruling

The first question

15 By its first question, the national court asks essentially whether, in order to verify its compatibility with Community law, a national provision, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen, under which private individuals are prohibited from importing alcoholic beverages, must be assessed in the light of Article 31 EC on State monopolies of a commercial character or in the light of Article 28 EC, which prohibits all quantitative restrictions on imports and all measures having equivalent effect.

16 It is common ground that the national measure at issue in the main proceedings constitutes a provision of the alkohollagen, which has also set up a retail monopoly on which has been conferred the exclusive right to retail sales of alcoholic beverages in Sweden. That monopoly has been given to Systembolaget.

17 Having regard to the case-law of the Court, it is necessary to examine the rules relating to the existence and operation of the monopoly with reference to Article 31 EC, which is specifically applicable to the exercise, by a domestic commercial monopoly, of its exclusive rights (see Case 91/75 *Miritz* [1976] ECR 217, paragraph 5; Case 120/78 *REWE-Zentral* [1979] ECR 649, *'Cassis de Dijon'*, paragraph 7; Case 91/78 *Hansen* [1979] ECR 935, paragraphs 9 and 10; Case C-387/93 *Banchero* [1995] ECR I-4663, paragraph 29; and Case C-189/95 *Franzén* [1997] ECR I-5909, paragraph 35).

18 However, the effect on intra-Community trade of the other provisions of the domestic legislation, which are separable from the operation of the monopoly although they have a bearing upon it, must be examined with reference to Article 28 EC (see *Franzén*, paragraph 36).

19 Accordingly, it is necessary to check whether the ban at issue in the main proceedings amounts to a rule relating to the existence or operation of the monopoly.

20 Firstly, it should be recalled that the specific function assigned to the monopoly by the alkohollagen consists of the exclusive right of retail sale in Sweden of alcoholic beverages to consumers, with the exception of the catering industry. It is common ground that that exclusive right does not extend to the importation of those beverages.

21 While, by regulating the importation of alcoholic beverages into the Kingdom of Sweden, the measure at issue in the main proceedings affects the free movement of goods within the European Community, it does not, as such, govern that monopoly's exercise of its exclusive right of retail sale of alcoholic beverages on Swedish territory.

22 That measure, which does not, therefore, concern the monopoly's exercise of its specific function, accordingly cannot be considered to relate to the very existence of that monopoly.

23 Next, it is clear from the information before the Court that, by application of Chapter 5, Paragraph 5, of the alkohollagen, Systembolaget is in principle required to import any alcoholic beverage at the request and expense of the consumer. Accordingly, the fact that private individuals are prohibited from importing alcoholic beverages, as provided for in the first subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen, has the effect of channelling consumers who wish to acquire such beverages towards the monopoly and, on that basis, is liable to affect the operation of that monopoly.

24 However, such a ban does not truly regulate the operation of the monopoly since it does not relate to the methods of retail sale of alcoholic beverages on Swedish territory. In particular, it is not intended to govern either the system for selection of goods by the monopoly, its sales network, or the organisation of the marketing or advertising of goods distributed by that monopoly.

25 Furthermore, that measure arises from the provisions of Chapter 4 of the alkohollagen relating to wholesale. The Court has already held that the rules contained in that chapter, under which only holders of wholesale licences are allowed to import alcoholic beverages, did not feature among the measures regulating the operation of the monopoly (see, to that effect, *Franzén*, paragraphs 34, 67 and 70).

26 In those circumstances, such a ban cannot be regarded as constituting a rule relating to the existence or operation of the monopoly. Accordingly, Article 31 EC is irrelevant for the purposes of determining whether such a measure is compatible with Community law, in particular with the provisions of the Treaty relating to free movement of goods.

27 The answer to the first question must therefore be that a national provision, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen, under which private individuals are prohibited from importing alcoholic beverages, must be assessed in the light of Article 28 EC and not in the light of Article 31 EC.

The second question

28 The second question is posed only in the event that the Court should take the view that the ban at issue in the main proceedings must be assessed in the light of Article 31 EC.

29 Having regard to the answer to the first question, there is no need to answer the second question.

The third question

30 By its third question, the national court asks essentially whether a measure, such as that in the alkohollagen, under which private individuals are prohibited from importing alcoholic beverages amounts to a quantitative restriction on imports within the meaning of Article 28 EC, even though that law requires the holder of the retail sale monopoly, on demand, to supply and therefore, if necessary, to import the beverages in question.

31 In that regard, it should be recalled that the free movement of goods is a fundamental principle of the Treaty which is expressed in the prohibition, set out in Article 28 EC, of quantitative restrictions on imports between Member States and all measures having equivalent effect (Case C-147/04 *De Groot en Slot Allium and Bejo Zaden* [2006] ECR I-245, paragraph 70).

32 The prohibition of measures having an effect equivalent to a quantitative restriction, laid down in Article 28 EC, applies to all legislation of the Member States that is capable of hindering, directly or indirectly, actually or potentially, intra-Community trade (see, inter alia, Case 8/74 *Dassonville* [1974] ECR 837, paragraph 5; Case C-192/01 *Commission* v *Denmark* [2003] ECR I-9693, paragraph 39; Case C-41/02 *Commission* v *Netherlands* [2004] ECR I-11375, paragraph 39; and *De Groot en Slot Allium and Bejo Zaden*, paragraph 71).

33 In the present case, it must be held, first of all, that the actual provisions of Chapter 5, Paragraph 5, of the alkohollagen, in the version in force at the date of the facts of the main proceedings, granted Systembolaget the possibility of refusing an order from a consumer for the supply and therefore, if necessary, the importation of beverages not included in the range offered by the monopoly. In those circumstances, the fact that private individuals are prohibited from importing such beverages directly into Sweden, without personally transporting them, in the absence of a counter-balancing obligation in every case on the monopoly to import such beverages when requested to do so by private individuals, constitutes a quantitative restriction on imports.

34 In fact, and independently of the possibility referred to in the preceding paragraph, it is not disputed that, when consumers use the services of Systembolaget to have alcoholic beverages imported, those concerned are confronted with a variety of inconveniences with which they would not be faced were they to import the beverages themselves.

35 In particular, it appears, in the light of the information provided during the written procedure and at the hearing, that the consumers involved must complete an order form in one of the monopoly's shops, return to sign that order when the supplier's offer has been accepted, and then collect the goods after they have been imported. Moreover, such an order is accepted only if it represents a minimum quantity of bottles to be imported. The consumer has no control over the conditions of transport or arrangements for the packaging of the beverages ordered and cannot choose the type of bottles he would like to order. It also appears that, for every import, the price demanded of the purchaser includes, in addition to the cost of the beverages invoiced by the supplier, reimbursement of the administrative and transport costs borne by Systembolaget and a margin of 17% which the purchaser would not, in principle, have to pay if he directly imported the goods himself.

36 Consequently, the answer to the third question must be that a measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen, under

which private individuals are prohibited from importing alcoholic beverages amounts to a quantitative restriction on imports within the meaning of Article 28 EC, even though that law requires the holder of the retail sale monopoly, on request, to supply and therefore, if necessary, to import the beverages in question.

The fourth question

37 By its fourth question, the national court asks essentially whether a measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen, under which private individuals are prohibited from importing alcoholic beverages, can be regarded as justified, under Article 30 EC, on grounds of protection of the health and life of humans.

38 It is indeed true that measures constituting quantitative restrictions on imports within the meaning of Article 28 EC may be justified, inter alia, on the basis of Article 30 EC, on grounds of protection of the health and life of humans (see, to that effect, *Franzén*, paragraph 75).

39 It is settled case-law that the health and life of humans rank foremost among the assets or interests protected by Article 30 EC and it is for the Member States, within the limits imposed by the Treaty, to decide what degree of protection they wish to assure (see Case C-322/01 *Deutscher Apothekerverband* [2003] ECR I-14887, paragraph 103, and case-law cited).

40 The Court has already ruled that legislation which has as its objective the control of the consumption of alcohol so as to prevent the harmful effects caused to health of

humans and society by alcoholic substances, and which thus seeks to combat alcohol abuse, reflects health and public policy concerns recognised by Article 30 EC (see Case C-434/04 *Ahokainen and Leppik* [2006] ECR I-9171, paragraph 28).

41 Nevertheless, it is necessary, as required by Article 30 EC, that the measure under consideration should not constitute either a means of arbitrary discrimination or a disguised restriction on trade between Member States.

42 In that respect, it should be pointed out that there is nothing before the Court to suggest that the public health grounds on which the Swedish authorities rely in the circumstances set out in paragraphs 44 and 48 of the present judgment have been diverted from their purpose and used in such a way as to discriminate against goods originating in other Member States or indirectly to protect certain national products (Case C-405/98 *Gourmet International Products* [2001] ECR I-1795, paragraph 32, and case-law cited).

43 Furthermore, national rules or practices likely to have a restrictive effect, or having such an effect, on imports are compatible with the Treaty only to the extent to which they are necessary for the effective protection of health and life of humans. A national rule or practice cannot benefit from the derogation provided for in Article 30 EC if the health and life of humans may be protected just as effectively by measures which are less restrictive of intra-Community trade (see, to that effect, *Deutscher Apothekerverband*, paragraph 104).

44 In that regard, the Swedish Government seeks first of all to justify the prohibition at issue in the main proceedings on the ground of the general need to limit the consumption of alcohol.

45 However, it must be noted that, although the prohibition on private individuals directly importing alcoholic beverages reduces the sources available to the consumer and may contribute, to a certain extent, because of the difficulty of supply, to prevention of the harmful effects of those beverages, the fact none the less remains that, pursuant to Chapter 5, Paragraph 5, of the alkohollagen, the consumer may still ask Systembolaget to supply him with those goods.

46 It is true, as is apparent from paragraph 33 of this judgment, that, pursuant to Chapter 5, Paragraph 5, of the alkohollagen, in the version in force at the time of the facts in the main proceedings, the duty to supply alcoholic beverages to order was balanced by the fact that it was possible for Systembolaget to refuse such an order. However, that paragraph of the alkohollagen did not state the grounds on which such a refusal could be made. It does not follow, in any event, from the information available to the Court that, in practice, Systembolaget has refused to make such a supply by reference to maximum quantities of alcohol which may be ordered or, at the very least, with regard to such maximum quantities for beverages with the highest alcohol content.

47 In those circumstances, the fact that private individuals are prohibited from importing alcoholic beverages directly appears to be a means of favouring a distribution channel for those goods by directing requests for the importation of beverages to Systembolaget. However, in the light of the alleged objective, that is to say, limiting generally the consumption of alcohol in the interest of protecting the health and life of humans, that prohibition, because of the rather marginal nature of its effects in that regard, must be considered unsuitable for achievement of that objective.

48 The Swedish Government goes on to submit that the prohibition at issue in the main proceedings, by directing the demand to Systembolaget, fulfils the objective of protecting younger persons against the harmful effects of alcohol consumption since Systembolaget, which is obliged to check the age of persons placing orders, may supply alcoholic beverages only to those who are at least 20 years of age. The second subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen also precludes, moreover, the importation of alcohol into Sweden by such persons as travellers, which is not the case with regard to older persons.

49 It cannot be disputed that if the ban at issue in the main proceedings thus proves to be a means effectively of preventing younger persons from becoming purchasers of alcoholic beverages and therefore of reducing the risk of their becoming consumers of such beverages, it must be regarded as being justified in the light of the objective of protection of public health referred to in Article 30 EC.

50 However, since a ban such as that which arises from the national legislation at issue in the main proceedings amounts to a derogation from the principle of the free movement of goods, it is for the national authorities to demonstrate that those rules are consistent with the principle of proportionality, that is to say, that they are necessary in order to achieve the declared objective, and that that objective could not be achieved by less extensive prohibitions or restrictions, or by prohibitions or restrictions having less effect on intra-Community trade (see, to that effect, Case C-17/93 *Van der Veldt* [1994] ECR I-3537, paragraph 15; *Franzén*, paragraphs 75 and 76; and *Ahokainen and Leppik*, paragraph 31).

51 The ban on imports at issue in the main proceedings applies to everyone, irrespective of age. Accordingly, it goes manifestly beyond what is necessary for the objective sought, which is to protect younger persons against the harmful effects of alcohol consumption.

52 With regard to the need for age checks, it should be noted that, by limiting, as a result of the ban at issue in the main proceedings, the sale of imported alcoholic beverages to the Systembolaget shops, the national legislation seeks to make distribution of such beverages subject to a centralised and coherent operation which must allow the monopoly's agents, in accordance with the objective pursued, to satisfy themselves in a consistent manner that the goods are provided only to persons of more than 20 years of age.

53 That being the case, it follows from the information before the Court that, although Systembolaget does have, in principle, recourse to such methods of distribution and checking the age of purchasers, there are other methods of distribution of alcoholic beverages, thus conferring on third parties the responsibility for such checks. In particular, it is not disputed that Systembolaget accepts that age checks may be made by a great number of agents when alcoholic beverages are supplied, outside the monopoly's shops, for example in food shops or service stations. Furthermore, the existence of such checks is itself not clearly established and verifiable in the event that the alcoholic beverages are supplied by Systembolaget, inter alia, as stated by the Swedish Government, 'by post or by any other suitable means of transport to the nearest station or coach stop'.

54 In that context, it does not appear that there is, in all circumstances, an irreproachable level of effectiveness with respect to the checking of the age of private individuals to whom those beverages are delivered and the objective pursued by the present system is met only in part.

55 The question remains to be answered whether, in order to achieve that objective of protection of the health of young persons with at least an equivalent level of effectiveness, there are other methods less restrictive of the principle of free movement of goods and capable of replacing the method at issue.

56 In that regard, the Commission of the European Communities submits, without being contradicted on that point, that age check could be carried out by way of a declaration in which the purchaser of the imported beverages certifies, on a form accompanying the goods when they are imported, that he is more than 20 years of age. The information before the Court does not, on its own, permit the view to be taken that such a method, which attracts appropriate criminal penalties in the event of non-compliance, would necessarily be less effective than that implemented by Systembolaget.

57 Accordingly it has not been established that the ban at issue in the main proceedings is proportionate for the purposes of attaining the objective of protecting young persons against the harmful effects of alcohol consumption.

58 In those circumstances, the answer to the fourth question must be that:

a measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the alkohollagen, under which private individuals are prohibited from importing alcoholic beverages,

— as it is unsuitable for attaining the objective of limiting alcohol consumption generally, and

— as it is not proportionate for attaining the objective of protecting young persons against the harmful effects of such consumption,

cannot be regarded as being justified under Article 30 EC on grounds of protection of the health and life of humans.

Costs

59 Since these proceedings are, for the parties to the main proceedings, a step in the action pending before the national court, the decision on costs is a matter for that court. Costs incurred in submitting observations to the Court, other than the costs of those parties, are not recoverable.

On those grounds, the Court (Grand Chamber) hereby rules:

1. **A national provision, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the Law on alcohol (alkohollagen) of 16 December 1994, under which private individuals are prohibited from importing alcoholic beverages must be assessed in the light of Article 28 EC and not in the light of Article 31 EC.**

2. **A measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the Law on alcohol, under which private individuals are prohibited from importing alcoholic beverages amounts to a quantitative restriction on imports within the meaning of Article 28 EC, even though that law requires the holder of the retail sale monopoly, on request, to supply and therefore, if necessary, to import the beverages in question.**

3. **A measure, such as that in the first subparagraph of Paragraph 2 of Chapter 4 of the Law on alcohol, under which private individuals are prohibited from importing alcoholic beverages,**

   — **as it is unsuitable for attaining the objective of limiting alcohol consumption generally, and**

   — **as it is not proportionate for attaining the objective of protecting young persons against the harmful effects of such consumption,**

   cannot be regarded as being justified under Article 30 EC on grounds of protection of the health and life of humans.

[Signatures]