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

1989/0194(COD) - 22/04/1998

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 All amendments (72 had been tabled initially, others were withdrawn) were rejected by overwhelming majorities.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.