21 March 2002

OPINION

of the Committee on the Environment, Public Health and Consumer Policy

for the Committee on Legal Affairs and the Internal Market


Draftsman (*): Minerva Melpomeni Malliori

(*) Enhanced Hughes Procedure
PROCEDURE


It considered the draft opinion at its meetings of 22 January 2002 and 21 March 2002.

At the last meeting it adopted the following conclusions unanimously.

The following were present for the vote: Caroline F. Jackson, chairman; Mauro Nobilia and Anneli Hulthén, vice-chairmen; Minerva Melpomeni Malliori, rapporteur; Hans Blokland, Philip Bushill-Matthews (for Per-Arne Arvidsson), Chris Davies, Anne Ferreira, Francesco Fiori (for Christa Klaß, pursuant to Rule 153(2)), Marialiese Flemming, Robert Goodwill, Françoise Grossetête, Cristina Gutiérrez Cortines, Bernd Lange, Peter Liese, Torben Lund, Jules Maaten, Patricia McKenna, Pietro-Paolo Mennea (for María del Pilar Ayuso González), Riitta Myller, Giuseppe Nisticò, Ria G.H.C. Oomen-Ruijten, Frédérique Ries, Dagmar Roth-Behrendt, Guido Sacconi, Giacomo Santini (for John Bowis), Karin Scheele, Robert William Sturdy (for Martin Callanan), Charles Tannock (for Raffaele Costa), Antonios Trakatellis, Kathleen Van Brempt and Phillip Whitehead.
SHORT JUSTIFICATION

Background
The Commission proposal is intended to replace European Parliament and Council Directive 98/43/EC on the advertising and sponsorship of tobacco products\(^1\), which was annulled by the Court of Justice on 5 October 2000\(^2\) on the grounds that its legal basis was inappropriate (for a detailed analysis of the Court judgement see the explanatory statement of Mr Medina’s draft report (PE 308.484) for the Committee on Legal Affairs and the Internal Market).

Because of their adverse effects on human health\(^3\), regulation of advertising and sponsorship of tobacco products has been a concern for the Member States and the Community legislature for the past ten years.

It was, in fact, in April 1989 that the Commission presented its initial proposal seeking to regulate tobacco advertising\(^4\). The proposal was based on a step-by-step approach and, therefore, only provided for partial harmonization of Member States legislation relating to tobacco advertising. It specifically concerned the advertising of tobacco products in the press and by means of bills and posters and established that unambiguous warnings should appear on an alternating basis on a substantial area of the advertising space. These warnings should be the same as those appearing on the packaging of tobacco products. The proposal also provided for a ban on indirect advertising and limited the content of authorised advertising to showing only the tobacco products in question. Member States also had to prohibit all advertising for tobacco products in publications mainly intended for people under 18.

In its resolution of 14 March 1990\(^5\) Parliament voted in favour of extending the scope of the proposed Directive to any “advertising medium and sponsored activities”. In Parliament's view, therefore, all forms of advertising of tobacco products should be banned.

As the Health Council failed to achieve a qualified majority to adopt a common position in December 1990, the Commission withdrew its proposal and presented a new, more ambitious proposal in June 1991\(^6\). This new proposal advocated a total ban on any form of direct or indirect advertising of tobacco products as from 1 January 1993, with the only exception of advertising within tobacco sales outlets, provided that this was not visible from outside the premises. In particular, the proposal provided for the prohibition of using trademarks mainly associated with tobacco in the advertising of other products; similarly, new tobacco products could not use the reputation of trademarks already used in association with other products. Any free distribution of tobacco products was banned.

In its resolution of 11 February 1992\(^7\) Parliament supported the idea of a total ban on advertising of tobacco products and strengthened the Commission proposal by including sponsorship in the definition of advertising and by clarifying that vending machines should not be considered as tobacco sales outlets and their use for advertising should, therefore, be

---

\(^{1}\) OJ L213, 30.7.1998, p. 12
\(^{3}\) Tobacco related diseases are responsible each year for around 4 million deaths worldwide. This figure is expected to raise to 10 million deaths per year by 2030.
\(^{4}\) OJ C124, 19.5.1989, p. 5
\(^{5}\) OJ C96, 17.4.1990, p. 93
\(^{6}\) OJ C167, 27.6.1991, p. 3
\(^{7}\) OJ C67, 16.3.1992, p. 35
prohibited.

It was only in February 1998 that the Council adopted its common position1 on the issue. The common position explicitly banned – in line with the EP amendment – all forms of sponsorship to promote tobacco products. It confirmed the principle of a ban on all forms of advertising of tobacco products, although some exceptions were added both for the provisions relating to indirect advertising and for those related to direct advertising. In addition, some derogations for the Member States concerning the implementation of the Directive, as well as a regular reporting procedure by the Commission, were also included.

In its resolution of 13 May 19982 Parliament supported the common position and approved it without amendments. The rapporteur’s view was that the text agreed by the Council after almost ten years of negotiations was the best possible compromise. Amendments aiming at reintroducing previous EP positions on the subject were, in his view, a pretext to delay sine die the adoption of the Directive. Parliament indeed followed the rapporteur’s view and rejected all the amendments tabled (72 in the Environment Committee and 65 in plenary).

The Directive was therefore adopted in accordance with the common position on 6 July 1998 (directive 98/43/EC). It was then annulled by the Court of Justice judgement on 5 October 2000.

Comments on the Commission proposal

The Commission proposal for a new Directive on tobacco advertising and sponsorship is intended to replace Directive 98/43/EC taking due account of the Court of Justice ruling.

The legal basis of the proposed Directive is the same as that of Directive 98/43/EC (i.e. articles 47(2), 55 and 95 EC). The proposal seeks to regulate the advertising of tobacco products and related sponsorship, apart from that on television, already covered by other Community legislation. In particular, it bans advertising of tobacco products in printed media, radio advertising and cross-border sponsorship. It also prohibits tobacco advertising using information society services and free distribution of tobacco products which, in the context of cross-border sponsorship, have the purpose or effect of promoting tobacco products.

The new proposal is, therefore, much more modest in terms of protection of public health than Directive 98/43/EC, which also covered indirect advertising, and was based on the principle of a total ban on all forms of advertising and sponsorship.

The issue of the impact of advertising and promotion of tobacco products on tobacco consumption has been the subject of a vigourous debate for several years. On the one hand, public health advocates argue that such advertising does increase consumption, both by encouraging children and adolescents to start smoking and by deterring current smokers from quitting or reducing their daily consumption. On the other hand, the tobacco industry argues that its main purpose in advertising is to maintain brand loyalty and to capture a greater market share of current smokers.

Studies have been carried out on the effects on the consumption of tobacco products of partial or total advertising bans. They have shown that partial advertising bans have only limited

---

1 OJ C91, 26.3.1998, p. 34  
2 OJ C167, 1.6.1998, p. 91
effects on smoking, since the industry can easily switch to advertising in other media. On the contrary, comprehensive bans on the advertising and promotion of tobacco products, covering all media and all uses of brand names and logos have proved to be significantly effective in reducing smoking, in particular smoking by young people, and in discouraging them from starting to smoke.

Studies have in fact also shown that children and adolescents are particularly vulnerable to tobacco advertising and sponsorship, which encourage them to smoke by associating smoking with self-image, independence and peer-acceptance.

Your rapporteur, therefore, strongly believes that the present Commission proposal – which only introduces a partial advertising ban – is far from achieving the objective of protecting public health and reducing the attraction, especially for young people, of tobacco products. Although it emanates from the Commission Health and Consumers’ Directorate General, the proposal confines itself to eliminating obstacles to the functioning of the internal market by means of the approximation of the legislation already in place in the Member States.

Your rapporteur considers this approach extremely disappointing from the point of view of health protection and is convinced that this feeling is shared by the majority of the members of the Committee. It has however to be borne in mind that the present debate does not take place in a vacuum and that a distinction needs to be made between the priority given by the Environment Committee to the protection of public health and the competence of the Community to adopt legislation, based on the internal market legal basis, restricting tobacco advertising.

Directive 98/43/EC was no doubt much more far reaching in terms of protection of public health than the present proposal for a Directive. Many of the amendments tabled in the context of Parliament’s second reading on that Directive were certainly useful and desirable for the cause of public health protection. But Directive 98/43/EC was annulled by the Court of Justice, which ruled that its content was inappropriate having regard to the articles of the Treaty chosen as its legal basis.

The new proposal presented by the Commission goes as far as possible – given the legal framework set by the Court of Justice – in restricting the advertising and sponsorship of tobacco products. Any amendment seeking at introducing new elements emphasising the public health aspects would de facto undermine the appropriateness of the legal basis and could lead to a further annulment by the Court of Justice (for an analysis of the relationship of the new Commission proposal with the Court judgement, see the explanatory statement of Mr Medina’s draft report (PE 308.484) for the Committee on Legal Affairs and the Internal Market).
CONCLUSION

In view of the above, your rapporteur recommends the approval of the Commission proposal without amendments.

She stresses however that the present Directive is only one step in the more comprehensive strategy on tobacco control and therefore asks the Commission to put forward as soon as possible appropriate proposals on issues such as indirect advertising, monitoring of tobacco expenditures on advertising and vending machines.