

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 17.06.2002
COM(2002) 303 final

Proposal for a

COUNCIL RECOMMENDATION

on the prevention of smoking and on initiatives to improve tobacco control

(presented by the Commission)

EXPLANATORY MEMORANDUM

INTRODUCTION

1. The prevalence of smoking is a major public health concern in Europe, given the links between tobacco consumption and a significant proportion of cancers, cardiovascular and respiratory diseases. The number of smokers in the population is high, at about a third of the Community population, and the health impact is similarly significant, with about 500,000 smoking related deaths per year in the Community. Smoking also has established health effects on non-smokers, particularly on vulnerable groups.

2. The European Community has been addressing tobacco control issues since the late nineteen eighties. Since 1987, the "Europe against Cancer" Programme has acted as a major focus for measures aimed at reducing tobacco consumption. Through its successive action plans, this programme has i. a. supported Europe-wide smoking prevention projects, and established pan-European smoking prevention networks.

3. In 1989, two important legislative measures were adopted. Firstly, the Television without Frontiers Directive[1] banned all forms of television advertising for tobacco products. It also provided that television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of tobacco products. Secondly, in 1989 the first EC rules on labelling tobacco products with health warnings were introduced in the framework of a Directive[2] aimed at harmonising Internal Market provisions, taking as a basis a high level of public health protection.

4. As a next step, in 1990 a Directive[3] was adopted setting an EC ceiling on the tar content of cigarettes. In 1992, a revision of the tobacco labelling rules was introduced[4] to establish additional specific warnings for unit packaging of tobacco products other than cigarettes. On this occasion, the placing of oral tobacco products on the Community market was prohibited. All these measures were later recast into the new Tobacco Products Directive adopted in June 2001[5].

5. As regards the protection of non smokers from environmental tobacco smoke (ETS), the Resolution of the Council and the Ministers for Health of the Member States of 18 July 1989 on banning smoking in places open to the public[6] provided Member States with guidelines for the protection of non smokers[7]. A Report from the

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1 Directive 89/552/EEC
2 Directive 89/622/EEC
3 Directive 90/239/EEC
4 Directive 92/41/EEC
5 Directive 2001/37/EC
6 OJ C189, 26.7.1989, p. 1.
7 Regarding the protection from environmental smoke at the workplace, two other Directives are relevant. Firstly, a Council Directive from 1989 concerning the minimum safety and health requirements in the workplace, which requires employers to protect workers from passive smoking in their rest areas. Secondly, a 1992 Council Directive on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. Vid. Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace. OJ L 393, 30.12.1989, p. 1; and Council Directive

Commission[8] was published in 1996 in order to evaluate the response to this Resolution in the Member States. It showed a clear undertaking by the Member States to implement the Resolution, with however great variations in the concrete measures adopted. The present Recommendation underlines the need for protection against ETS, in particular with regard to vulnerable groups such as children, pregnant women and persons with respiratory diseases.

RECENT DEVELOPMENT OF TOBACCO CONTROL POLICY

6. The Commission's High Level Cancer Experts Committee adopted recommendations on tobacco control initiatives required at Community level in a meeting in October 1996[9]. The Council Resolution of 26 November 1996 on the reduction of smoking in the European Union[10] reviewed the actions taken in this field and indicated guidelines for future action.

7. In its Communication on smoking prevention of December 1996[11] the Commission proposed a series of measures to reinforce smoking prevention throughout the Community. It set out a series of options for action both in terms of prevention and related legislation, focusing on smoking prevention in the public health context but also in relation to all Community policies and activities. In parallel, the Advisory Committee for Cancer Prevention was established in 1996[12] with a view to provide guidance to the Commission in the pursuit of its anti-smoking measures.

8. Following the comments of the European Parliament and the Council, the Commission presented in October 1999 a Report[13] on the follow-up to the 1996 Communication. This report contains an analysis of Member State policies and practices on a series of tobacco control measures, some of which are dealt with in the present proposal for a Council Recommendation.

9. The Council Conclusions of 18 November 1999 on combating tobacco consumption[14] underlined the necessity for developing an overall strategy, and invited the Commission to contribute to such a strategy. A number of the measures suggested in these Council Conclusions are addressed in the present proposal, in particular some of the initiatives aiming at the protection of minors (including rules for selling conditions, sales through electronic means and vending machines).

10. As outlined above, the European Parliament and Council adopted a Directive recasting the existing Community Directives on tobacco product regulation, and

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92/85/EEC of 19 October 1992 on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding. OJ L 348, 28.11.1992, p. 1.

8 Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the response to the Resolution of the Council and the Ministers for Health of the Member States meeting within the Council on banning smoking in places open to the public.
Doc. COM (96) 0573 final.

9 Doc. COM(1996) 609 final - Annex

10 OJ C374, 11.12.1996, p. 4.

11 Doc. COM (1996) 609 final.

12 COM Decision 96/469/EC.

13 Doc. COM (1999) 407 final

14 OJ C86, 24.3.2000, p. 4.

introducing several new elements particularly concerning tobacco additives and misleading descriptors, on 5 June, 2001[15]. Moreover, the Commission adopted on 14 May, 2001 a proposal for a Directive on tobacco advertising and sponsorship[16] which is currently examined by the European Parliament and the Council under the co-decision procedure. Both these texts have as their objective the improvement of the conditions for the establishment and functioning of the Internal Market and the elimination of obstacles to its smooth operation, taking as a basis a high level of health protection.

11. The present Commission proposal for a Council Recommendation deals with further aspects of tobacco control, which concern the improvement of public health, the prevention of human illnesses and diseases, and obviating sources of danger to human health. It also takes account of the negotiations for the establishment of a World Health Organisation Framework Convention on Tobacco Control, and the need to ensure coherence with other actual or proposed acts.

12. 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[17] was annulled by the Judgement of the Court of Justice of the European Communities (ECJ) in Case C-376/98[18]. The Proposal for a new Directive adopted by the Commission on 14 May, 2001 (cf. paragraph 10 above) is intended to replace the annulled Directive. It has nevertheless a more limited scope and does not include certain tobacco control measures which were covered by the annulled Directive, and in particular certain forms of advertising and sponsorship where - according to the ECJ ruling - harmonisation cannot presently be justified on the basis of internal market rules. Given that these forms of advertising nevertheless play an important role in tobacco promotion, in particular as they also reach young people, measures concerning such advertising, sponsorship and promotional practices have been included in the present proposal for a Council Recommendation.

13. A further element of the proposed Recommendation which complements the measures foreseen in the Commission proposal for a Directive on tobacco advertising and sponsorship is that Member States should evaluate expenditure by the tobacco industry on the promotion of their products, in order to ensure better monitoring of the application of advertising restrictions and their eventual circumvention. As stated before, the proposal for a Directive on tobacco advertising had to limit its scope to certain types of advertising with cross-border effects. In 1999, a World Bank report[19] concluded that advertising increases cigarette consumption and that legislation banning advertising would reduce consumption provided that it is comprehensive, covering all media and uses of brand names and logos. Such a reduction in cigarette consumption would have immediate short-term and long-term benefits for public

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15 Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001

16 Doc. COM(2001) 283 final

17 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 - – OJ L 213, 30.7.1998, p. 9.

18 European Court of Justice, Case C-376/98, Judgement of 5 October 2000, Germany v Parliament and Council.

19 The World Bank, « Curbing the Epidemic : Governments and the Economics of Tobacco Control », 1999, Washington DC.

health. In order to be able to evaluate the public health consequences of both Member States and European Community legislation on tobacco advertising, as well as of any voluntary restrictions on tobacco advertising, it is important to monitor to what extent advertising efforts of the tobacco industry are diverted to other forms of advertising, sponsorship and similar promotional activities. In fact, such information is needed for future planning of tobacco control activities by both national authorities and the European Community, with the ultimate objective of an improved protection of the European citizens' health.

14. Particular mention should be made of the issue of availability of tobacco products to children and adolescents. This includes the application of age criteria to sales, as well as vending machine sales, self-service sales, distance sales (such as sales through the Internet, which should be restricted to sites protected by adult verification methods, using effective mechanisms for identifying the age of the buyers) and sales of cigarettes in packets of less than 20 pieces (in order to avoid lower packet prices, which would make cigarettes more easily accessible for children and adolescents).

15. The present proposal envisages a series of measures addressed to restrict the access of children and adolescents to tobacco products. It recommends that tobacco distance sales, such as sales via the Internet, be restricted to sites protected by adult verification methods. With regard to vending machines, it recommends that the access to these machines, viz. to the tobacco products sold through the machines, by children and adolescents be regulated by efficient means (placing of machines in locations accessible only to persons over the age set for the purchase of tobacco products in national law, or other access restrictions to equivalent effect, e. g. the use of adult verification methods before the delivery of a tobacco product through the machine). Furthermore, vending machines should not be used as advertising sites since they are seen indiscriminately by consumers and non-consumers alike.

16. The measures outlined in the proposed Recommendation are entirely in line with the negotiations for the establishment of a World Health Organisation Framework Convention on Tobacco Control (FCTC)[20]. In fact, the draft elements of the FCTC presently under discussion include i. a. provisions aiming at a total ban on all forms of direct and indirect advertising, the restriction of access by minors to tobacco vending machines, the prohibition of the sale of cigarettes individually or in packets of fewer than 20, and the requirement for tobacco companies to disclose expenditures on advertising

[20] Internet address < http://www.who.int/gb/fctc/ >

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on the prevention of smoking and on initiatives to improve tobacco control

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 152 (4), second subparagraph thereof,

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

Whereas:

(1) Article 152 of the Treaty stipulates that Community action, which shall complement national policies, shall be directed towards improving public health, preventing human illness and diseases, and obviating sources of danger to human health;

(2) The Resolution of the Council and the Ministers for Health of the Member States, meeting within the Council of 18 July 1989 on banning smoking in places open to the public[2], provided guidelines to the Member States for the protection of non-smokers from environmental tobacco smoke. Following a Report from the Commission on the response from the Member States to this initiative[3], the present Recommendation reinforces such protection and identifies particularly vulnerable groups.

(3) The Council Resolution of 26 November 1996 on the reduction of smoking in the European Community[4] recognised the need for the development of an effective strategy on combating tobacco consumption, which includes certain of the elements contained in this Recommendation;

(4) The Council Conclusions[5] of 18 November 1999 on combating tobacco consumption underlined the necessity for developing an overall strategy, which includes some of the measures outlined in the present Recommendation for the protection of minors (rules for selling conditions, sales through electronic means and vending machines);

(5) The recommended actions are necessary against a background of 500,000 smoking related deaths annually in the European Community and a worrying increase in the

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1 OJ C […], […], p. […]

2 OJ C 189, 26.7.1989, p. 1

3 Report from the Commission to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions on the response to the Resolution of the Council and the Ministers for Health of the Member States meeting within the Council on banning smoking in places open to the public.
Doc. COM (96)0573 final.

4 OJ C 374, 11.12.1996, p. 4.

5 OJ C 86, 24.3.2000, p. 4.

number of children and adolescents who take up smoking. Smoking is damaging human health, as smokers become addicted to nicotine and suffer fatal and disabling diseases such as cancers of the lung and other organs, ischaemic heart disease and other circulatory diseases, and respiratory diseases such as emphysema;

(6) Smoking prevention and tobacco control are already priority objectives in the public health policies of Member States and the European Community. Nevertheless, smoking remains the biggest form of preventable death in the European Union, and progress in reducing tobacco consumption and smoking incidence is still disappointing. Moreover, the advertising, marketing, and promotion strategies used by the tobacco industry foster tobacco consumption, thereby increasing the already high mortality and morbidity caused by the use of tobacco products. Some of these strategies appear to be targeting young people in their educational years, in order to replace the large number of smokers who die annually. It is in fact established that 60% of smokers start the habit before 13 years of age, and 90% before 18;

(7) Through the Europe against Cancer program[6], the European Community has set as one of its objectives a contribution to the improvement of the health of its citizens by reducing the number of cases of cancer and other diseases related to smoking;

(8) Directive 2001/37/EC of the European Parliament and of the Council of 5 June 2001 on the manufacture, presentation and sale of tobacco products[7] and the Proposal for a Directive on advertising and sponsorship of tobacco products[8] deal with tobacco control in the context of the completion and consolidation of the Internal Market and the abolition of obstacles to its smooth operation, while taking as a basis a high level of public health protection;

(9) Certain measures that should be part of a comprehensive tobacco control policy, such as a prohibition of billboard and poster advertising, or of advertising in cinemas, cannot presently be subject to harmonisation under the Community internal market rules. However such harmonisation could be possible in the future if obstacles to the free movement of goods or the freedom to provide services or distorsions of competition arise;

(10) All the above facts highlight the need for a comprehensive approach towards tobacco control, with a view to reducing the incidence of smoking-induced diseases in the Community;

(11) In the context of a comprehensive tobacco control policy, it is essential to adopt measures aimed particularly at reducing demand for tobacco products by children and adolescents. Such measures may include actions aimed at reducing the supply of tobacco to children and adolescents, and at limiting the exposure of children and adolescents to certain kinds of advertising, marketing and promotion strategies for

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6 Decision No 646/96/EC of the European Parliament and of the Council of 29 March 1996 adopting an action plan to combat cancer within the framework for action in the field of public health (1996 to 2000) OJ L 95 , 16.04.1996, p. 9.

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. OJ L 194, 18.07.2001 p. 26.

8 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 and sponsorship of tobacco products COM/2001/0283 final. OJ C 270, 25.09.2001 p. 97.

tobacco products, taking into account that such strategies impact indiscriminately on young people and other age groups.

(12) Certain forms of sales and distribution of tobacco products facilitate the access by children and adolescents to these products, and should therefore be regulated by Member States.

(13) Given that vending machines are visible to consumers and non-consumers alike, they should not carry advertising or be otherwise used as sites for the promotion of tobacco products.

(14) Two other important measures at European Community level address the advertising and the sponsorship of tobacco products. The 1989 Television without Frontiers Directive[9] bans all forms of television advertising for tobacco products and provides that television programmes may not be sponsored by natural or legal persons whose principal activity is the manufacture or sale of tobacco products. The current proposal for a Directive on advertising and sponsorship of tobacco products[10] foresees a ban of tobacco advertising in the press and in other printed publications, in the radio and through information society services. This proposal also foresees a ban on sponsorship by tobacco companies of radio programmes, and of events involving or taking place in several Member States or otherwise having cross-border effects;

(15) This Recommendation addresses other types of advertising, marketing and promotion practices used by the industry to promote tobacco consumption, which can indiscriminately reach children and adolescents. Such practices include the use of tobacco brand names on non-tobacco merchandise or services ("brand-stretching") and/or clothes ("merchandising"), the distribution of promotional items (such as ordinary objects like ashtrays, lighters, parasols and other similar objects) and of tobacco samples, the use of billboards and/or posters as "outdoor" or "static" advertising, the use of tobacco advertising in cinemas, as well as any other forms of advertising, sponsorship or practices directly or indirectly addressed to promote tobacco products. In fact, such activities, which constitute means of promoting tobacco products while circumventing bans on direct tobacco advertising already in force for certain media, should be specifically regulated by Member States authorities;

(16) The World Health Organisation[11] and the World Bank[12] recommend that countries prohibit all forms of tobacco advertising and promotion. In cases where only certain forms of direct tobacco advertising are prohibited, the tobacco industry frequently shifts its advertising expenditure to other marketing, sponsorship and promotion strategies, using creative and indirect ways to promote tobacco products, especially with young people. In this way, the effect of partial advertising bans on tobacco consumption may be limited. Moreover, the World Bank has concluded that

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9 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. OJ L 298, 17.10.1989, p. 23.

10 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 and sponsorship of tobacco products (presented by the Commission pursuant to Articles 47(2), 55 and 95 of the EC Treaty). COM/2001/0283 final. OJ C 270, 25.09.2001 p. 97.

11 World Health Organisation, Tobacco Free Initiative. Internet <www.tobacco.who.int>

12 The World Bank, « Curbing the Epidemic : Governments and the Economics of Tobacco Control », 1999, Washington DC.

advertising increases cigarette consumption and that legislation banning advertising would reduce consumption provided that it is comprehensive, covering all media and uses of brand names and logos[13]. Such a reduction in cigarette consumption would have immediate short-term and long-term benefits for public health. Information on the global expenditure of the tobacco industry on the promotion of tobacco products is therefore an important prerequisite for monitoring the effectiveness of tobacco control policies from a public health perspective. Such information makes it possible to determine whether restrictions imposed are being circumvented, particularly by the diversion of budgets towards new or unrestricted forms of promotion. Regular declaration of such expenditure should be required of the tobacco industry;

(17) Given the health risks associated with passive smoking, Member States should ensure the protection of non-smokers from environmental tobacco smoke, in particular with regard to vulnerable groups such as persons with respiratory diseases, pregnant women and children;

(18) Member States should continue developing strategies and measures to reduce the prevalence of smoking, such as strengthening health education programmes to improve understanding of the risks of smoking as well as other prevention programmes to discourage smoking;

(19) The World Health Organisation's Framework Convention on Tobacco Control, which is currently negotiated, addresses many of the issues dealt with in the present Recommendation. It is therefore important to ensure that the measures contained in this Recommendation are consistent with the draft elements of the FCTC presently under discussion.

[13] The World Bank, « Curbing the Epidemic : Governments and the Economics of Tobacco Control », 1999, Washington DC

HEREBY RECOMMENDS THAT MEMBER STATES:

1. Adopt appropriate legislative or administrative measures, or foster voluntary agreements, to prohibit tobacco sales to children and adolescents, including:

   (a) Requiring vendors of tobacco products to establish that tobacco purchasers have reached the age for purchase of such products required in national law, where such an age limit exists;

   (b) Removing tobacco products from self-service displays in retail outlets;

   (c) Restricting the access to tobacco vending machines to locations accessible to persons over the age set for purchase of tobacco products in national law, where such an age limit exists, or otherwise regulating the access to the products sold through such machines in an equally effective way;

   (d) Restricting tobacco distance sales, such as sales via the Internet, to sites protected by adult verification methods;

   (e) Prohibiting the sale of cigarettes individually or in packets of fewer than 20 cigarettes.

2. Adopt appropriate legislative or administrative measures or foster voluntary agreements so as to avoid the following forms of advertising and promotion reaching children and adolescents:

   (a) the use of tobacco brand names on non-tobacco products or services;

   (b) the use of promotional items (ashtrays, lighters, parasols, etc.) and tobacco samples;

   (c) the use of billboards, posters and other indoor or outdoor advertising techniques (such as advertising on tobacco vending machines);

   (d) the use of advertising in cinemas; and

   (e) any other forms of advertising, sponsorship or practices directly or indirectly addressed to promote tobacco products.

3. Adopt appropriate measures, by introducing legislation or by other methods in accordance with national practices and conditions, in order to require manufacturers, importers and traders in tobacco products to provide Member States with information concerning the expenditure they incur on advertising, marketing, sponsorship and promotion campaigns not prohibited under national or Community legislation.

4. Implement legislation, voluntary agreements or other effective measures at the appropriate governmental or non-governmental level that provide adequate protection from exposure to environmental tobacco smoke in indoor workplaces, enclosed public places, and public transport, with particular attention to special risk groups such as children, pregnant women and persons with respiratory diseases.

5. Continue developing strategies and measures to reduce the prevalence of smoking, such as strengthening health education and general programmes to discourage the use of tobacco products.

6. Implement all necessary and appropriate procedures to verify compliance with the measures set out in this Recommendation.

7. Inform the Commission every two years of action taken in response to this recommendation.

HEREBY INVITES THE COMMISSION:

1. To monitor and assess the developments and the measures undertaken in the Member States and at Community level;

2. To report on the implementation of the proposed measures, on the basis of the information provided by Member States, not later than the end of the fifth year after the date of adoption of this Recommendation;

3. To consider the extent to which the measures set out in this Recommendation are working effectively, and to consider the need for further action, particularly if internal market disparities are identified in the areas covered by this Recommendation.

Done at Brussels,

For the Council
The President