Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products (Text with EEA relevance)

DIRECTIVE 2003/33/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

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on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 47(2), 55 and 95 thereof,

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

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

After consulting the Committee of the Regions,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(3)],

Whereas:

(1) There are differences between the Member States' laws, regulations and administrative provisions on the advertising of tobacco products and related sponsorship. Such advertising and sponsorship in certain cases crosses the borders of the Member States or involves events organised on an international level, and are activities to which Article 49 of the Treaty applies. The differences in national legislation are likely to give rise to increasing barriers to the free movement between Member States of the products or services that serve as the support for such advertising and sponsorship. In the case of press advertising, certain obstacles have already been encountered. In the case of sponsorship, distortions of the conditions of competition are likely to increase and have already been noted as regards the organisation of certain major sporting and cultural events.

(2) Those barriers should be eliminated and, to this end, the rules relating to the advertising of tobacco products and related sponsorship should in specific cases be approximated. In particular, there is a need to specify the extent to which tobacco advertising in certain categories of publications is allowed.

(3) Article 95(3) of the Treaty requires the Commission, in its proposals for the establishment and functioning of the Internal Market concerning health, to take as a base a high level of protection. Within their respective powers, the European Parliament

and the Council also seek to achieve this objective. The legislation of the Member States to be approximated is intended to protect public health by regulating the promotion of tobacco, an addictive product responsible for over half a million deaths in the Community annually, thereby avoiding a situation where young people begin smoking at an early age as a result of promotion and become addicted.

(4) The circulation in the Internal Market of publications such as periodicals, newspapers and magazines is subject to an appreciable risk of obstacles to free movement as a result of Member States' laws, regulations and administrative provisions which prohibit or regulate tobacco advertising in those media. In order to ensure free circulation throughout the Internal Market for all such media, it is necessary to limit tobacco advertising therein to those magazines and periodicals which are not intended for the general public such as publications intended exclusively for professionals in the tobacco trade and to publications printed and published in third countries, that are not principally intended for the Community market.

(5) The laws, regulations and administrative provisions of the Member States relating to certain types of sponsorship for the benefit of tobacco products with cross-border effects give rise to an appreciable risk of distortion of the conditions of competition for this activity within the Internal Market. In order to eliminate these distortions, it is necessary to prohibit such sponsorship only for those activities or events with cross-border effects which otherwise may be a means of circumventing the restrictions placed on direct forms of advertising, without regulating sponsorship on a purely national level.

(6) Use of information society services is a means of advertising tobacco products which is increasing as public consumption and access to such services increases. Such services, as well as radio broadcasting, which may also be transmitted via information society services, are particularly attractive and accessible to young consumers. Tobacco advertising by both these media has, by its very nature, a cross-border character, and should be regulated at Community level.

(7) Free distribution of tobacco products is subject to restriction in several Member States, given its high potential to create addiction. Cases of free distribution have occurred in the context of the sponsorship of events having cross-border effects and should therefore be prohibited.

(8) Internationally applicable standards for the advertising of tobacco products and related sponsorship are the subject of negotiations for the drafting of a World Health Organisation Framework Convention on Tobacco Control. These negotiations are intended to create binding international rules complementary to those contained in this Directive.

(9) The Commission should draw up a report on the implementation of this Directive. Provision should be made in the relevant Community programmes to monitor the effects of this Directive on public health.

(10) Member States should take adequate and effective steps to ensure control of the implementation of measures adopted pursuant to this Directive in compliance with their national legislation, as provided for in Commission Communication to the European

Parliament and the Council on the role of penalties in implementing Community Internal Market legislation and in the Council Resolution of 29 June 1995 on the effective uniform application of Community law and on the penalties applicable for breaches of Community law in the Internal Market[(4)]. Such means should include provision for intervention of persons or organisations with legitimate interest in the suppression of activities that are not in conformity with this Directive.

(11) The penalties provided for under this Directive should be without prejudice to any other penalty or remedy provided under national law.

(12) This Directive regulates the advertising of tobacco products in the media other than television, i.e. in the press and other printed publications, in radio broadcasting and in information society services. It also regulates the sponsorship, by tobacco companies, of radio programmes and of events or activities involving, or taking place in, several Member States or otherwise having cross-border effects, including the free or discounted distribution of tobacco products. Other forms of advertising, such as indirect advertising, as well as the sponsorship of events or activities without cross-border effects, fall outside the scope of this Directive. Subject to the Treaty, Member States retain the competence to regulate these matters as they deem necessary to guarantee the protection of human health.

(13) Advertising relating to medicinal products for human use is covered by Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use[(5)]. Advertising relating to products intended for use in overcoming addiction to tobacco does not fall within the scope of this Directive.

(14) This Directive should be without prejudice to 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[(6)], which prohibits all forms of television advertising for cigarettes and other tobacco products. Directive 89/552/EEC provides that television programmes may not be sponsored by undertakings whose principal activity is the manufacture or sale of cigarettes and other tobacco products, or the provision of services, the advertising of which is prohibited by that Directive. Teleshopping for tobacco products is also prohibited by Directive 89/552/EEC.

(15) The transnational character of advertising is recognised by Council Directive 84/450/EEC of 10 September 1984 relating to the approximation of the laws, regulations and administrative provisions of the Member States concerning misleading advertising[(7)]. Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco products[(8)], contains provisions on the use of misleading descriptions on the labelling of tobacco products, the cross-border effect of which has also been recognised.

(16) 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[(9)] was annulled

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by the Court of Justice in Case C-376/98 *Federal Republic of Germany* v *European Parliament and Council of the European Union*[(10)]. References to Directive 98/43/EC should therefore be construed as references to this Directive.

(17) In accordance with the principle of proportionality, it is necessary and appropriate for the achievement of the basic objective of the proper functioning of the Internal Market to lay down rules on the advertising of tobacco products and related sponsorship. This Directive does not go beyond what is necessary in order to achieve the objectives pursued in accordance with the third paragraph of Article 5 of the Treaty.

(18) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure respect for the fundamental right of freedom of expression,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Subject-matter and scope

1 The objective of this Directive is to approximate the laws, regulations and administrative provisions of the Member States relating to the advertising of tobacco products and their promotion:

a in the press and other printed publications;
b in radio broadcasting;
c in information society services; and
d through tobacco related sponsorship, including the free distribution of tobacco products.

2 This Directive is intended to ensure the free movement of the media concerned and of related services and to eliminate obstacles to the operation of the Internal Market.

Article 2

Definitions

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

(a) ‘tobacco products’ means all products intended to be smoked, sniffed, sucked or chewed inasmuch as they are made, even partly, of tobacco;

(b) ‘advertising’ means any form of commercial communications with the aim or direct or indirect effect of promoting a tobacco product;

(c) ‘sponsorship’ means any form of public or private contribution to any event, activity or individual with the aim or direct or indirect effect of promoting a tobacco product;

(d) ‘information society services’ means services within the meaning of Article 1(2) of Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services[(11)].