

Questions and Answers on tobacco advertising

1. What is the proposed directive about?

This proposal for a Directive of the European Parliament and of the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising of tobacco products and related sponsorship is intended to regulate the advertising of tobacco products and related sponsorship, apart from that on television, which is already covered by other Community legislation (Directive 89/552/EC, known as the Television without frontiers Directive). It also regulates to the extent necessary for the completion of the Internal Market the rules concerning tobacco advertising using information society services, and free distribution of tobacco products likely to undermine these provisions.

It is intended to replace Directive 98/43/EC of 6 July 1998 which has been annulled by the Court of Justice of the European Communities¹.

It also takes account of the legislation of the Member States and of the development of international rules in this matter. It is intended to approximate the laws, regulations and administrative provisions of the Member States in order to eliminate barriers to the functioning of the Internal Market, with the objective of ensuring the free movement of goods and services which respect the rules of the directive.

This proposal does not deal with issues such as indirect advertising, monitoring of tobacco companies' expenditures on advertising, or vending machines, which are dealt with by a proposal for a Council Recommendation based on Articles 152 and 153 of the Treaty (see [IP/02/873](#)). The Commission's proposal for a Council Recommendation on the prevention of smoking and on initiatives to improve tobacco control is on the Council agenda for adoption on 2 December 2002.

The regulation of tobacco advertising and sponsorship at Member State level is motivated by concern at the link between tobacco consumption and promotion. The prevention of tobacco consumption is a public health priority in Member States, and many have chosen to limit and regulate tobacco promotion in order to reduce the attraction of this addictive product. In doing so, the resulting variation in national laws and regulations has given rise to differences in treatment of economic operators across the Internal Market.

2. What is the legal basis?

This proposal is based on Articles 47(2), 55 and 95 of the Treaty, taking as a basis a high level of public health protection. Account is also taken of public health issues raised by the Member States, which have been brought to the attention of the Commission (Article 95 paragraph 8).

¹ Case C-376/98 of 5 October 2000, *Germany v Parliament and Council*.

In the drafting of this proposal, the Commission has taken due account of the above-mentioned ruling of the Court of Justice. This judgement annulled Directive 98/43/EC on tobacco advertising and clarified the requirements for the adoption of Directives under the legal basis provided by Article 95 of the EC Treaty².

3. What are the laws in place in Member States?

Most Member States have adopted legislative measures to regulate tobacco advertising and related sponsorship. Others are developing legislative initiatives in this field, after the adoption of the previous Directive. The scope of this national legislation varies greatly. However, all Member States have transposed Directive 89/552/EEC which imposes a prohibition on television advertising of tobacco products (Article 13 and 17).

Two categories of countries may be distinguished if one compares the national legislation on advertising of tobacco products and related sponsorship.

3.1. Limited restrictions on tobacco advertising

3.1.1. Luxembourg³

Advertising is allowed only in sales outlets, in the press and under certain conditions on posters. There are restrictions on advertising content and health warnings are compulsory.

3.1.2. Sweden⁴

All forms of tobacco products marketing must be moderate, e.g. it is not possible to advertise outdoors in public places, or in indoor places attended mostly by people under 20 years of age. Free distribution and sponsoring are subject to the same condition of moderation. Commercial advertising in the press, TV and radio are prohibited insofar as the advertising is aimed at marketing tobacco products to consumers.

A ban on indirect advertising is planned (it requires however an amendment to the Freedom of the Press Act).

3.1.3. Spain⁵

Tobacco advertising is only prohibited on TV and in places where tobacco sales or consumption are prohibited. Sponsorship of TV programmes by persons or companies is banned if their principal activity is the production or sale of products for which advertising is prohibited. Some Autonomous Communities go further, prohibiting for instance advertising in programmes or publications destined for minors, or outdoor advertising, or free distribution (for minors or for everybody).

3.1.4. Greece⁶

Direct or indirect tobacco advertising is prohibited on TV and radio. In other media – cinemas or press – tobacco advertising is possible only if it carries a health warning. Tobacco products advertising is forbidden in health care services, educational establishments, youth centres and athletic facilities.

² See paragraphs 98, 100, 111 and 117 of the judgement.

³ Act of 24-03-1989 on restriction of tobacco advertising and prohibition of smoking in certain places. Règlement grand-ducal d'exécution of 6-03-1995.

⁴ Tobacco Act (1993:581) issued in Stockholm, June 3, 1993.

⁵ National legislation: Act n°34/1988 on advertising, Act n°25/1994.

⁶ Two Ministerial Decisions of 29 May 1989 concerning tobacco advertising.

3.1.5. Germany⁷

Tobacco advertising on TV and on radio is prohibited. For other media, restrictions exist on the content of this advertising: it cannot carry statements or descriptions which could give the impression that the use of tobacco products is harmless for health; it cannot be destined to a young public; it cannot recommend smoking it cannot present tobacco products as natural. It is also forbidden to promote tobacco products by any means that are misleading or deceptive.

3.1.6. Austria⁸

Tobacco advertising is prohibited in certain cases: on TV and radio, in cinema-shows accessible to young people, within the view of schools and youth-centres, or when it is specially addressed to young people. Some restrictions are put on the advertising of certain cigarettes (without filter...) or on the content of this advertising (featuring young smoking models or using comics...). Free distribution of tobacco products is prohibited, as are the distribution of articles having a connection to tobacco products to children or adolescents or the distribution of advertising-articles destined for children. Moreover, advertising for tobacco products must not be combined with advertising for other products; advertising by posters, print media or cinema has to carry a health warning. Restrictions must not be evaded by indirect advertising for tobacco products that are made up like tobacco products. Sponsorships allowed when in compliance with the above-mentioned restrictions.

3.2. Total ban on tobacco advertising

3.2.1. France⁹

France has regulation based on a total (direct and indirect) advertising ban on tobacco products, although exceptions are permissible (point-of-sale advertising, under strict conditions). The prohibition is extended to sponsorship and free distribution. All tobacco products carry a health warning.

3.2.2. Italy¹⁰

All forms of direct or indirect advertising of tobacco products and other products (with a symbol of a tobacco product) whose purpose or effect is to promote tobacco are prohibited. A health warning shall figure on tobacco packaging. However, sponsorship of events for the benefit of tobacco products is not regulated.

3.2.3. Portugal¹¹

Portugal applies a total ban on all forms of advertising of tobacco products, through whatever media under the jurisdiction of the Portuguese State (derogation for certain sporting events until 2005). Sponsorship of TV programmes by persons or companies whose principal activity is the production or sale of tobacco products is prohibited.

⁷ Act of 9.09.1997, modified on 20.07.2000.

⁸ Tobacco Act (BGBl. 431/1995).

⁹ Act n° 91-32 of 10-01-1991 on control of tobacco abuse and alcohol abuse (so-called Loi Evin).

¹⁰ Act n° 52 of 22-02-1983, D. M. n° 425 of 30-11-1991.

¹¹ Decree n° 421/80 of 30-09-1980, Decree n° 226/83 of 23-05-1983, amended by Decree n° 330/90 of 23-10-1990 (Advertising Rule) and by Decree n° 275/98 of 9-09-1998.

3.2.4. Finland¹²

Direct or indirect advertising of tobacco, tobacco products, tobacco imitations and smoking accessories is prohibited. Indirect advertising includes promotion of tobacco products through advertising of other commodities using an identifiable symbol of a tobacco product; associating tobacco with the sale of other products or provision of services is prohibited. This Act does not apply to advertisements in foreign printed publications whose main purpose is not the advertising of tobacco.

3.2.5. United Kingdom¹³

The Tobacco Advertising and Promotion Bill bans advertising and promotion whose purpose or effect is to promote a tobacco product; it includes advertising in press or electronic media, free distribution, brand sharing and sponsorship (if the purpose or the effect is to promote a tobacco product). Main exemptions concern advertising at points of sale and communications made to persons involved in the tobacco trade .

3.2.6. Ireland¹⁴

All forms of advertising of tobacco products or of the manufacturers' name or brand image are prohibited, including point of sale advertising. The sale, distribution or preparation of material containing tobacco advertising are offences. All forms of sponsorship are prohibited, including sponsorship which does not directly lead to advertising.

3.2.7. Netherlands

All forms of direct and indirect tobacco marketing, advertising, promotion and sponsorship are banned (exemption for limited forms of advertising at points of sale). Derogations shall concern the time application for sponsorship and advertising in press.

3.2.8. Denmark¹⁵

All forms of advertising of tobacco products are prohibited. Main exemptions relate to the notices addressed to specialists within the industry; advertising at points of sale (under strict conditions); advertisements in publications published in other countries, unless the main objective is to advertise tobacco in Denmark; the use of a name, used before 13/12/2000 both for tobacco products and for other products to advertise such other products in a form in which it differs clearly from the appearance of the name of the tobacco product; the use of a name, which is well-known from tobacco products, in advertising of other products and services, provided that the other product or service is only marketed in a restricted geographical area. Sponsorship for the benefit of tobacco products is prohibited, as is any form of distribution aimed at promoting the sale of tobacco products.

3.2.9. Belgium¹⁶

Tobacco sponsorship and advertising are prohibited either in direct or indirect forms (free distribution and brand diversification products advertising are considered as indirect forms of advertising). The exceptions are related to outlet sales and publications printed outside Belgium if their principal market is not Belgium.

¹² Act on Measures to reduce tobacco smoking, 693/1976 (amendments since 1976).

¹³ Advertising and Promotion Act 2002 of 7/11/2002

¹⁴ Public Health (Tobacco) Act 2002 N. 6/2002

¹⁵ Bill n° L134, introduced on 13 December 2000 (Proposal for an Act prohibiting tobacco advertising), planned to enter into force on 1 July 2001.

¹⁶ Act of 10.12.1997 on tobacco advertising.

4. What are the international recommendations and conventions?

These measures are in line with Recommendations made by the Commission's Advisory Committee for Cancer Prevention¹⁷, and those of the World Health Assembly of the WHO¹⁸. The measures proposed also take account of the Commission's Consumers Committee opinion on a socially responsible Community tobacco policy adopted on 14 June 1998.

Attention is particularly drawn to the work on smoking prevention underway in the World Health Organisation (WHO). The 52nd World Health Assembly on 24 May 1999 decided to establish an intergovernmental negotiating body to draft and negotiate a proposed WHO Framework Convention on Tobacco Control (FCTC) and possible related Protocols, open to participation by regional economic integration organisations. The Commission is participating in the negotiations on the basis of a mandate granted by Council in October 1999. The fifth negotiation round ended in October 2002. The last round will take place in February 2003. The FCTC will become a mixed Convention, requiring ratification by Member States and the EU and is planned to be adopted in May 2003. Further details at <http://www.who.int/home-page>

In the framework of the negotiations for this Convention, attention is being given to developing provisions regulating tobacco advertising, sponsorship and other forms of promotion. This will have an impact on the existing Community acquis.

The World Bank report on tobacco control¹⁹ concludes that bans on advertising and promotion prove effective, but only if they are comprehensive, cover all media and all uses of brand names and logos.

5. Why a directive prohibiting tobacco advertising?

The ways and means of circulating information in the fifteen Member States are increasingly of a trans-frontier nature. As a result, people in one Member State are increasingly coming into contact with other Member States' media, be it in the form of radio, television, in film projections, the written press, information society services and posters. Advertising for tobacco products is following this trend, particularly because of its centralised nature and the fact that multinational producers use themes which have a Community-wide - not to say international - appeal.

Advertising is an important economic activity which stems from the most fundamental rights. However, legislators in Member States have felt the necessity to restrict the exercise of those rights in order to protect public interest and especially to protect health. These restrictions which often extend to a total ban, concern in particular advertising for certain products, no matter whether their sale is legal or not. Such restrictions exist in Member States for drugs, guns, pharmaceuticals, alcohol, toys, etc.

These differences in the regulations of the Member States, as indicated above, create barriers for the circulation of the advertising media, products and services. These barriers are not just potential but real ones. In this context, the Commission has already received complaints originating in several Member States.

The establishment of the Internal Market foreseen in Article 14 of the Treaty requires the harmonisation of national provisions on advertising for tobacco products in certain information media, including radio broadcasting.

¹⁷ Final Annex to COM(96) 609.

¹⁸ Tobacco or Health, a status report, WHO, Geneva, 1997 p. 49.

It is important to ensure the free movement of products, means of support for their advertising, and the free provision of services in this area and to prevent the emergence of barriers to trade on the grounds of non-compliance with national provisions regarding direct advertising for tobacco products and related sponsorship.

In this context, given the current state of Member States' legislation and the case law of the Court of Justice of the European Communities²⁰ harmonisation can only be logically based on banning advertising in the press and other printed publications, as well as sponsorship involving more than one Member State. Internet advertising and free distribution also need to be covered by these provisions in order to ensure applicability and coherence.

Health protection requirements are clearly stated in the provisions of Article 95 of the Treaty which concerns the establishment of the internal market. Article 95(3) states that: "The Commission, in its proposals envisaged in paragraph 1 concerning health, safety, environmental protection and consumer protection, will take as a base a high level of protection...". Therefore, the Community legislator must take into account the requirements of health protection which directly affect the establishment and the operation of the internal market.

As seen in the review of national legislation, future developments in many Member States are heading towards increasingly stringent advertising restrictions. Eventually, even in the absence of any Community action, natural evolution in this area seems to lead legislation of individual EC Member States in the direction of a total ban of any tobacco advertising. However, substantial differences of approach and content at national level still exist despite this trend.

This is also the trend at the international level, as in the negotiations underway to develop a World Health Organisation Framework Convention on Tobacco Control. Therefore, in this area, a first step in harmonisation by regulating advertising in the press and trans-boundary sponsorship would contribute to ensure the free circulation without any barriers of such advertising means and products. A complementary provision concerning advertising in information society services, in radio broadcasting and by means of free distribution also appears necessary to complete these Internal Market rules, and avoid circumvention.

Restrictions on fair competition can also occur due to the variations in rules on tobacco sponsorship, particularly as regards sporting events.

6. What are the Health consequences of tobacco consumption?

In the European Union tobacco consumption - and more particularly cigarette smoking - has generally become an accepted social habit, acquiring particularly among young people a positive image which has been fostered by advertising. Tobacco consumption has now become one of our major health problems. The hazards of smoking can be divided in two categories:

6.1. Hazards for the individual smoker: half are eventually killed by their habit, unless they can give it up

Studies of the hazards of persistent cigarette smoking, starting in early adult life and not giving up the habit, show that the risk is big. Overall, **half** of all persistent smokers are eventually killed by tobacco, one quarter in old age and one quarter in middle age (35-69)²¹.

¹⁹ Curbing the Epidemic, World Bank, Washington, 1999.

²⁰ Case C-376/98 of 5 October 2000.

²¹ Doll R, Peto R, Wheatley K, Gray R, Sutherland I. Mortality in relation to smoking: 40 years' observations on male British doctors. BMJ 1994; 309: 901-11.

Those killed by tobacco in old age might well have died of something else a few years later, but those killed while still in middle age lose, on average, some 20-25 years of life expectancy. But, even in middle age those who stop before they become ill avoid most of their risk of being killed by tobacco, and stopping before middle age is even more effective²².

6.2. Hazards for the EU population: 0.5 million (0.4M male + 0.1M female) tobacco deaths per year

In most European countries men started smoking before women, so although the male epidemic has now levelled off at 0.4 million EU tobacco deaths per year, the female epidemic, which already involves 0.1 million EU tobacco deaths per year, is still rising. Of these EU tobacco deaths, 0.2 million involve cancer and 0.3 million involve other diseases. Tobacco now causes about 25% of all EU cancer deaths (39% male, 8% female - but, female tobacco deaths are still rising). A quarter of all EU deaths in middle age are now caused by tobacco. If current mortality patterns continue, then over the next 40 years there will be 20 million EU tobacco deaths, half in middle age and half in old age, and only if there is widespread cessation among adults who now smoke will these numbers be substantially reduced²³.

As regards the subtle implications of the advertising of a product such as tobacco, the United Kingdom example is significant. In this Member State two thirds of the adult smokers say they want to stop, but half agreed with the statement that smoking can't be all that dangerous, or the government would not allow tobacco to be advertised²⁴. This is now being addressed for that Member State by draft legislation. Similarly, in a report commissioned by the German Ministry of Health, it is concluded that "the data are so conclusive as to justify a package of health policy measures that includes bans on advertising"²⁵.

The Member States are aware of this situation and, as long ago as 1986, established the prevention of smoking as one of the priority aims of the "Europe against Cancer" programme. This has been continued as a priority in subsequent programmes. Furthermore, a Recommendation was adopted by the Commission's High Level Cancer Experts Committee in Helsinki in October 1996 which was included in the Annex to the Commission's Communication on the present and proposed Community role in combating tobacco consumption²⁶. This priority aim was also reflected in the Commission Report to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions on progress achieved in relation to public health protection from the harmful effects of tobacco consumption²⁷.

7. What is the influence of advertising on tobacco consumption?

Advertising would appear to be one of the factors responsible for the expansion of the market for tobacco products. The abundance of words and images seeking to promote the consumption of tobacco products glosses over any hint of harmfulness of tobacco and incites young people to adopt what appears to be a socially acceptable behaviour pattern.

²² Peto R, Lopez AD, Boreham J, Thun M, Heath C Jr. Mortality from smoking in developed countries 1950-2000. Oxford University Press, Oxford, 1994.

²³ Peto R, Darby S, Deo H, Silcocks P, Whitley E, Doll R. Smoking, smoking cessation, and lung cancer in the UK since 1950: combination of national statistics with two case-control studies. *BMJ* 2000; 321: 323-9.

²⁴ Economics & Operational Research Division. Effects of tobacco advertising on tobacco consumption (page 21). UK Department of Health 1992.

²⁵ Advertising and tobacco consumption, Harewinkel and Pohl, Kiel, 1998.

²⁶ COM(96) 609 final.

²⁷ COM(1999) 407 final.

Although it is not universally accepted that advertising has been shown to be uniquely and directly responsible for people trying out smoking or becoming addicted to the habit, the fact remains that it does play a fundamental role in promoting tobacco products. The smoking habit tends to be acquired in most cases in childhood or adolescence. Some 60% of smokers start smoking at the age of 13, with more than 90% starting before the age of 20. Given that only something like 10% of the current smokers actually start smoking as adults, adolescents form the group from whom the largest number of new smokers are recruited²⁸. The addictive nature of the product differentiates it from other consumer products which are marketed to the general public in such an intensive manner.

According to the tobacco industry, the aim of advertising is simply to persuade smokers to change brands, and as such enhances the competition between the various products on the market²⁹. Any form of advertising by definition seeks to increase the targeted product's share of the market. However, different studies show that smokers are very loyal to their tobacco brand and that cigarettes are among the products which have the highest brand loyalty³⁰.

In the fifteen Member States, the advertising budget for tobacco products does not exceed 3% of the total advertising budget for all products or services.

In Norway, where a total ban on tobacco advertising exists since 1975, in the eight years that preceded the application of the ban, sales of advertisements - of all kinds - increased by 3,9%, whereas there was a 5,6% increase in the eight year period that followed the entry into force of the ban. This example of Norway shows that an advertising ban does not worsen the economic situation of the press.

8. Allegedly, the tobacco advertising directive will cost jobs in the advertising and, eventually, in the tobacco industry. Is this of no concern to the EU?

The experience in applying the 1989 television without frontiers directive, as well as the various national rules and regulations on tobacco advertising and sponsorship (as in Ireland, Belgium, France, Finland, Portugal etc.) has shown no evidence of net job losses in the economy. In fact, expenditure on tobacco advertising, sponsorship and consumption has been replaced by publicity from other sectors, in particular that for the new information technology sector.

9. Are there any other bans on advertising for products in the EU and in the Member States? For what products?

Yes, there are bans or restrictions in existence both at the EU and Member State level for a variety of products, such as for firearms, drugs, medicines, and so on; these restrictions are adopted for public policy, public security, public morality or public health purposes.

²⁸ Tye, J.B., Warner, K.E., and Glanz, S.A., "Tobacco advertising and consumption: evidence of a causal relationship". World Smoking and Health. 1988, p. 6-13.

Royal College of Physicians of London. "Smoking and Health. The third report of the Royal College of Physicians of London". London, Pitman Medical, 1987, p. 104.

Chapman, S. "Cigarette advertising and smoking: A review of the evidence", British Medical Association, London, 1985.

²⁹ Tye, J.B., Warner, K.E., and Glanz, S.A., "Tobacco advertising and consumption: evidence of a causal relationship". Public Health Policy. 1988, p. 492-508.

³⁰ Agence FCB/Autres produits. Kapferer et Laurent, 1983.

10. Will advertising for fast cars and alcohol soon be banned?

Neither advertising bans for fast cars nor for alcoholic beverages are being considered at EU level. EU Member States apply the strategies of the European Alcohol Charter and the guidelines of the European Alcohol Action Plan. Self-regulation of advertising for alcoholic beverages is working in a number of Member States and Council Recommendation 2001/458/EC on the drinking of alcohol by young people urges producers and retailers to enforce self-regulatory controls over, and to agree on standards for, all forms of promotion, marketing and retailing of alcoholic beverages.

11. Why is the EU funding tobacco farmers? Is this not absolutely contradictory?

The Common Agricultural Policy supports production in the EU of raw tobacco leaf. This system of support replaces previous national support schemes, and is intended to ensure that the product is produced on an equal footing across the Member States, and does not benefit from more support in one location than another. The Commission's proposal of November 2001 for the 2002-04 premiums and quotas for tobacco also set the scene for allowing the phasing out of subsidies while simultaneously putting in place measures to develop alternative sources of income and economic activity for tobacco workers and growers, in line with the Commission communication on sustainable development. However, the European Parliament and the Council did not follow the Commission on this. The Commission made a formal declaration at the Agriculture Council meeting on 18 March 2002 stating that: "The Commission recalls that, within the Communication 'A sustainable Europe for a better world', it proposes to adapt the raw tobacco regime at the end of its review in 2002 so as to allow for the for the phasing out of tobacco subsidies while putting in place measures to develop alternative sources of income and economic activity for tobacco growers and workers, and decide on an early date accordingly."

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