

# COMMISSION OF THE EUROPEAN COMMUNITIES

COM(89) 163 final - SYN 194

Brussels, 31 March 1989

**PROPOSAL FOR A COUNCIL DIRECTIVE  
CONCERNING THE APPROXIMATION OF THE LAWS, REGULATIONS  
AND ADMINISTRATIVE PROVISIONS OF THE MEMBER STATES  
RELATING TO THE ADVERTISING OF TOBACCO PRODUCTS IN THE PRESS AND  
BY MEANS OF BILLS AND POSTERS**

(presented by the Commission)

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EXPLANATORY MEMORANDUM

This proposal for a Council directive concerns the advertising of tobacco products in the press and by means of bills and posters. Radio and television advertising is already covered by Commission proposals concerning the Community's audiovisual policies (documents COM(86)146 final and COM(86)154 final). Article 9 of this proposed directive provides for a complete ban on the advertising of cigarettes and other tobacco products on radio and television.

1. BACKGROUND

National provisions governing advertising in the press and by means of bills and posters are as follows :

- a) a total ban on advertising : Italy and Portugal apply a total ban on the advertising of tobacco products;
- b) a ban on advertising in publications aimed at young people. In Belgium, this applies to periodicals intended for children; in Ireland such advertising is banned in magazines intended essentially for young people under 18; in Luxembourg it applies to papers and periodicals intended for minors. A similar ban applies in Italy and Portugal. It should be noted that advertisements for tobacco products in the United Kingdom may not feature typical cult figures of the young (cowboys, etc.) or persons under 25;
- c) partial restrictions on advertising in the press and by means of bills and posters. Where it is not banned outright the advertising of tobacco products is either regulated by legislation or covered by agreements between the tobacco industry and the Ministry of Health (Denmark, Spain, the Netherlands, the United Kingdom).

In Belgium, France and Ireland advertisements may only show the packaging and certain factual information regarding the brand. This is designed to prevent any misleading information or impression.

Lastly, in six countries - Belgium, Denmark, the Federal Republic of Germany, Ireland, the Netherlands and the United Kingdom - advertising of tobacco products must incorporate the compulsory warning which appears on the packaging of these products. The minimum surface area to be occupied by this warning is stipulated in Ireland (15 %) and in the United Kingdom (17,5 %). In Ireland, the law also stipulates that the Ministry of Health may prohibit the distribution of foreign publications which do not comply with the Irish provisions.

## 2. BASIS FOR COMMUNITY ACTION

Nationals of the twelve Member States are increasingly drawn, for purposes of learning languages, or for professional reasons, to newspapers, magazines and publications from other Community countries. Similarly, advertising by means of bills and posters, which in all the Member States conforms to the same rules as those governing advertising in the press, is increasingly cross-frontier in nature, since nowadays, advertising of tobacco products is centralized on the European and even on the international level. It is therefore important to ensure, in accordance with public health requirements within the meaning of the EEC Treaty, to promote the free movement of such publications and to prevent obstacles to trade arising as a result of these publications and bills and posters failing to comply with national provisions on tobacco advertising.

The removal by 1992 of all obstacles to trade therefore requires the harmonization of national provisions on the advertising of tobacco products in the press and by means of bills and posters. The removal of these obstacles will ensure free circulation of advertising of tobacco products in the forms covered by this proposal and a distortion free competition between advertising in the press and by means of bills and posters. Article 100A, paragraph 3 of the Single Act also states "the Commission, in its proposals laid down in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection".

In view of the current state of legislation in the majority of the Member States, the European Commission notes that it is at the present place impossible simply to impose a ban on tobacco advertising in the press and by means of bills and posters. This directive, which provides for a partial harmonisation, is based on the most advanced system of governing advertising permitted, namely the Irish one : unambiguous warnings must appear on an alternating basis on a substantial area of the advertising space. For reasons of continuity and consistency, the warnings shall be the same as those laid down in the proposal for a Council Directive on the labelling of tobacco products.

Moreover, the proposal for a Directive shall also be aligned on the legislation in force or in preparation, maintaining the ban on indirect advertising and limiting the content of authorized advertising to showing only the tobacco product in question since the purpose is to avoid any association being made between smoking and professional or sexual advantage, the enjoyment of wide open spaces, fresh air, adventure and freedom.

Member States may ban advertising for tobacco products, either completely or in certain cases or at particular places. In this respect, in accordance with Irish practice, this proposal for a Directive also bans advertising in publications intended mainly for young people under 18.

### 3. COMMENTS ON THE INDIVIDUAL ARTICLES

**Article 1** : this article defines the scope as well as the term "tobacco product". The definition of the term "tobacco product" corresponds to the one already given in the previous proposals of directive in this field.

**Article 2** : this article defines the rules on the incorporation of warnings in tobacco advertising inserts. For reasons of continuity and consistency, the warnings shall be the same as those laid down in the proposal for a Council Directive on the labelling and advertising of tobacco products.

The minimum percentage of the surface to be covered refers exclusively to the surface actually occupied by the words used in the text of the warning itself.

**Article 3** : paragraph 1 restricts the content of the advertising message to factual details concerning the features of the product (tar, nicotine yields, etc.) to prevent misleading advertising.

Similarly to the proposal of directive concerning the pursuit of broadcasting activities (COM(88)154 final). Paragraph 2 prohibits the indirect advertising of tobacco product.

**Article 4** : the article prohibits direct or indirect advertising of tobacco products in publications intended for young people as is already the case in Belgium, Ireland, Luxembourg, Italy and Portugal. To avoid any problems in implementing this Directive, a specific age has been laid down (18 years).

**Article 5** : the article safeguards the free circulation of publications complying with this Directive with regard to tobacco advertising in the press. It does not, of course, prohibit the marketing of publications which do not contain any tobacco advertising. On the contrary, it authorises Member States who wish to introduce new restrictions (as for example ban of advertising through posters in some places or even a total ban of advertising in press and by means of bills and posters). However, when authorised, those forms of advertising must comply with the rules provided for in the present directive.

**Article 6 and 7** : these are standard articles.

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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, (1)

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

Whereas these rules must take due account of public health protection, in particular in relation to young people; 1

Whereas the European Council held on 28 and 29 June 1985 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 (4) 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 by the use of these products is important for health protection; for reasons of consistency, the warnings shall be the same as those laid down in the proposal for a Council Directive on the labelling of tobacco products (5);

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(1)

(2)

(3)

(4) OJ C184, 23.07.1986, p. 19

(5)

Whereas it is necessary to prohibit all indirect forms of advertising which, whilst not directly mentioning the tobacco products, seek to promote tobacco products by using logos, symbols of other distinctive symbols of tobacco products;

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

HAS ADOPTED THIS DIRECTIVE

#### Article 1

1. The objective of this directive is the harmonisation of the laws, regulations and administrative provisions of the Member States on tobacco advertising in the press and by means of bills and posters, taking as a base a high level of health protection.
2. 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 adopted shall be printed against a contrasting background on inserts in such a way as to guarantee an equal frequency of display for each warning, allowing for a 5 % margin of tolerance.
2. The advertising in the press and by means of bills and posters of tobacco products other than tobacco products shall carry the general warning "Tobacco seriously damages your health".
3. The 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 warning 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 % for countries with two official languages and to at least 20 % for countries with three official languages.

#### Article 3

1. The content of the advertisement in the press and on posters and billboards 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.
2. Advertising in the press or by means of bills and posters which, whilst not directly mentioning the tobacco product, refers to an emblem, symbol or other distinctive feature mainly used for tobacco products shall be prohibited.

**Article 4**

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

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

**Article 6**

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

The provisions adopted pursuant to paragraph 1 expressly refer to this directive.

**Article 7**

This directive is addressed to the Member States.

Done at Brussels

The President  
For the Council

ANNEX

LIST OF HEALTH WARNINGS, AS REFERRED TO IN ARTICLE 3(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.



PROPOSITION DE DIRECTIVE DU CONSEIL  
CONCERNANT LE RAPPROCHEMENT DES DISPOSITIONS LEGISLATIVES,  
REGLEMENTAIRES ET ADMINISTRATIVES DES ETATS MEMBRES EN MATIERE  
DE PUBLICITE EN FAVEUR DES PRODUITS DU TABAC  
PAR VOIE DE PRESSE ET D'AFFICHES

FICHE D'IMPACT SUR LA COMPETITIVITE ET L'EMPLOI

1. Quelle est la justification principale de la mesure ?  
Unification du marché intérieur
2. Caractéristiques des entreprises concernées. En particulier :
  - a. Y a-t-il un grand nombre de PME ?  
Certaines des agences de publicité sont des PME.
  - b. Note-t-on des concentrations dans des régions :
    - éligibles aux aides régionales des Etats membres ? Non
    - éligibles au Feder ? Non
3. Quelles sont les obligations imposées directement aux entreprises ?
  - a. l'introduction d'un avertissement médical dans chaque encart publicitaire en faveur des produits du tabac par voie de presse ou d'affiches (mesure déjà effective dans 6 Etats membres, l'Italie et le Portugal interdisant déjà toute forme de publicité);
  - b. l'interdiction de la publicité dans les revues destinées aux jeunes (mesure déjà effective dans 5 Etats membres);
  - c. l'interdiction de la publicité par voie de presse et d'affiches, lorsque celle-ci se réfère à un emblème, symbole ou autre élément distinctif, utilisé pour des produits du tabac.
4. Quelles sont les obligations susceptibles d'être imposées indirectement aux entreprises via les autorités locales ?  
Aucune
5. Y a-t-il des mesures spéciales pour les PME ? Non
6. Quel est l'effet prévisible :
  - a. sur la compétitivité des entreprises ? Le développement formidable du secteur de la publicité des dernières années ne semble pas avoir été entravé par des mesures analogues existant déjà dans plusieurs Etats membres.
  - b. sur l'emploi ? Aucun impact direct significatif
7. Les partenaires sociaux ont-ils été consultés ? Quels sont leurs avis ?  
Les hauts fonctionnaires de la santé des Etats membres ont été consultés et leurs principales observations ont été prises en compte.