

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(90) 147 final - SYN 194

Brussels, 19 April 1990

Amended proposal for a

COUNCIL DIRECTIVE

ON THE AUTHORIZED ADVERTISING OF TOBACCO PRODUCTS

IN THE PRESS AND BY MEANS OF BILLS AND POSTERS

(presented by the Commission pursuant to Article 149(3)
of the EEC-Treaty)

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON THE AUTHORIZED
ADVERTISING OF TOBACCO PRODUCTS IN THE PRESS
AND BY MEANS OF BILLS AND POSTERS
COM (89) ...

EXPLANATORY MEMORANDUM

On 7 April 1989, the Commission forwarded to the Council its initial proposal for a Directive on the advertising of tobacco products in the press and by means of bills and posters⁽¹⁾.

The Economic and Social Committee delivered its opinion on this proposal on 19 December 1989⁽²⁾.

The European Parliament, consulted under the cooperation procedure, delivered its opinion on 14 March 1990. The resolution of the European Parliament, containing 22 amendments to the initial Commission proposal, aims at a complete ban on advertising. The Commission has pointed out that only amendments 27, 30 and 32 could be incorporated into the amended proposal. In view of the current state of legislation in the Member States the Commission regards a complete ban as premature and cannot propose such a measure. Nevertheless, the Commission envisages, in function of the evolution in the Member States, to propose a total ban on such advertising from 31.12.1992 onwards.

In addition, parts of the proposal have been redrafted, some for technical reasons, following the discussions which have taken place since the proposal was first submitted. For example, it was thought advisable to change the title of the proposal so as to limit the scope of the Directive to authorized advertising in the press and by means of bills and posters, thus excluding the complete bans.

1. Examination of the recitals

In line with amendments 27, 30 and 32 adopted by the European Parliament, three new recitals have been included. They draw attention to the aims of the Member States regarding the health protection of their citizens and of young people in particular. Two new recitals have also been added to indicate the extent of the proposed harmonization of provisions in the Member States.

2. Comments on the articles

Art. 1

This is a new article. It expressly states that the purpose of the Directive is to harmonize only those regulations of the Member States which permit advertising.

Art. 1 a

This was formerly Article 1, which remains unchanged.

Art. 2

The changes made are designed to clarify the ways in which warnings are to be displayed on advertising.

(1) OJ No C 124, 19.5.1989, p.5

(2) OJ No C 62, 12.3.1990

Art. 3

Paragraph 2 has been redrafted in order to define the scope of this provision.

Paragraph 3 is designed to exclude from the field covered by the ban advertising of a product other than tobacco in cases where the identity of the trademark of such a product with the trademark of a tobacco product is purely fortuitous.

Art. 4 : unchanged

Art. 5

Paragraph 2 is a new version which aims to clarify the scope of this directive. It must guarantee the free circulation of goods, at which it is aimed, between the Member States which authorize the advertising.

Art. 6 and 7 : unchanged

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on the authorized advertising of tobacco products in the press and by means of bills and posters ⁽¹⁾

COM(90) 147 final — SYN 194

(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 19 April 1990)

(90/C 116/05)

⁽¹⁾ OJ No C 124, 19. 5. 1989, p. 5 (COM(89) 163 final 12 — SYN 194).

ORIGINAL TEXT

AMENDED PROPOSAL

Proposal for a Council Directive on the advertising of tobacco products in the press and by means of bills and posters

Amended proposal for a Council Directive on the authorized advertising of tobacco products in the press and by means of bills and posters

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,

Unchanged

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

Unchanged

In cooperation with the European Parliament ⁽²⁾,

Unchanged

Having regard to the opinion of the Economic and Social Committee ⁽³⁾,

Unchanged

Whereas there are differences between the laws, regulations and administrative provisions of the Member States on tobacco advertising in the press and by means of bills and posters; whereas advertising by these means transcends the borders of the Member States and whereas such differences are likely to constitute barriers to trade, distort competition and thus impede the establishment and operation of the internal market;

Whereas there are differences between the laws, regulations and administrative provisions of the Member States on authorized tobacco advertising in the press and by means of bills and posters; whereas authorized advertising by these means transcends the barriers of the Member States and whereas such differences are likely to constitute barriers to trade, distort competition and thus impede the establishment and operation of the internal market;

Whereas obstacles should be eliminated and, to this end, the rules relating to tobacco advertising by the above means should be harmonized, leaving Member States the possibility of introducing, under certain conditions, the measures they consider necessary to guarantee the health protection of their citizens;

Whereas obstacles should be eliminated and, to this end, the rules relating to authorized tobacco advertising by the above means should be harmonized, leaving Member States the possibility of introducing, under certain conditions, the measures they consider necessary to guarantee the health protection of their citizens.

⁽¹⁾ OJ No C 124, 19. 5. 1989.

⁽²⁾ Sitting of 14. 3. 1990.

⁽³⁾ OJ No C 62, 12. 3. 1990.

ORIGINAL TEXT

AMENDED PROPOSAL

Whereas these rules must take due account of public health protection, in particular in relation to young people;

Whereas the European Council held on 28 and 29 June in Milan stressed the importance of launching a European action programme against cancer;

Whereas the Council and the representatives of the Governments of the Member States, meeting within the Council, in their resolution of 7 July 1986 on a programme of action of the European Communities against cancer (1) set for this programme the objective of contributing to an improvement in the health and quality of life of citizens within the Community by reducing the number of illnesses due to cancer and, accordingly, regarded measures to counter the use of tobacco as their prime objective;

Whereas the incorporation in tobacco advertising inserts in the press and by means of bills and posters of a warning of the health risks entailed in the use of these products is important for health protection;

Whereas it is necessary to prohibit all indirect forms of advertising which, whilst not directly mentioning tobacco products, seek to promote, tobacco products by using trade marks, emblems, symbols or other distinctive features associated with tobacco products;

Whereas special provisions should ensure the protection of young people against the advertising of tobacco products;

Whereas one of the main objectives of the Member States of the European Commission is to bring about steady improvements in the living and working conditions of their citizens;

Whereas Article 100a (3) of the EEC Treaty stipulates that the Commission, in its proposals concerning health, safety, environmental protection and consumer protection, should take as a base a high level of protection;

Whereas it is advisable to ensure that authorized advertising in the press and by means of bills and posters provides information on the main features of the products which meets the essential requirements concerning the health protection of consumers and the fairness of commercial transactions;

Unchanged

Unchanged

Unchanged

Unchanged

Whereas it has been shown that young people are ready-made victims of advertising and that dependency on tobacco begins at a young age;

Unchanged

Whereas these common rules relating only to authorized tobacco advertising in the press and by means of bills and posters shall not apply in the event of a complete ban;

Whereas this Directive represents the first stage in a harmonization which should guarantee the free circulation of goods aimed at for 31 December 1992,

(1) OJ No C 184, 23. 7. 1986, p. 19.

ORIGINAL TEXT

AMENDED PROPOSAL

HAS ADOPTED THIS DIRECTIVE:

Article 1

For the purposes of this Directive, 'tobacco products' means products intended to be smoked, sniffed, sucked or chewed, in as much as they are, even partly, made of tobacco.

Article 2

1. Advertisements for cigarettes in the press and by means of bills and posters shall carry specific warnings alternating according to the following rules:

- each Member State shall draw up a list of warnings based on those listed in the Annex,
- the specific warnings so adopted shall be printed against a contrasting background on inserts and in such a way as to guarantee an equal frequency of display for each warning, allowing for a 5 % margin.

2. Advertising in the press and by means of bills and posters of tobacco products other than cigarettes shall carry the general warning: 'Tobacco seriously damages your health'.

3. Member States may stipulate that the warnings referred to in paragraphs 1 and 2 shall bear the name of the issuing authority.

4. The text of the warnings mentioned in paragraphs 1 and 2 shall cover a minimum of 10 % of the total advertising insert, excluding the name of any authority as referred to in paragraph 3. The percentage shall be raised to at least 15 % where the warning is in two languages and to at least 20 % where it is in three or more languages.

Article 3

1. The content of advertisements in the press and on bills and posters shall be restricted solely to the presentation of the packaging of the tobacco products, possibly with the addition of information on the features of the product.

HAS ADOPTED THIS DIRECTIVE:

Article 1

This Directive concerns the harmonization of the laws, regulations and administrative provisions of the Member States on authorized tobacco advertising in the press and by means of bills and posters.

Unchanged

Article 2

1. Advertisements for cigarettes in the press and by means of bills and posters shall carry specific warnings alternating according to the following rules:

- each Member State shall draw up a list of warnings based solely on those listed in the Annex,
- the specific warnings so adopted shall be printed horizontally against a contrasting background on inserts and in such a way as to guarantee an equal frequency of display for each warning, allowing for a 5 % margin.

2. Advertising in the press and by means of bills and posters of tobacco products other than cigarettes shall carry the general warning 'Tobacco seriously damages your health', printed horizontally against a contrasting background.

3. The warnings referred to in paragraphs 1 and 2 shall, when appearing in the press, be in the same language as that used in the publication and, in the case of bills and posters, shall be in the language or languages of the country in which such bills and posters are shown.

4. Member States may stipulate that the warnings referred to in paragraphs 1 and 2 shall bear the name of the issuing authority.

5. The text of the warnings mentioned in paragraphs 1 and 2 shall cover a minimum of 10 % of the total advertising insert, excluding the name of any authority as referred to in paragraph 3. The percentage shall be raised to at least 15 % where the warning is in two languages and to at least 20 % where it is in three or more languages.

Article 3

Unchanged

ORIGINAL TEXT

AMENDED PROPOSAL

2. Advertising in the press and by means of bills and posters which, whilst not directly mentioning the tobacco product, refers to a trade mark, emblem, symbol or other distinctive feature mainly used in connection with tobacco products shall be prohibited.

2. To prevent the provision in paragraph 1 of this Article from being circumvented, advertising in the press and by means of bills and posters which, whilst not directly mentioning the tobacco product, refers to a trade mark, emblem, symbol or other distinctive feature mainly used in connection with tobacco products shall be prohibited.

3. The preceding paragraph shall not apply when the identity of a tobacco trade mark with the trade mark of a product other than tobacco which is marketed by undertakings that are legally and financially distinct from one another is purely fortuitous.

Article 4

Member States shall prohibit all advertising for tobacco products in publications mainly intended for people under 18.

Unchanged

*Article 4**Article 5*

1. The Member States may not cite tobacco advertising as the reason for prohibiting or restricting the sale of newspapers, magazines and publications of a similar kind or the display of bills and posters which comply with this Directive.

Unchanged

Article 5

2. The provisions of this Directive shall not affect the right of Member States to introduce measures concerning tobacco advertising, in accordance with the Treaty, which they deem necessary to guarantee the health protection of their citizens provided that such measures do not imply modifications of the content or of the form of advertisements as provided by this Directive.

2. The Commission will report to the Council, before 31 December 1991, on the evolution of the situation in the Member States, notably following the implementation of this Directive, and at the same time will propose the necessary measures to guarantee the free circulation of goods aimed at for 31 December 1992.

Article 6

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 1991. They shall forthwith inform the Commission thereof.

Unchanged

Article 6

The provisions adopted pursuant to the first paragraph shall make express reference to this Directive.

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

Article 7

This Directive is addressed to the Member States.

Unchanged

Article 7

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ANNEX

LIST OF HEALTH WARNINGS, AS REFERRED TO IN ARTICLE 2 (1)

- (a) Warnings which must appear in the national lists:
1. Smoking causes cancer
 2. Smoking causes heart disease
- (b) Warnings from which the Member States may choose:
1. Smoking causes fatal diseases
 2. Smoking kills
 3. Pregnant women: smoking harms your baby
 4. Protect children from tobacco smoke
 5. Smoking damages the health of those around you
 6. Stopping smoking reduces the risk of serious diseases
 7. Smoking causes lung cancer, chronic bronchitis and other chest diseases
 8. More than . . . people die each year in . . . (name of the country) from lung cancer
 9. Every year . . . (name of nationals of a country) die in road accidents: . . . times more die from smoking
 10. Smokers die before their time
 11. Don't smoke if you want to stay healthy
 12. Save money: stop smoking
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