



# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Tobacco products: advertising and sponsorship by press, radio, television Repealed by <a href="#">2001/0119(COD)</a>	
Subject 4.20.03 Drug addiction, alcoholism, smoking	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<div>ENVI</div> Environment, Public Health and Consumer Protection	RDE <a href="#">CABROL Christian E.A.</a>	27/07/1994
Council of the European Union	Council configuration	Meeting	Date
	Research	<a href="#">2109</a>	22/06/1998
	Research	<a href="#">2067</a>	12/02/1998
	Health	<a href="#">2056</a>	04/12/1997
	Health	<a href="#">1924</a>	14/05/1996
	Health	<a href="#">1890</a>	30/11/1995
	Health	<a href="#">1823</a>	22/12/1994
	Health	<a href="#">1762</a>	02/06/1994

Key events			
18/04/1989	Legislative proposal published	COM(1989)0163	Summary
27/07/1989	Committee referral announced in Parliament, 1st reading		
24/01/1990	Vote in committee, 1st reading		
24/01/1990	Committee report tabled for plenary, 1st reading	A3-0030/1990	
13/03/1990	Debate in Parliament		
14/03/1990	Decision by Parliament, 1st reading	T3-0097/1990	Summary
19/04/1990	Modified legislative proposal published	COM(1990)0147	Summary
06/06/1991	Amended legislative proposal for reconsideration published	COM(1991)0111	Summary
05/07/1991	Formal reconsideration of Parliament		

28/11/1991	Vote in committee, 1st reading		
28/11/1991	Committee report tabled for plenary, reconsultation	A3-0348/1991	
16/01/1992	Debate in Parliament		
11/02/1992	Decision by Parliament, 1st reading	T3-0037/1992	Summary
30/04/1992	Modified legislative proposal published	COM(1992)0196	Summary
24/11/1993	Vote in committee, 1st reading		
24/11/1993	Committee report tabled for plenary confirming Parliament's position	A3-0365/1993	
02/12/1993	Decision by Parliament, 1st reading	T3-0683/1993	Summary
22/12/1994	Debate in Council	<a href="#">1823</a>	
30/11/1995	Resolution/conclusions adopted by Council		Summary
14/05/1996	Debate in Council	<a href="#">1924</a>	Summary
12/02/1998	Council position published	<a href="#">12302/2/1997</a>	Summary
19/02/1998	Committee referral announced in Parliament, 2nd reading		
22/04/1998	Vote in committee, 2nd reading		Summary
22/04/1998	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A4-0150/1998</a>	
12/05/1998	Debate in Parliament		Summary
13/05/1998	Decision by Parliament, 2nd reading	T4-0267/1998	Summary
22/06/1998	Act approved by Council, 2nd reading		
06/07/1998	Final act signed		
06/07/1998	End of procedure in Parliament		
30/07/1998	Final act published in Official Journal		

## Technical information

Procedure reference	1989/0194(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealed by <a href="#">2001/0119(COD)</a>
Legal basis	EC before Amsterdam E 100A
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/4/09782

## Documentation gateway

Legislative proposal		<a href="#">COM(1989)0163</a> <a href="#">OJ C 124 19.05.1989, p. 0005</a>	18/04/1989	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES1370/1989</a> <a href="#">OJ C 062 12.03.1990, p. 0023</a>	19/12/1989	ESC	
Committee report tabled for plenary, 1st reading/single reading		A3-0030/1990 <a href="#">OJ C 068 19.03.1990, p. 0008</a>	24/01/1990	EP	
Text adopted by Parliament, 1st reading/single reading		T3-0097/1990 <a href="#">OJ C 096 17.04.1990, p. 0049-0098</a>	14/03/1990	EP	Summary
Modified legislative proposal		COM(1990)0147 <a href="#">OJ C 116 11.05.1990, p. 0007</a>	19/04/1990	EC	Summary
Amended legislative proposal for reconsultation		COM(1991)0111 <a href="#">OJ C 167 27.06.1991, p. 0003</a>	06/06/1991	EC	Summary
Committee final report tabled for plenary, reconsultation		A3-0348/1991 <a href="#">OJ C 013 20.01.1992, p. 0007</a>	28/11/1991	EP	
Text adopted by Parliament after reconsultation		T3-0037/1992 <a href="#">OJ C 067 16.03.1992, p. 0028-0037</a>	11/02/1992	EP	Summary
Modified legislative proposal		COM(1992)0196 <a href="#">OJ C 129 21.05.1992, p. 0005</a>	30/04/1992	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES1036/1992</a> <a href="#">OJ C 313 30.11.1992, p. 0027</a>	23/09/1992	ESC	Summary
Committee final report tabled for plenary, 1st reading/single reading		A3-0365/1993 <a href="#">OJ C 342 20.12.1993, p. 0003</a>	24/11/1993	EP	
Text adopted by Parliament confirming position adopted at 1st reading		T3-0683/1993 <a href="#">OJ C 342 20.12.1993, p. 0015-0033</a>	02/12/1993	EP	Summary
Council position		<a href="#">12302/2/1997</a> <a href="#">OJ C 091 26.03.1998, p. 0034</a>	12/02/1998	CSL	Summary
Commission communication on Council's position		SEC(1998)0140	12/02/1998	EC	Summary
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A4-0150/1998</a> <a href="#">OJ C 167 01.06.1998, p. 0005</a>	22/04/1998	EP	
Text adopted by Parliament, 2nd reading		T4-0267/1998 <a href="#">OJ C 167 01.06.1998, p. 0078-0091</a>	13/05/1998	EP	Summary
<b>Final act</b>					
<a href="#">Directive 1998/43</a> <a href="#">OJ L 213 30.07.1998, p. 0009</a> Summary					

## Tobacco products: advertising and sponsorship by press, radio, television

This proposal for a Council Directive concerns the advertising of tobacco products in the press and by means of bills and posters. Because of diverse national legislation on the matter, this Directive provides for partial harmonisation, and is based on the most advanced system of governing authorised advertising, namely the Irish one. Unambiguous warnings must appear on an alternating basis on a substantial area of the advertising space. For reasons of continuity and consistency, the warnings would be the same as those laid down in the proposed Council Directive on the labelling of tobacco products. It would also be aligned with the legislation in force or in preparation, maintaining the ban on indirect advertising and limiting the content of authorized advertising to only showing the tobacco products in question since the purpose is to avoid any association being made between smoking and professional or sexual advantage, the enjoyment of wide open spaces, fresh air, adventure and freedom. The proposal's annex contains a list of health warnings. Member States would have to prohibit all advertising for

tobacco products in publications mainly intended for people under 18. Member States will have the right to introduce stricter provisions than those contained in the Directive, as long as these do not imply modifications of the content or form of advertisements as provided for in this Directive.?

## Tobacco products: advertising and sponsorship by press, radio, television

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The Parliament called for a number of amendments to the Commission's text. In particular, Parliament called for : - Member States to be allowed to take stricter measures under certain conditions; - recognition to be given to the invaluable contribution which advertising makes to consumer information and choice and for a ban or limit on advertising to only be considered in exceptional circumstances; - the definition of 'advertising' to be modified so as to prevent the ban being circumvented; - automatic vending machines not to be included under the definition 'tobacco sales outlets'; - provisions to be set down governing a company's right to advertise under its brand or trademark products other than tobacco products; - consumer or anti-smoking organisations to be recognised as having a legitimate interest in taking action against tobacco products.?

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In its opinion of March 1990, the Parliament consulted under the cooperation procedure called for a total ban on advertising for tobacco products. As the Health Council failed to achieve a qualified majority in December 1990, the successive steps approach recommended by the Commission became inapplicable because of the tight time limits. Thus, this new modified proposal aims at a full harmonization of Member States' provisions on the advertising of tobacco products by the introduction of a ban on all tobacco advertising. The proposal would, however, permit advertising in establishments specialising in the sale of tobacco and with enclosed indoor premises for serving their customers. All indirect advertising for tobacco products would also be banned.?

## Tobacco products: advertising and sponsorship by press, radio, television

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?The Presidency notes that the Commission?s amended proposal completely prohibiting direct and indirect advertising has not yet obtained the support of a qualified majority. The Council has examined a proposal submitted by the Presidency. This proposal, which does not yet have the support of a sufficient majority, was regarded by a large number of delegations as an appropriate basis for continuing discussions with the aim of reaching an agreement during the next Presidency. The basic elements of the agreement should be the following: - Article 100a should be retained as the legal basis, to be supplemented by Articles 57 and 66; - prohibition of cross-border advertising broadcast by radio; - prohibition of advertising in written publications or in other media distributed in more than one Member State. This general principle will be implemented by the necessary provisions ensuring compliance with the principles of proportionality and right to information. Likewise, the possibility of putting into practice these provisions by means of voluntary agreements will have to be considered. - possibility for the Member States to maintain stricter provisions, including the total ban on advertising in accordance with the Treaties; - inclusion of a review clause in the Directive which will comprise, among other items, the ban on indirect advertising in accordance with a specified schedule, with the ultimate aim of introducing a total ban. Furthermore, the Presidency notes that a large number of Member States would like a total ban on tobacco advertising at European level.?

## Tobacco products: advertising and sponsorship by press, radio, television

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On the basis of certain viewpoints put forward by the presidency the Council had had a new exchange of views on the proposal for a directive. In the course of the debate one of the factors highlighted was the need to protect young people especially from the damaging effects of tobacco. Having failed to narrow the gap between the positions, the Council agreed that it would continue to work on this issue under the Irish

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In its common position on the proposal for a directive relating to the advertising and sponsorship of tobacco products, the Council provides for a ban on all forms of advertising and sponsorship of tobacco products in the Community to be phased in under certain conditions. The spirit and structure of the Commission text has generally been maintained, apart from four basic changes: (1) Sponsorship: in line with Parliament's request, the common position explicitly bans all forms of sponsorship to promote tobacco products. (2) The specifications relating to indirect advertising (the use of trade marks, symbols or other distinctive features intended to promote tobacco products): while confirming the principle of a ban on all forms of advertising of tobacco products, the common position: - allows, under certain conditions, that a brand name already used in good faith both for tobacco products and for other goods or services traded prior to the date of publication of the directive, to be used for the advertising of those other goods or services, - provides that no tobacco product may bear the brand name, trade mark, emblem or etc. of any other product, unless the tobacco product has already been traded under that brand name before the date of transposition of the directive, - avoids any form of circumvention of the directive by banning advertising in respect of any product or service placed on the market as from the date of entry into force of the directive, by the use of brand names, trade marks etc. already used for a tobacco product, - bans the free distribution of tobacco products having the effect of promoting such products; (3) Exceptions to the ban on advertising (areas regulated at national level): these exceptions concern publications from third countries, communications between professionals in the tobacco trade and tobacco sales outlets (presentation of tobacco products offered for sale, indication of their prices etc.). (4) Particular conditions for implementation of certain provisions and monitoring of the directive: - the directive must be transposed into the laws of the Member States within three years of its publication in the Official Journal, - after this time, the Member States may delay for an additional year for advertising in the press and two years for sponsorship, - in exceptional cases and for duly justified reasons, Member States may continue to authorize the existing sponsorship of events or activities organized at world level for a further period of three years (in addition to the two years already mentioned), - all the provisions of the directive are applicable from 1 October 2006, - no later than three years after publication of the directive and subsequently every two years, the Commission is to draw up a report on the implementation and effects of the directive. Where appropriate, it shall submit proposals for new provisions to suit developments identified in the report. With regard to Parliament's amendments, apart from the amendment on sponsorship (not adopted by the Commission but adopted by the Council), the Council has included the substance of the amendment on advertising of products other than tobacco products marketed under the same brand name. It has also included Parliament's request for regular reports evaluating the directive. ?

## Tobacco products: advertising and sponsorship by press, radio, television

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In its opinion on the common position of the Council concerning the proposal for a directive on tobacco advertising, the Commission considered that the Council text, obtained after 6 years of negotiation, was an acceptable compromise. It considered that the measures for which provision is made in the common position were more operational than before and the effects more transparent (in particular, the provisions relating to indirect advertising). The provisions of the common position relating to sponsorship were equally balanced and allowed for deferred implementation in order to take account of specific commercial circumstances in the Member States. Finally, the provisions relating to the drafting of a Commission report accompanied, if applicable, by suitable proposals, were of a nature to ensure standardised application of the provisions of the directive, while preventing its circumvention. The Commission likewise pointed out that it made a declaration when the common position was adopted to the effect that it intended to actively examine the updating of directives on labelling of tobacco products and the tar content of cigarettes. Other actions were also envisaged, such as, for example, in the field of additives in tobacco products.?

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A proposal for a Europe-wide ban on the advertising and sponsorship of tobacco products, which has been in the pipeline for nine years, received the go-ahead from the Committee. Accepting the advice of its rapporteur Mr Christian CABROL (UPE, F), the committee voted by 36 votes to 7 with 1 abstention to adopt, as it stood, the Council's common position on the proposal. All amendments (72 had been tabled initially, others were withdrawn) were rejected by overwhelming majorities. Plenary is now required to vote. An absolute majority (i.e. at least 314 votes) is required for an amendment to the Council's common position to be adopted in plenary. If any amendments are adopted, the proposal will be reconsidered by the Council, at least in respect of the amendments. If no amendments are adopted, the Council should adopt the common position without further ado. In his report, he said: ?As the European Parliament has requested, the text of the common position adopts the principle, accompanied by temporary sectoral derogations, of banning the advertising of tobacco products. It also responds to the other amendments proposed by the European Parliament at first reading. Your rapporteur welcomes this and proposes that the common position should be adopted without amendment. ? He told the committee that the text of the common position was the best possible compromise, given current national legislation, between the need to ensure a general ban on the advertising of tobacco products and the need to take account temporarily of essential economic adjustments. Some 511 000 people in the European Union died every year from the consequences of addiction to smoking. The common position bans all forms of advertising or sponsorship in the Community (excluding television advertising, which is already covered by Council Directive 89/552/EEC). It adds that since indirect advertising and the free distribution of tobacco products have the same effects as direct advertising, the directive should regulate all forms of indirect advertising which, while not mentioning tobacco directly, use brand names or trademarks associated with tobacco products. The common position provides for a general transposition period of three years. In addition, the Member States may defer the implementation of the Directive for: (a) one year in respect of the press and (b) for two years in respect of sponsorship in general and, under certain conditions and within specific limits, for a further period of three years ending not later than 1 October 2006, in respect of existing sponsorship of events or activities organized at world level. The directive does not apply to the advertising or presentation of products or the indication of their prices at tobacco sales outlets, communications intended exclusively for the trade, or the sale of publications published and printed in third countries if they are not principally intended for the Community market. It is for the Member States, where necessary, to take action in these areas. The legal base proposed from the outset for the directive is Article 100a of the EC Treaty, which covers measures designed to harmonize internal market legislation. Council has supplemented this in its common position by referring also to Article 57(2) (concerning the activities of self-employed persons) and Article 66 (on freedom to provide services). The Committee has accepted this legal base despite the opposition of the Committee on Legal Affairs and

Citizens? Rights, which adopted an opinion last week, by 12 votes to 7, to the effect that Article 100a was not a suitable legal base on the grounds that the measure did not concern trade between Member States within the internal market and that the advertising of products which can legally be manufactured within the internal market cannot legally be banned. The Legal Affairs Committee rapporteur Mr James JANSSEN van RAAY (UPE, NL) told the Environment Committee that Article 129 (public health) was the appropriate legal base. However, the Commission's Legal Service insisted that Article 100a remained the appropriate legal base as the directive's main objective concerned the operation of the internal market and the elimination of barriers to trade and distortion of competition. Article 100a was also appropriate, its representative said, as its third paragraph called for a high level of health protection. Harmonization of national legislation should be dealt with under Article 100a, not Article 129 of the Treaty. ?

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Stressing the relevance of using Article 100a as the legal basis, the rapporteur asked for the amendments aimed at changing this legal basis to be rejected. As for the rest of the common position, which took on board most of the amendments tabled by Parliament at first reading, Mr Cabrol said that this represented considerable progress in relation to the previous position and was therefore the best compromise possible, allowing all the necessary economic adjustments. It was, in any case, the result of nearly ten years of discussions. As a consequence, he was totally against the prospect of postponing this directive sine die and rejected en masse the amendments tabled by certain colleagues which, in his opinion, were pretexts aimed at making the whole procedure fail. Commissioner Flynn stated that the text of the common position reflected the spirit of the initial proposal. As for Article 100a, he pointed out that this had previously been used in the case of tar content labelling for cigarettes and to ban TV advertising and indirect advertising. Mr Flynn was also against subsidies being granted to tobacco production which caused so much suffering and so many deaths. For the same reason, any advertising of this product was unjustified. The Commission therefore agreed with the common position as adopted and accepted by the rapporteur.

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After rejecting by 211 votes to 314 with 25 abstentions a proposal of intended rejection of the Council common position (tabled by the EPP Group and by Mrs Roth-Behrendt and 28 other signatories) and by 214 votes to 314 with 18 abstentions, an amendment seeking to modify the legal basis of the proposal, Parliament, following the opinion of its rapporteur, Mr Christian CABROL (UPE, F), approved the Council's common position seeking to prohibit throughout the Union all advertising and sponsorship of tobacco products. The common position was thus approved without amendment. The Council was called on to adopt the act as soon as possible in accordance with the common position. ?

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OBJECTIVE: to harmonise rules on tobacco products advertising and sponsorship. COMMUNITY MEASURE: Directive 98/43/EC of the European Parliament and the Council on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products. SUBSTANCE: The directive as a general rule prohibits, in several phases and under certain conditions, all advertising and sponsorship of tobacco products in the Community. The directive guards against risks that the general prohibition will be circumvented by also regulating indirect advertising. Thus, advertising which, while not mentioning the tobacco product directly, uses brand names, trade marks, emblems or other distinctive features associated with tobacco products is banned. There are provisions for derogations from this general principle: a Member State may allow a name which was already in use in good faith both for tobacco products and for other products marketed before 30 July 1998 to be used to advertise the other products. However, from 30 July 2001, indirect advertising for a product or service using the name, trade mark etc. of a tobacco product already marketed under this name will be banned. The general ban will, however, 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 at tobacco sales outlets, - advertising aimed at purchasers in sales outlets and on the shop fronts, - the sale of publications containing advertising for tobacco products which are published and printed in third countries. The directive gives people or organisations with a legitimate interest in banning advertising the means to monitor the withdrawal of such advertising. It does not preclude Member States from laying down stricter requirements than those in the directive. It will be implemented progressively and must be transposed into the laws of the Member States by 30 July 2001. Member States will have an additional year to ban advertising of tobacco products in the written press and two additional years to ban sponsorship. In exceptional cases and under certain conditions, Member States may continue to allow sponsorship of events or activities organised at world level for a further period of three years ending not later than 1 October 2006. From that date, all the provisions of the directive will be applicable. The Commission is to draw up a report on implementation of the directive by 30 July 2001 and every two years thereafter. The report may propose new provisions in line with developments identified in the report. ENTRY INTO FORCE: the directive enters into force on 30.7.1998. DATE OF TRANSPOSITION IN THE MEMBER STATES: 30.7.2001. ?