

II

(Preparatory Acts)

COMMISSION

Amended proposal for a Council Directive on the approximation of Member States' laws, regulations and administrative provisions on advertising for tobacco products ⁽¹⁾

*(92/C 129/04)**COM(92) 196 final — SYN 194**(Submitted by the Commission pursuant to Article 149 (3) of the EEC Treaty on 30 April 1992)*

⁽¹⁾ OJ No C 167, 27. 6. 1991, p. 3.

ORIGINAL PROPOSAL

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,

Having regard to the opinion of the Economic and Social Committee,

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;

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Unchanged

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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;

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;

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

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 89/552/EEC ⁽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 ⁽²⁾ 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 tobacco consumption constitutes a very important death factor each year in the Member States of the European Community;

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

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;

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⁽¹⁾ OJ No L 298, 17. 10. 1989, p. 23.

⁽²⁾ OJ No C 184, 23. 7. 1986, p. 19.

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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;

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;

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;

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;

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

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;

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,

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

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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;

tobacco products: all products intended to be smoked, sniffed, sucked or chewed, inasmuch as they are, even partly, made of tobacco;

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.

Article 2

1. Without prejudice to Directive 89/552/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 trade mark is being used for advertising of a tobacco product.

2a. The provisions of paragraph 2 shall not affect a company's right to advertise under its brand or trade mark products other than tobacco products on condition that:

(a) the turnover from tobacco products marketed under the same brand or trade mark, even by a different company, does not exceed half the turnover from non-tobacco products of this brand;

(b) the brand or trade mark 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 trade marks already used in association with products other than tobacco products.

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

Article 3

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

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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 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 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 7

This Directive is addressed to the Member States.
