

COMMISSION OF THE EUROPEAN COMMUNITIES

COM(92) 196 final-SYN 194

Brussels, 30 April 1992

Amended proposal for a

COUNCIL DIRECTIVE

ON THE APPROXIMATION OF MEMBER STATES' LAWS,
REGULATIONS AND ADMINISTRATIVE PROVISIONS
ON ADVERTISING FOR TOBACCO PRODUCTS

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

**Amended proposal for a Council Directive
on advertising for tobacco products**

EXPLANATORY MEMORANDUM

On 15 May 1991, the Commission adopted and forwarded to the Council an amended proposal for a Council Directive on advertising for tobacco products⁽¹⁾

As described in the explanatory memorandum (recapitulation of the situation), this proposal presents an approach which differs substantially from the earlier proposal.

Consequently, the cooperation procedure has been reinstated (all phases).

The opinion of the Economic and Social Committee is expected shortly.

The European Parliament gave its opinion at first reading on 11 February 1992. Parliament's resolution, comprising 12 amendments, is favourable to the Commission proposal. The Commission accepts amendment No 10, which seeks to introduce a derogation from the ban on indirect advertising for any company whose brand or trademark has been registered for products other than tobacco products, but which has also marketed tobacco products, the annual turnover from which does not exceed half of the turnover from non-tobacco products of the same brand. The two cumulative conditions for the derogation from the ban on indirect advertising are designed to enable this derogation to be applied solely to companies whose non-tobacco products generate a turnover which is higher than for tobacco products of the same brand.

The Commission has not accepted the other amendments adopted by the EP for the following reasons:

- Amendment No 1: This amendment proposes that all recitals be numbered. The Commission does not think it appropriate to make this amendment at this stage.
- Amendments Nos 2, 3, 4, 5, 6, 8 and 18: These amendments introduce an element of repetitive wording whose aim is to consolidate points which the Commission considers are already stated sufficiently clearly in the text of the proposal.
- Amendment No 7: This would enable recognised organisations in any Member State set up to defend the interests of consumers or whose aims include combating tobacco consumption to be active in any other Member State. Article 4 of the proposal already recognises the part played by such organisations on the territory of each of the Member States. The Commission has, as part of its consumer protection policy, adopted a proposal for a directive providing for the field of action of such an organisation to be extended beyond the Member State which has recognised its legal personality.

(1) OJ C 167, 27.6.1991

- Amendment No 9: This calls on the Commission to present a report, one year after entry into force of this Directive and subsequently every two years, on the application and effects of the Directive. Under the "Europe against Cancer" programme, the Commission already presents an annual report on all action undertaken, assessing what has been achieved. The report on the application of this Directive forms part of this general report.

- Amendment No 14: This amendment expresses the view that the Member States have not done enough to make the public aware of the health hazards of tobacco products. The Commission takes the view that this question goes beyond the scope of this Directive, which is concerned with advertising on the part of companies producing or marketing tobacco products.

1. Commentary on the individual articles

Article 1: unchanged

Article 2

Paragraph 2a (new)

This is a new paragraph. It lays down, subject to certain conditions, the terms for derogation from the ban set out in para. 2. It enables a company to advertise non-tobacco products marketed under the same brand or trademark as a tobacco product under two conditions:

- a) the annual turnover from tobacco products must not exceed half the annual turnover from non-tobacco products;
- b) the brand or trademark in question must have been originally registered for non-tobacco products.

Articles 3, 4, 5, 6 and 7: unchanged.

AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE
ON THE APPROXIMATION OF MEMBER STATES' LAWS,
REGULATIONS AND ADMINISTRATIVE PROVISIONS ON
ADVERTISING FOR TOBACCO PRODUCTS⁽¹⁾

THE COUNCIL OF THE EUROPEAN
COMMUNITIES,

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

Having regard to the proposal
from the Commission,

In cooperation with the
European Parliament⁽²⁾,

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

Whereas there are differences
between the laws, regulations
and administrative provisions
of the Member States on
advertising for tobacco
products; whereas such
advertising transcends the
borders of the Member States
and whereas such differences
are likely to constitute
barriers to free circulation of
products, means of support for
this advertising, and the free
provision of services in this
area, as well as to distort
competition and thus impede the
establishment and operation of
the Internal market;

Unchanged.

(1) OJ C116, 11.5.1990, p.7

(2)

(3)

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

Unchanged.

Whereas, in conformity with Article 100a(3) of the Treaty, the Commission is obliged, in its proposals under paragraph 1 concerning health, safety, environmental protection and consumer protection, to take a high level of protection as a basis ;

Unchanged.

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

Unchanged.

Whereas, given the interdependence between the various forms of advertising, printed, written, oral, by radio and television broadcast and cinema, and to prevent any risk of distorting competition and circumventing the rules and regulations; such harmonization should cover all advertising forms and media apart from television advertising, which is already covered by Council Directive 89/522/EEC⁽⁴⁾;

Unchanged.

(4) OJ L 298, 17.10.1989

Whereas the European Council held on 28 and 29 June 1985 in Milan stressed the importance of launching a European action programme against cancer;

Unchanged.

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⁽⁵⁾ 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;

Unchanged.

Whereas tobacco consumption constitutes a very important death factor each year in the Member States of the European Community;

Unchanged.

Whereas advertising plays a fundamental role in promoting smoking, particularly among young people;

Unchanged.

(5) OJ C 184, 23.7.1986, p.19

Whereas, at the Council of Ministers meeting on 3 December 1990, the Member States came out in favour of full harmonization of advertising for tobacco products;

Unchanged.

Whereas, given the current state of Member States' national legislation and bearing in mind their likely further development, full harmonization can only take place on the basis of a complete ban on advertising for tobacco products;

Unchanged.

Whereas the tobacco industry must be able to inform consumers of the various types and brands of tobacco products in compliance with market laws and the rules of competition;

Unchanged.

Whereas, however, the use of tobacco is extremely damaging to health and such information should therefore be restricted to interested parties only, i.e. the consumers of tobacco products;

Unchanged.

Whereas advertising must, to this effect, be authorized only in establishments specializing in the sale of tobacco and with enclosed indoor premises for serving their customers;

Unchanged.

Whereas by retaining the possibility for displaying advertising within such outlets, advertising can thus fulfill its essential purpose; whereas it will thus be possible to guarantee the protection of the population in general and of young people in particular;

Unchanged.

Whereas all forms of indirect advertising produce the same effects as straight advertising for tobacco products; whereas a ban should therefore be imposed on such indirect forms of advertising which, while not actually mentioning the tobacco product, use trade marks, emblems, symbols or other distinctive elements associated with tobacco products;

Unchanged.

Whereas persons or organizations who, under national law, have a legitimate interest in the matter must be given the opportunity to take action against any advertising which does not conform to the rules established by the Member States in application of this Directive.

Unchanged.

HAS ADOPTED THIS DIRECTIVE:

Article 1

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

Advertising : any form of communication, printed, written, oral, by radio and television broadcast and cinema, with the aim or direct or indirect effects of promoting a tobacco product, including advertising which, while not specifically mentioning the product, tries to circumvent the advertising ban by using brand names, trade marks, emblems or other distinctive features of tobacco products.

Unchanged

Tobacco products : All products intended to be smoked, sniffed, sucked or chewed, in as much as they are, even partly, made of tobacco.

Unchanged

Tobacco sales outlets : establishments specializing in the sale of tobacco and with enclosed indoor premises for serving customers. Shops with several counters for a range of different goods on sale are excluded from this definition.

Unchanged

Article 2

1. Without prejudice to Directive 89/522/EEC, all forms of advertising for tobacco products shall be banned in the territory of the Community.

2. Member States shall ensure that brands or trademarks whose reputation is mainly associated with a tobacco product are not used for advertising in other areas, if this brand or trademark is being used for advertising of a tobacco product.

Article 2

Unchanged.

Unchanged

- 2.a The provisions of paragraph 2 shall not affect a company's right to advertise under its brand or trademark products other than tobacco products on condition that:
 - a) the turnover from tobacco products marketed under the same brand or trademark, even by a different company, does not exceed half the turnover from non-tobacco products of this brand;
 - b) the brand or trademark was first registered for non-tobacco products;

3. Member States shall ensure that new tobacco products do not make use of the reputation acquired by certain brands or trademarks already used in association with products other than tobacco products.

Unchanged.

4. Any free distribution of tobacco products shall be banned.

Unchanged.

Article 3

Member States may authorize advertising within tobacco sales outlets, provided that it is not visible from outside the premises.

Article 3

Unchanged.

Article 4

Member States shall ensure that there exists appropriate and effective means to control the implementation of the national measures adopted in accordance with this Directive. These means must include provisions ensuring that persons or organizations which, according to the national legislation, can justify a legitimate interest in the suppression of advertising which is incompatible with this Directive, may take legal action against such advertising or bring such advertising to the attention of an administrative body competent either to pronounce on complaints or to institute the appropriate legal proceedings.

Article 4

Unchanged.

Article 5

This Directive shall not preclude Member States from introducing measures concerning advertising for tobacco products, in accordance with the Treaty, which they deem necessary to guarantee the health protection of their citizens, provided that such measures comply with this Directive.

Article 5

Unchanged.

Article 6

1. Member States shall adopt and publish by 31 July 1992 the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

When Member States adopt these provisions, these shall include a reference to this Directive or shall be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by Member States.

2. Member States shall apply the provisions referred to in paragraph 1 from 1 January 1993.

Article 6

Unchanged.

Article 7

This Directive is addressed to the Member States.

Article 7

Unchanged.

ISSN 0254-1475

COM(92) 196 final

DOCUMENTS

EN

05

Catalogue number : CB-CO-92-203-EN-C

ISBN 92-77-43943-2

Office for Official Publications of the European Communities
L-2985 Luxembourg