


# Fiche de procédure

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	Procedure completed
Advertising and sponsorship of tobacco products Repealing Directive 98/43/EC <a href="#">1989/0194(COD)</a>	
Subject 4.20.03 Drug addiction, alcoholism, smoking 4.60.02 Consumer information, advertising, labelling	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>JURI</b> Legal Affairs and Internal Market		10/07/2001
		PSE <a href="#">MEDINA ORTEGA Manuel</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	<b>ENVI</b> Environment, Public Health, Consumer Policy (Associated committee)		26/06/2001
		PSE <a href="#">MALLIORI Minerva Melpomeni</a>	
Council of the European Union	<b>CULT</b> Culture, Youth, Education, Media and Sport	The committee decided not to give an opinion.	
	Council configuration	Meeting	Date
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">2499</a>	27/03/2003
	<a href="#">Employment, Social Policy, Health and Consumer Affairs</a>	<a href="#">2470</a>	02/12/2002
	Health	<a href="#">2440</a>	26/06/2002
	<a href="#">Agriculture and Fisheries</a>	<a href="#">2419</a>	18/03/2002
European Commission	Health	<a href="#">2384</a>	15/11/2001
	Commission DG	Commissioner	
	<a href="#">Health and Food Safety</a>		

Key events			
30/05/2001	Legislative proposal published	COM(2001)0283	Summary
05/07/2001	Committee referral announced in Parliament, 1st reading		
15/11/2001	Debate in Council	<a href="#">2384</a>	Summary
18/03/2002	Debate in Council	<a href="#">2419</a>	Summary

26/06/2002	Debate in Council	<a href="#">2440</a>	
08/10/2002	Vote in committee, 1st reading		Summary
08/10/2002	Committee report tabled for plenary, 1st reading	<a href="#">A5-0344/2002</a>	
18/11/2002	Debate in Parliament		
20/11/2002	Decision by Parliament, 1st reading	<a href="#">T5-0550/2002</a>	Summary
28/11/2002	Modified legislative proposal published	<a href="#">COM(2002)0699</a>	Summary
27/03/2003	Act adopted by Council after Parliament's 1st reading		
26/05/2003	Final act signed		
26/05/2003	End of procedure in Parliament		
20/06/2003	Final act published in Official Journal		

### Technical information

Procedure reference	2001/0119(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealing Directive 98/43/EC <a href="#">1989/0194(COD)</a>
Legal basis	Rules of Procedure EP 57; EC Treaty (after Amsterdam) EC 055; EC Treaty (after Amsterdam) EC 047-p2; EC Treaty (after Amsterdam) EC 095
Stage reached in procedure	Procedure completed

### Documentation gateway

Legislative proposal		<a href="#">COM(2001)0283</a> <a href="#">OJ C 270 25.09.2001, p. 0097 E</a>	30/05/2001	EC	Summary
Economic and Social Committee: opinion, report		<a href="#">CES1328/2001</a> <a href="#">OJ C 036 08.02.2002, p. 0104</a>	17/10/2001	ESC	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A5-0344/2002</a>	08/10/2002	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T5-0550/2002</a> OJ C 025 29.01.2004, p. 0027-0187 E	20/11/2002	EP	Summary
Modified legislative proposal		<a href="#">COM(2002)0699</a>	28/11/2002	EC	Summary
Follow-up document		<a href="#">COM(2008)0330</a>	28/05/2008	EC	Summary

### Additional information

European Commission	<a href="#">EUR-Lex</a>
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### Final act

[Directive 2003/33](#)  
[OJ L 152 20.06.2003, p. 0016-0019](#) Summary

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## Advertising and sponsorship of tobacco products

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PURPOSE : to address economic operations regarding tobacco advertising in certain media and tobacco related sponsorship. CONTENT : There are differences between Member States laws on tobacco advertising and sponsorship. Such advertising in certain cases crosses Member States' borders. Differences in national legislation are likely to give rise to increasing barriers to free movement of products. - To eliminate these barriers and promote public health, the rules on tobacco advertising need to be approximated. Tobacco advertising is to be limited to those magazines and periodicals which are not intended for the general public such as trade journals and to publications published and printed in third countries, which are not principally intended for the Community market. - Sponsorship is prohibited only for those activities or events with crossborder effects, without regulating sponsorship on a purely national level, which otherwise may be a means of circumventing the restrictions placed on direct forms of advertising. - Tobacco advertising by means of information society services and radio broadcasting should be regulated at the Community level and is prohibited. - Free distribution of tobacco in the context of sponsorship of events is prohibited. - There are provisions for laying down penalties applicable to infringements of these rules. Persons or organisations which, according to national legislation can justify a legitimate interest in the suppression of advertising may take legal action. - The Directive must be transposed by 31 July 2005. ?

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## Advertising and sponsorship of tobacco products

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The Council held a policy debate on the proposal for a Directive. This new proposal is intended to replace an earlier Directive (98/43/EC) on the same subject which was annulled by the European Court of Justice on 5 October 2000 on the grounds that some provisions were not in conformity with the legal basis on which it had been adopted. The Council's discussion focused on the scope of the proposal, taking account of the judgment by the Court of Justice. The Council asked the Permanent Representatives Committee to continue examining the proposal pending the European Parliament's first-reading Opinion.?

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## Advertising and sponsorship of tobacco products

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After lengthy discussions, the Council reached political agreement by qualified majority, with the Danish and Swedish delegations voting against and the United Kingdom delegation abstaining, on a proposal for a Regulation concerning the tobacco sector (14521/01) as amended on the basis of a Presidency compromise suggestion adopted by the Commission. This compromise was accompanied by a Commission statement for the minutes, which the German, Netherlands and United Kingdom delegations supported. The Regulation sets premiums and guarantee thresholds for tobacco for the 2002, 2003 and 2004 harvests by variety group and Member State. The main points of the Presidency compromise suggestion are as follows: - Inclusion of a reference in Recital (5) to Article 152 of the Treaty - requirement for a high level of public health protection - and of a reference in Recital (6) to the Community Tobacco Fund's activities and financing; - Community Tobacco Fund: the deduction to finance the Fund is set at 2% of the premium for the 2002 harvest, and 3% for the 2003 harvest; the deduction may be increased to 5% for the 2004 harvest on the basis of a Commission report to be presented by 31 December 2003 on the use of the Fund's appropriations, accompanied if necessary by a proposal to that effect; - auction system: the scheme may apply to the contracts of producer groups that wish to take part in it; - national quota reserve: producer Member States will be able to create a national quota reserve. The Regulation will be formally adopted without debate at a forthcoming Council.?

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## Advertising and sponsorship of tobacco products

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The committee adopted the report by Manuel MEDINA ORTEGA (PES, E) amending the proposal under the codecision procedure (1st reading). The amendments were designed to enable this new proposal to stand up to any fresh challenge before the Court of Justice: - the scope of the directive should be limited to cases with "significant trans-border effects" and any advertising only indirectly related to promoting tobacco products should be excluded from it; - regarding the print media, Member States should be allowed, rather than required as the Commission proposes, to limit advertising to publications intended exclusively for the tobacco trade. The clause in the proposal which prohibits other advertising in the press and other printed publications was therefore deleted. The committee added that a Member State with a national ban on tobacco advertising may not prohibit the sale and circulation of publications published in other Member States, where those publications are not principally intended for the market of that Member State; - as regards the internet, a system should be set up to limit tobacco advertising to the tobacco trade and informed adults. However, commercial information available to the public through the internet about tobacco products (especially ingredients, quality standards and scientific reports on health aspects) should not be regarded as advertising; - as regards radio advertising and sponsorship, only radio advertising which has a substantial cross-border impact and significantly distorts competition should be prohibited. Tobacco sponsorship of radio programmes should be banned only where the programmes are targeted at a transborder audience; - on the tricky question of indirect advertising, an amendment stipulated that, where a brand name has been used in good faith both for non-tobacco and for tobacco products, it may continue to be used for advertising and sponsorship of non-tobacco products so long as it is used in a manner distinct from that used for tobacco products; - with regard to events and activities, only sponsorship of events with substantial cross-border effects and the potential to cause a significant distortion of competition should be banned. In such cases, the free distribution of tobacco products should also be prohibited; - however, to avoid disturbing the scheduled plans for Formula 1 car racing, in exceptional cases Member States may continue to authorise the existing sponsorship of international events for which agreements are already in place, but only up to 1 October 2006 and provided that the sums devoted to such sponsorship decrease over the transitional period and that voluntary restraint measures are introduced to reduce the visibility of advertising at such events.?

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## Advertising and sponsorship of tobacco products

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The European Parliament adopted by 309 votes to 203, with 39 abstentions a resolution on tobacco advertising. Its rapporteur was Manuel

MEDINA ORTEGA (PES, Spain). Parliament rejected many of the amendments passed by the Legal Affairs Committee. The main amendment adopted by Parliament states, as a recital, that the Directive regulates the advertising of tobacco products in the media other than the television, i.e., in the press and other printed publications, in radio broadcasting and in information society services. The Directive also regulates the sponsorship, by tobacco companies, of radio programmes, and of events 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 the 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.?

## Advertising and sponsorship of tobacco products

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The amendments accepted by the Commission concern : - the deletion of the reference to the call for new proposals to address possible further obstacles to the smooth operation of the Internal market. The Commission agrees that its right of initiative remains as provided for in the Treaty even if specific reference to the right to present new proposals is not indicated; - improving the clarity of the text by introducing a new recital which clearly identifies the matters within the scope of the Directive, and recalls that Member States retain the competence to regulate certain issues not covered by the Directive as they deemed necessary to guarantee the health protection of individuals.?

## Advertising and sponsorship of tobacco products

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PURPOSE : to harmonise national regulation on tobacco advertising in printed media, radio broadcasting and information society services as well as on sponsorship of events with cross-border effects. COMMUNITY MEASURE : Directive 2003/33/EC 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. CONTENT : to recall, 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 difference 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 organisations of certain major sporting and cultural events. It should be noted that the German and United Kingdom delegations voted against. The Directive is aimed at harmonising national regulations on tobacco advertising in printed media, radio broadcasting and information society services, as well as on sponsorship of events with cross-border effects with the aim of promoting tobacco products. It does so whilst ensuring the free movement of the media concerned and with a view to eliminating obstacles to the operation of the internal market. Moreover, it aims at banning, with a few limited exceptions, advertising and sponsorship of tobacco products in the sectors and cases mentioned above. More specifically, advertising in the press and other printed publications shall be limited to publications intended exclusively for professionals in the tobacco trade and to publications which are printed and published in third countries, where those publications are not principally intended for the Community market. Other advertising in the press and other printed publications shall be prohibited. As regards radio advertising and sponsorship, the Directive stipulates all forms of radio advertising for tobacco products shall be prohibited. Radio programmes shall not be sponsored by undertakings whose principal activity is the manufacture or sale of tobacco products. Concerning the sponsorship of events or activities involving or taking place in several Member States or otherwise having cross-border effects shall be prohibited. Any free distribution of tobacco products in the context of sponsorship events having the purpose of the direct or indirect effect of promoting such products shall be prohibited. It is intended to replace Directive 98/43/EC, which was annulled by the Court of Justice in Case C-376/98 on 5 October 2000 on the grounds that some of its provisions were not in conformity with the legal basis on which it had been adopted, namely article 95 of the Treaty (approximation of the laws, regulations and administrative provisions of the Member States in the context of the establishment and functioning of the internal market). References to the annulled Directive shall be construed as reference to this Directive. It builds on the relevant provisions, with regard to television advertising and sponsorship of tobacco products, of Directive 97/36/EC concerning the pursuit of television broadcasting activities (so-called "Television without frontiers" Directive). No later than 20 June 2008, the Commission shall submit a report to the European Parliament, the Council and the European Economic and Social Committee on the implementation of this Directive. This report shall be accompanied by any proposals for amendments to this Directive. The report shall be accompanied by any proposals for amendments to this Directive which the Commission deems necessary. TRANSPOSITION : 31 July 2005. ENTRY INTO FORCE : 20 June 2003.?

## Advertising and sponsorship of tobacco products

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The Commission presents a report on the implementation of the Tobacco Advertising Directive 2003/33/EC. Given the short period of time since the transposition of the Directive, including delays in some Member States, it is too early to evaluate the effectiveness of this Directive on public health. However, it is expected that the comprehensive cross-border advertising ban introduced by the Directive will help to reduce the prevalence of smoking within the EU in the long run.

Print media: Article 3(1) obliges Member States to ban tobacco advertising in the press and other printed publications, with certain exceptions. In general, the ban on tobacco advertising in print media is complied with. Traditional cigarette brand advertisements appear to be absent from publications intended for the general public. However, print media within the EU is not yet completely free from tobacco advertising and promotion. The latter may take the form of references in press stories and print media content. In addition, tobacco advertising has occasionally been spotted in catalogues at certain points of sale. Typical examples are tax-free shop catalogues on cross-border vessels and in-flight magazines. Furthermore, tobacco advertisements are often visible in news images (e.g. from sports events) from third countries where tobacco sponsorship of events and activities is still legal. The scope of this problem will depend on how well the Parties of the FCTC implement the comprehensive ban on tobacco advertising, promotion and sponsorship in events in line with its Article 13. The Commission is closely involved in the international efforts to enhance speedy and effective implementation of this Article.

Information society services: the virtual environment is the most common cross-border platform for tobacco advertising and the biggest

challenge for the effective implementation of the EU advertising ban. The pace of change of communication technologies provides for a variety of platforms for tobacco advertising and sponsorship. Elements of tobacco promotion are regularly inserted into a variety of digital media contents, including internet sales of tobacco and specialised communication applications that function in the virtual environment. The key challenge of implementing the tobacco advertising ban in the virtual environment is how to recognise covert forms of advertising. Tobacco advertising in the internet takes a variety of forms, mostly indirect. Buying tobacco through the internet has become easier. The Directive does not cover the sale of tobacco products, but the websites selling tobacco often involve an element of promotion (?buy cheap?). Another challenge is the number of entities involved in the virtual environment and their identification. Almost anybody may produce promotional content and make it available worldwide. The international dimension poses the biggest challenge in terms of implementing the tobacco advertising ban in the virtual environment. Servers hosting the advertising content may be located in third countries. As regards third countries, guidelines and decisions of the Third Conference of Parties under the FCTC are expected to improve exchanges of information with third countries.

Sponsorship issues: the ban on tobacco sponsorship of cross-border events is well implemented within the EU. However, tobacco sponsorship arrangements have not completely stopped. Instead, they have taken indirect and more insidious forms that pose a challenge to the enforcement authorities in Member States. There are indications of exclusive selling arrangements and free distribution of tobacco products at festivals for young people. There are also attempts to glamorise tobacco products by associating them with events, festivals, celebrity artists, movie stars and different products in various ways.

Tobacco advertising and sponsorship is still visible in media coverage received from third countries. Such advertising is not covered by the Directive, but it risks undermining the EU ban. The most visible events are famous sports events that get wide media attention, such as Formula One races. The Audiovisual Media Services Directive (2007/65/EC), which now clearly prohibits product placement for tobacco products, could be relevant in such cases after its transposition deadline of 19 December 2009. The Commission states that work needs to be done within the FCTC in order to prevail on third countries to adopt comprehensive tobacco sponsorship bans. Corporate promotion still exists as a cross-border method to market tobacco products. There is a need to streamline ways in which different Member States address such cases.

Cross-border enforcement: the Commission states that it will explore the possibility of making the cross-border enforcement mechanism in the Regulation on Consumer Protection Cooperation applicable to the Tobacco Advertising Directive. It invites Member States to designate enforcement liaison offices, exchange information, and take all necessary enforcement measures to bring about the cessation of any infringement and respond without delay to enforcement requests of other Member States. The EC should support the development of a similar mechanism in the context of implementation of Article 13 of the FCTC.

Conclusion: the Commission considers that the Directive is wide enough to cover changing patterns of cross-border tobacco advertising and sponsorship. There is a risk of inconsistent interpretation and application of the Directive, and a need to streamline monitoring so as to avoid differences of interpretation. Mechanisms for cross-border enforcement need to be developed and strengthened. The Commission does not see any need to propose amendments to the Directive.