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,

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[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).