

DIRECTIVE 98/43/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
of 6 July 1998
on the approximation of the laws, regulations and administrative provisions of the
Member States relating to the advertising and sponsorship of tobacco products

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF
 THE EUROPEAN UNION,

Having regard to the Treaty establishing the European
 Community, and in particular Article 57(2), Article 66
 and Article 100a thereof,

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

Having regard to the opinion of the Economic and Social
 Committee ⁽²⁾,

Acting in accordance with the procedure laid down in
 Article 189b of the Treaty ⁽³⁾,

(1) Whereas there are differences between the Member
 States' laws, regulations and administrative
 provisions on the advertising and sponsorship of
 tobacco products; whereas such advertising and
 sponsorship transcend the borders of the Member
 States and the differences in question are likely to
 give rise to barriers to the movement between
 Member States of the products which serve as the
 media for such advertising and sponsorship and to
 freedom to provide services in this area, as well as
 distort competition, thereby impeding the
 functioning of the internal market;

(2) Whereas those barriers should be eliminated and,
 to this end, the rules relating to the advertising and
 sponsoring of tobacco products should be
 approximated, whilst leaving Member States the
 possibility of introducing, under certain conditions,
 such requirements as they consider necessary in
 order to guarantee the protection of the health of
 individuals;

(3) Whereas, in accordance 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 as a base a high level of protection;

(4) Whereas this Directive must therefore take due
 account of the health protection of individuals, in
 particular in relation to young people, for whom
 advertising plays an important role in tobacco
 promotion;

(5) Whereas in order to ensure the proper functioning
 of the internal market the Council adopted, on the
 basis of Article 100a, Directive 89/622/EEC ⁽⁴⁾ and
 Directive 90/239/EEC ⁽⁵⁾ concerning the labelling
 of tobacco products and the maximum tar yield of
 cigarettes, respectively;

(6) Whereas advertising relating to medicinal products
 for human use is covered by Directive
 92/28/EEC ⁽⁶⁾; whereas advertising relating to
 products intended for use in overcoming addiction
 to tobacco does not fall within the scope of this
 Directive;

(7) Whereas this Directive will not apply to
 communications intended exclusively for
 professionals in the tobacco trade, the presentation
 of tobacco products offered for sale and the
 indication of their prices, and, depending on sales
 structures, advertising directed at purchasers at
 tobacco sales outlets and the sale of third-country
 publications which do not satisfy the conditions
 laid down in this Directive, provided, however,
 that they comply with Community law and the
 Community's obligations at international level;
 whereas it is for the Member States, where
 necessary, to take appropriate measures in these
 areas;

(8) Whereas, given the interdependence between the
 various forms of advertising — oral, written,

⁽¹⁾ OJ C 129, 21.5.1992, p. 5.

⁽²⁾ OJ C 313, 30.11.1992, p. 27.

⁽³⁾ Opinion of the European Parliament of 11 February 1992
 (OJ C 67, 16.3.1992, p. 35), confirmed under the Article
 189b procedure on 3 December 1993, Council Common
 Position of 12 February 1998 (OJ C 91, 26.3.1998, p. 34)
 and Decision of the European Parliament of 13 May 1998
 (OJ C 167, 1.6.1998). Council Decision of 22 June 1998.

⁽⁴⁾ OJ L 359, 8.12.1989, p. 1. Directive as amended by
 Directive 92/41/EEC (OJ L 158, 11.6.1992, p. 30).

⁽⁵⁾ OJ L 137, 30.5.1990, p. 36.

⁽⁶⁾ OJ L 113, 30.4.1992, p. 13.

printed, on radio or television or at the cinema — and in order to prevent any risk of distorting competition or circumventing rules and regulations, this Directive must cover all forms and means of advertising apart from television advertising already covered by Council Directive 89/552/EEC of 3 October 1989 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities ⁽¹⁾;

(9) Whereas all forms of indirect advertising and sponsorship, and likewise free distribution, have the same effects as direct advertising, and whereas they should, without prejudice to the fundamental principle of freedom of expression, be regulated, including indirect forms of advertising which, while not mentioning the tobacco product directly, use brand names, trade marks, emblems or other distinctive features associated with tobacco products; whereas, however, Member States may defer application of these provisions to allow time for commercial practices to be adjusted and sponsorship of tobacco products to be replaced by other suitable forms of support;

(10) Whereas, without prejudice to the regulation of the advertising of tobacco products, Member States remain free to allow the continued use, under certain conditions, for the advertising of products or services other than tobacco products, of a brand name which was already in use in good faith both for such products or services and for tobacco products before this Directive entered into force;

(11) Whereas existing sponsorship of events or activities which Member States may continue to authorise for a period of eight years after the entry into force of this Directive ending not later than 1 October 2006 and which will be subject to voluntary-restraint measures and decrease of expenditure levels during the transitional period should include all means of achieving the aims of sponsorship as defined in this Directive;

(12) Whereas Member States must take adequate and effective steps to ensure control of the implementation of national measures adopted pursuant to this Directive in compliance with their national legislation,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

Article 2

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

1. 'tobacco products': all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco;
2. 'advertising': any form of commercial communication with the aim or the direct or indirect effect of promoting a tobacco product, including advertising which, while not specifically mentioning the tobacco product, tries to circumvent the advertising ban by using brand names, trade marks, emblems or other distinctive features of tobacco products;
3. 'sponsorship': any public or private contribution to an event or activity with the aim or the direct or indirect effect of promoting a tobacco product;
4. 'tobacco sales outlet': any place where tobacco products are offered for sale.

Article 3

1. Without prejudice to Directive 89/552/EEC, all forms of advertising and sponsorship shall be banned in the Community.
2. Paragraph 1 shall not prevent the Member States from allowing a brand name already used in good faith both for tobacco products and for other goods or services traded or offered by a given undertaking or by different undertakings prior to 30 July 1998 to be used for the advertising of those other goods or services.

However, this brand name may not be used except in a manner clearly distinct from that used for the tobacco product, without any further distinguishing mark already used for a tobacco product.

3. (a) Member States shall ensure that no tobacco product bears the brand name, trade mark,

⁽¹⁾ OJ L 298, 17.10.1989, p. 23. Directive as last amended by Directive 97/36/EC (OJ L 202, 30.7.1997, p. 60).

emblem or other distinctive feature of any other product or service, unless the tobacco product has already been traded under that brand name, trade mark, emblem or other distinctive feature on the date referred to in Article 6(1);

- (b) the ban provided for in paragraph 1 may not be circumvented, in respect of any product or service placed or offered on the market as from the date laid down in Article 6(1), by the use of brand names, trade marks, emblems and other distinguishing features already used for a tobacco product.

To this end, the brand name, trade mark, emblem and any other distinguishing feature of the product or service must be presented in a manner clearly distinct from that used for the tobacco product.

4. Any free distribution having the purpose or the direct or indirect effect of promoting a tobacco product shall be banned.

5. This Directive shall not apply to:

- communications intended exclusively for professionals in the tobacco trade,
- the presentation of tobacco products offered for sale and the indication of their prices at tobacco sales outlets,
- advertising aimed at purchasers in establishments specialising in the sale of tobacco products and on their shop-fronts or, in the case of establishments selling a variety of articles or services, at locations reserved for the sale of tobacco products, and at sales outlets which, in Greece, are subject to a special system under which licences are granted for social reasons ('periptera'),
- the sale of publications containing advertising for tobacco products which are published and printed in third countries, where those publications are not principally intended for the Community market.

Article 4

Member States shall ensure that adequate and effective means exist of ensuring and monitoring the implementation of national measures adopted pursuant to this Directive. These means may include provisions

whereby persons or organisations with a legitimate interest under national law in the withdrawal of advertising which is incompatible with this Directive may take legal proceedings against such advertising or bring such advertising to the attention of an administrative body competent to give a ruling on complaints or to institute the appropriate legal proceedings.

Article 5

This Directive shall not preclude Member States from laying down, in accordance with the Treaty, such stricter requirements concerning the advertising or sponsorship of tobacco products as they deem necessary to guarantee the health protection of individuals.

Article 6

1. Member States shall bring into force the laws, regulations, and administrative provisions necessary to comply with this Directive not later than 30 July 2001. They shall forthwith inform the Commission thereof.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.

2. Member States shall communicate to the Commission the text of the main provisions of domestic law which they adopt in the field covered by this Directive.

3. Member States may defer the implementation of Article 3(1) for:

- one year in respect of the press,
- two years in respect of sponsorship.

In exceptional cases and for duly justified reasons, Member States may continue to authorise the existing sponsorship of events or activities organised at world level for a further period of three years ending not later than 1 October 2006, provided that:

- the sums devoted to such sponsorship decrease over the transitional period,
- voluntary-restraint measures are introduced in order to reduce the visibility of advertising at the events or activities concerned.

Article 7

The Commission shall submit to the European Parliament, the Council and the Economic and Social Committee not later than 30 July 2001, and subsequently every two years, a report on the implementation of this Directive, with particular reference to the implementation and effects of Article 3(2) and (3) and Article 6(3). Where appropriate, it shall submit proposals for the adaptation of this Directive to suit developments identified in the report. Such adaptation shall not affect the periods provided for in Article 6(3).

Article 8

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

Article 9

This Directive is addressed to the Member States.

Done at Brussels, 6 July 1998.

For the European Parliament

The President

J. M. GIL-ROBLES

For the Council

The President

R. EDLINGER