

ECJ Advocate General Opines on Compatibility of Supplementary Tax on Heated Tobacco with Excise Duties Directives: *f6 Cigarettenfabrik* (Case C-336/22) (Excise)

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On 28 September 2023, Advocate General (AG) Athanasios Rantos of the Court of Justice of the European Union (ECJ) gave his opinion in the case of *f6 Cigarettenfabrik GmbH & Co. KG v. Hauptzollamt Bielefeld* (Case C-336/22) on the compatibility of a national "supplementary tax" levied on new tobacco products (rolls of heated tobacco) with the [Excise Directive \(2008/118\)](#) and [Directive 2011/64](#). Such "supplementary tax" would apply on top of the excise duty levied at the rate applied to pipe tobacco.

After confirming that heated tobacco falls within the scope of the above-mentioned Directives, the AG analysed whether the supplementary tax belongs to those "other indirect taxes" that, according to article 1(2) of the [Excise Directive \(2008/118\)](#), Member States are allowed to introduce on goods subject to excise duties, provided that they: (i) pursue a specific purpose; and (ii) comply with the rules applicable to excise duties and VAT. As to the specific purpose requirement, the AG concluded that the supplementary tax has the goal of discouraging nicotine-dependent consumers to switch from cigarettes to heated tobacco. As to the compliance with the rules applicable to excise duties, the AG concluded that, despite the method of calculation of the supplementary tax on heated tobacco products differs from that applicable to cigarettes, such difference in treatment does not constitute a prohibited discrimination between products in competition.

Therefore, the AG proposed that the ECJ answer the question referred to as follows:

" Article 1(2) of Council Directive 2008/118/EC of 16 December 2008 concerning the general arrangements for excise duty and repealing Directive 92/12/EEC [[Excise Directive \(2008/118\)](#)], and point c(ii) of the first subparagraph of Article 2(1) of Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco

must be interpreted as not precluding national legislation which provides for a supplementary tax, levied on heated tobacco, which, for the calculation of the tax, provides that, in addition to the rate of taxation for pipe tobacco, a supplementary tax of 80% of the amount of tax for cigarettes, less the amount of tax for pipe tobacco, is to be levied."

A more substantial report containing details of the Advocate General's reasoning will be published in due course.

European Union; Germany - ECJ Advocate General Opines on Compatibility of Supplementary Tax on Heated Tobacco with Excise Duties Directives: f6 Cigarettenfabrik (Case C-336/22) (Excise) (28 Sep. 2023), News IBFD.

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