ROMÂNIA

CONSILIUL LEGISLATIV

LEX

AVIZ

referitor la propunerea legislativă privind prevenirea şi combaterea consumului produselor de tutun

Analizând **propunerea legislativă privind prevenirea şi combaterea consumului produselor de tutun,** transmisă de Secretarul General al Senatului, cu adresa nr.558 din 10.06.1998,

CONSILIUL LEGISLATIV

În temeiul art.2 alin.1 lit.a din Legea nr.73/1993 şi art.48(2) din Regulamentul de organizare şi funcţionare a Consiliului Legislativ,

Avizează favorabil propunerea legislativă, cu următoarele observaţii şi propuneri :

Propunerea legislativă, inspirată din imperative medicale de mult demonstrate ştiinţific urmăreşte efecte sociale benefice şi demonstrează o grijă responsabilă pentru viaţa şi sănătatea oamenilor, cu precădere a tinerelor generaţii.

Textul include reglementări privind semnalarea faptului că produsele din tutun sunt nocive, descurajarea reclamei privind consumul acestora, interzicerea comercializării produselor din tutun în anumite locuri, sarcinile ce revin unor ministere în educarea antitabagică a populaţiei şi chiar sancţiuni pentru încălcarea unor prevederi ale proiectului.

Prevăzând incriminarea unor fapte propunerea legislativă are, potrivit dispoziţiilor constituţionale, caracterul unei legi organice.

Din punct de vedere juridic, proiectul este perfectibil, fiind necesar ca unele prevederi să fie mai precise, reglementarea să fie armonizată cu directivele Comisiei Uniunii Europene nr.89/622/CEE şi nr.92/41/CEE de completare a primei, în ce priveşte avertismentul general înscris pe pachetele de ţigări şi avertismentele înscrise pe

PARLAMENTUL ROMÂNIEI
SENAT
L 1143/10.VII.98

pachetele cu produse din tutun, altele decât ţigaretele. De asemenea, proiectul ar trebui să se refere expres la atribuţiile unor ministere şi ale Societăţii Naţionale de profil, în acest domeniu, să abordeze problema sancţiunilor în mod echilibrat şi să prevadă un termen rezonabil pentru intrarea legii în vigoare.

Din toate aceste puncte de vedere, pornind de la propunerea legislativă supusă avizării, prezentăm alăturat o formă refăcută a acesteia, elaborată în cadrul Consiliului Legislativ, care considerăm că poate sta la baza definitivării şi dezbaterii ei atât în Comisiile senatoriale sesizate, cât şi în plenul Senatului. Menţionăm că în ipoteza în care autorii propunerii legislative ar accepta în domeniul sancţiunilor numai sancţiuni contravenţionale, proiectul ar putea să fie adoptat cu procedura specifică legilor ordinare.

Prezentăm alăturat textul în limba engleză al celor două directive invocate.

PREŞEDINTE

Valeriu DORNEANU

CONSILIUL LEGISLATIV * PREŞEDINTE *

Bucureşti
Nr. 464/10.07.1998

Senatul Camera Deputaților

L e g e
privind prevenirea pericolelor rezultate prin consumul produselor din tutun

Parlamentul României adoptă prezenta lege :

Art.1 Comercializarea oricărui produs din tutun care nu poartă o inscripție - avertisment privind pericolul consumării lui asupra sănătății individuale şi publice, este interzisă.

Art.2 (1) Fiecare pachet cu țigarete introdus în circuitul comercial trebuie să aibă tipărit în limba română, pe una din suprafețele mari, avertismentul general : "Tutunul dăunează serios sănătății".

(2) Pe ambele suprafețe mari ale pachetelor cu produse din tutun, altele decât țigarete, trebuie să fie tipărit, prin rotație, pe lângă avertismentul general prevăzut la alin.1, unul din următoarele avertismente:

"Fumatul cauzează cancerul"; "Fumatul dăunează inimii"; "Protejați copiii ! Nu-i faceți să respire fumul de țigare"; "Fumatul în timpul sarcinii este dăunător şi pentru copil"; "Fumatul poate ucide".

Art.3 Avertismentele prevăzute la art.2 trebuie să fie imprimate în următoarele condiții tehnice :

a) să fie clare şi vizibile;

b) să fie tipărite cu litere îngroşate;

c) să fie tipărite pe un fond de contrast;

d) să nu poată fi deteriorate prin deschiderea pachetului;

e) să nu fie aplicate pe un ambalaj transparent sau pe orice alt ambalaj exterior.

Art.4 Vânzarea produselor din tutun minorilor sau în incinta instituțiilor de învățământ ori medicale, precum şi în mijloace de transport în comun este interzisă.

Art.5 (1) În instituțiile publice şi private, precum şi în orice unitate în care se desfăşoară activități de orice natură, fumatul este permis numai în locuri anume rezervate pentru aceasta, marcate prin inscripții sau indicații speciale.

(2) Conducătorii instituțiilor şi unităților prevăzute la alin.1 sunt obligați ca, în termen de 30 de zile de la intrarea în vigoare a prezentei legi să ia măsurile necesare pentru stabilirea locurilor în care fumatul este permis şi pentru marcarea lor vizibilă, avertizând totodată asupra interzicerii fumatului în restul spațiilor din instituție sau unitate.

Art.6 Se interzice publicitatea, sub orice formă, a produselor din tutun, atât prin mijloace mass-media audio-vizuale, cât şi prin orice alte mijloace de comunicare.

Art.7 Ministerul Educației Naționale şi Ministerul Sănătății sunt obligate să elaboreze şi să pună în aplicare programe naționale de educație, inclusiv prin mass-media, prin care să se combată consumul produselor din tutun.

Art.8 Societatea Națională "Tutunul Românesc" S.A. este obligată să ia măsurile necesare decurgând din dispozițiile art.1-3, inclusiv pentru produsele din tutun provenite din import.

Art.9 Ministerul Educației Naționale, Ministerul Sănătății şi Ministerul Transporturilor sunt obligate să ia măsurile necesare pentru prevenirea săvârşirii faptei prevăzută în art.4.

Art.10 (1) Încălcarea dispozițiilor art.1 - 6 constituie contravenție şi se sancționează cu amendă de la 1.000.000 la 3.000.000 lei.

(2) Sancțiunea poate fi aplicată şi persoanei juridice.

(3) Contravențiile se constată şi sancțiunea se aplică de organele de control ale Ministerului Sănătății, Ministerului Educației Naționale, Ministerului Transporturilor, Ministerului Agriculturi precum şi de cele ale Oficiului pentru Protecția Consumatorului.

(4) Produsele din tutun care au făcut obiectul contravențiilor se confiscă.

Art.11 Contravențiilor prevăzute în art.10 le sunt aplicabile dispozițiile Legii nr.32/1968 privind stabilirea şi sancționarea contravențiilor, cu excepția art.25 - 27.

Art.12 Prezenta lege intră în vigoare la 90 de zile de la publicarea ei în Monitorul Oficial al României.

COUNCIL DIRECTIVE of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products (89/622/EEC)

OFFICIAL JOURNAL NO. L 359, 08/12/89 P. 0001

COUNCIL DIRECTIVE of 13 November 1989 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products (89/622/EEC) THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,
Having regard to the proposal from the Commission(1),
In cooperation with the European Parliament(2),
Having regard to the opinion of the Economic and Social Committee(3),

Whereas there are differences between the laws, regulations and administrative provisions of the Member States on the labelling of tobacco products;

Whereas these differences are likely to constitute barriers to trade and to impede the establishment and operation of the internal market;

Whereas these possible barriers should be eliminated and whereas, to that end, the marketing and free movement of tobacco products should be made subject to common rules concerning labelling;

Whereas such common rules must take due account of public health protection;

Whereas the European Council meeting held in Milan on 28 and 29 June 1985 stressed the importance of launching a European action programme against cancer;

Whereas the Council and the representatives of the Governments of the Member States, meeting within the Council, in their resolution of 7 July 1986 on a programme of action of the European Communities against cancer(4) set for this programme the objective of contributing to an improvement of the health and quality of life of citizens within the Community by reducing the number of cancers and whereas they have for this purpose identified a fight against the use of tobacco products as their prime objective;

Whereas the printing of health warnings on the unit packaging of all tobacco products concerning the risks of use of such products is a vital factor in the protection of public health;

Whereas, for the purpose of improving public health protection, the indication of the tar and nicotine yield on cigarette packets is essential for the health information and education of the general public;

Whereas this Directive contains provisions which will be reviewed on the basis of experience gained and the development of medical knowledge in this area, the objective being to achieve greater protection of individuals;

Whereas, finally, the initiatives set in this Directive will have an even more beneficial effect on public health if they are coupled with health education programmes during the years of compulsory education and with information and public awareness campaigns,
HAS ADOPTED THIS DIRECTIVE:

Article 1 The objective of this Directive is the harmonization of the laws, regulations and administrative provisions of the Member States concerning the warnings regarding health to appear on the unit packet of tobacco products and the indication of the tar and nicotine yield to appear on

cigarette packets, taking as a base a high level of health protection by reducing the harm done to health by tobacco addiction.

Article 2 For the purposes of this Directive:
(1)tobacco products means products for the purpose of smoking, sniffing, sucking or chewing, inasmuch as they are, even partly, made of tobacco;
(2)tar means the raw anhydrous nicotine-free condensate of smoke;
(3)nicotine means nicotinic alkaloids.

Article 3

1. The tar and nicotine yields that must be indicated on cigarette packets shall be measured on the basis of the ISO 4387 and ISO 3400 methods.

2. The accuracy of the indications on packets shall be verified in accordance with ISO standard 8243.

3. The indications concerned shall be printed on the side of cigarette packets, in the official language or languages of the country of final marketing in clearly legible print on a contrasting background so that at least 4 % of the corresponding surface is covered. This percentage shall be raised to 6 % for countries with two official languages and to 8 % for countries with three official languages.

4. In January each year the Member States shall forward to the Commission lists of the tar and nicotine contents of the cigarettes sold on their markets. The Commission shall publish this information in the Official Journal of the European Communities.

Article 4

1. All unit packets of tobacco products shall carry, on the most visible surface, the following general warning in the official language or languages of the country of final marketing:

Tobacco seriously damages health.

2. With regard to cigarette packets, the other large surface of the packet shall carry, in the official language or languages of the country of final marketing, specific warnings alternating in accordance with the following rule:
-each Member State shall draw up a list of warnings taken exclusively from those listed in the Annex,
-the specific warnings selected shall be printed on the unit packets so as to guarantee the appearance of each warning on an equal quantity of unit packets, with a tolerance of around 5 %.

3. Member States may stipulate that the warnings referred to in paragraphs 1 and 2 be combined with the indication of the authority that is their author.

4. On cigarette packets the warnings provided for in paragraphs 1 and 2 shall cover at least 4 % of each large surface of the unit packet, excluding the indication of the authority provided for in paragraph 3. This percentage shall be increased to 6 % for countries with two official languages and to 8 % for countries with three official languages.

The required warnings on the two largest surfaces of each cigarette packet:
(a)shall be clear and legible;
(b)shall be printed in bold letters;
(c)shall be printed on a contrasting background;
(d)shall not be printed in a place where they may be damaged when the package is opened;
(e)shall not be printed on the transparent wrapper or any other external wrapping.

5. In the case of tobacco products other than cigarettes, the general warning laid down in paragraph 1 shall be printed in, or irremoveably affixed to, a conspicuous place on a contrasting background and in such a way as to be easilyvisible, clearly legible and indelible. It shall not in any way be hidden, obscured or interrupted by other written or pictorial matter.

Article 5 Adaptation to technical progress of the provisions of this Directive shall be limited to the measurement and verification methods referred to in Article 3 (1) and (2).

Article 6 With a view to the adaptation to technical progress referred to in Article 5, the Commission shall be assisted by an advisory Committee, composed of representatives of the Member States and chaired by the Commission representative.

Article 7 The Commission representative shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft, within a time limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.

The opinion shall be recorded in the minutes; in addition, each Member State may ask to have its position recorded in the minutes.

The Commission shall take the utmost account of the opinion delivered by the Committee. It shall inform the Committee of the manner in which its opinion has been taken into account.

Article 8

1. Member States may not, for reasons of labelling, prohibit or restrict the sale of products which comply with this Directive.

2. The provisions of this Directive do not affect the right of the Member States to lay down, in compliance with the Treaty,
requirements concerning the import, sale and consumption of tobacco products which they deem necessary in order to protect public health, provided such requirements do not imply any changes to labelling as laid down in this Directive.

Article 9

1. Member States shall adopt the laws, regulations and administrative provisions necessary to comply with this Directive before 1 July 1990.

They shall forthwith inform the Commission thereof and communicate to it the provisions of national law which they adopt in the field governed by this Directive.

The Commission shall publish in the Official Journal of the European Communities the national warning lists drawn up in accordance with the first indent of Article 4 (2).

2. Member States shall bring into force the above laws, regulations and adminsitrative provisions before 31 December 1991.

However,
-until 31 December 1992 cigarettes, and -until 31 December 1993 other tobacco products existing on 31 December 1991 which do not comply with this Directive may still be put on sale.

3. Member States which, after 31 December 1991, amend their warning lists drawn up in accordance with the first indent of Article 4 (2) shall notify the Commission of that amendment eighteen months before its application. The Commission shall publish it in the Official Journal of the European Communities.

Article 10 This Directive is addressed to the Member States.

Done at Brussels, 13 November 1989.
For the CouncilThe PresidentC. EVIN

(1)OJ No C 48, 20. 2. 1988, p. 8, and OJ No C 62, 11. 3. 1989, p. 12.

(2)OJ No C 12, 16. 1. 1989, p. 106 and OJ No C 291, 20. 11. 1989.
(3)OJ No C 237, 12. 9. 1980, p. 43.
(4)OJ No C 184, 23. 7. 1986, p. 19.

COUNCIL DIRECTIVE 92/41/EEC of 15 May 1992 amending Directive 89/622/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products

OFFICIAL JOURNAL NO. L 158, 11/06/92 P. 0030

COUNCIL DIRECTIVE 92/41/EEC of 15 May 1992 amending Directive 89/622/EEC on the approximation of the laws, regulations and administrative provisions of the Member States concerning the labelling of tobacco products THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100a thereof,
Having regard to the proposal from the Commission (1),
In cooperation with the European Parliament (2),
Having regard to the opinion of the Economic and Social Committee (3),

Whereas there are differences between the laws, regulations and administrative provisions of the Member States on the labelling of tobacco products; whereas these differences are likely to constitute barriers to trade and to impede the establishment and operation of the internal market;

Whereas these possible barriers should be eliminated and whereas, to that end, the marketing and free movement of tobacco products should be made subject to common rules concerning their labelling;

Whereas such common rules must take due account of public health protection, and of the protection of young persons in particular, taking as a base of high level of health protection, according to Article 100a (3) of the Treaty;

Whereas the Council and the representatives of the Governments of the Member States, meeting within the Council, in their resolution of 7 July 1986 on a programme of action of the European Communities against cancer (4), set for this programme the objective of contributing to an improvement of the health and quality of life of citizens within the Community by reducing the number of cancers and whereas they have for this purpose identified a fight against the use of tobacco products as their prime objective;

Whereas, for the purposes of providing objective information on the risks entailed in tobacco consumption, Council Directive 89/622/EEC (5) established a general warning to be carried on the unit packaging of all tobacco products, together with additional warnings exclusively for cigarettes;

Whereas the Commission, at the request of the Council, undertook to propose an amendment to Directive 89/622/EEC so as to establish additional specific warnings to be carried on the unit packaging of tobacco products other than cigarettes;

Whereas scientific experts are of the opinion that all tobacco products carry health risks;

Whereas, in relation to their effects on health and for the purposes of their labelling, a distinction needs to be made between smoking tobacco products and smokeless tobacco products;

Whereas rolling tobaccos carry the same health risks as cigarettes and it is therefore appropriate that the specific warnings selected for cigarettes should apply also to rolling tobaccos;

Whereas other smoking tobacco products carry similar health risks to those carried by cigarettes; whereas, however, the range of such products is more varied; whereas such products should therefore be required to carry specific warning which accord with appropriate rules;

Whereas it has been proved that smokeless tobacco products are a major risk factor as regards cancer and whereas they should therefore carry a specific warning of that risk;

Whereas scientific experts are of the opinion that the addiction caused by tobacco consumption constitutes a danger meriting a specific warning on every tobacco product;

Whereas, moreover, new tobacco products for oral use which have appeared on the market in certain Member States are particularly attractive to young people and whereas the Member States most exposed to this problem have already placed total bans on these new tobacco products or intend so to do;

Whereas, regarding such products, there are differences between the laws, regulations and administrative provisions of the Member States and whereas these products therefore need to be made subject to common rules;

Whereas there is a real risk that the new products for oral use will be used above all by young people, thus leading to nicotine addiction, unless restrictive measures are taken in time;

Whereas, in accordance with the conclusions of the studies conducted by the International Agency for Research on Cancer, tobacco for oral use contains particularly large quantities of carcinogenic substances; whereas these new products cause cancer of the mouth in particular;

Whereas, the sales bans on such tobacco already adopted by three Member States have a direct impact on the establishment and operation of the internal market; whereas it is therefore necessary to approximate Member States' laws, regulations and administrative provisions in this area, taking as a base a high level of health protection; whereas the only appropriate measure is a total ban; whereas, however, such a ban should not affect traditional tobacco products for oral use, which will remain subject to the provisions of Directive 89/622/EEC, as amended by this Directive, applicable to smokeless tobacco products;

Whereas, finally, the initiatives set in this Directive will have an even more beneficial effect on public health if they are coupled with health education programmes during the years of compulsory education and with information and public awareness campaigns,
HAS ADOPTED THIS DIRECTIVE:

Article 1 Directive 89/622/EEC is hereby amended as follows:

1. The following shall be added to the title and to Article 1:
'and the prohibition of the marketing of certain types of tobacco for oral use.'

2. The following point shall be added to Article 2:
'4. "Tobacco for oral use", for the purposes of Article 8a, means all products for oral use, except those intended to be smoked or chewed, made wholly or partly of tobacco, in powder or particulate form or in any combination of these forms - particularly those presented in sachet portions or porous sachets - or in a form resembling a food product.'

3. Article 4 shall be amended as follows:
(a) in paragraph 2 the word 'Annex' shall be replaced by 'Annex I';
(b) the following paragraph shall be inserted:
'2a. In addition to the general warning referred to in paragraph 1, unit packets of tobacco products other than cigarettes shall carry specific warnings which accord with the following rules:

(a) on the other large surface of rolling tobacco packets, the specific warnings, of which each Member State shall draw up a list taken exclusively from the warnings listed in Annex I, shall be rotated in such a way as to guarantee the successive appearance of each warning on an equal quantity of unit packets, with a tolerance of approximately 5 %;

(b) unit packets of cigars, cigarillos, pipe tobacco or other smoking tobacco products with the exception of cigarettes and rolling tobacco shall carry a specific warning from among those in Annex II, in such a way as to ensure that they are in actual fact rotated;
(c) unit packets of smokeless tobacco products shall carry the following specific warning: "Causes cancer".

The specific warnings shall be printed on, or irremovably affixed to, the unit packets in the official language or languages of the country of final marketing.' (c) paragraph 3 shall be replaced by the following:

'3. Member States may stipulate that the warnings referred to in paragraphs 1, 2 and 2a be combined with the indication of the authority that is their author.' (d) paragraph 5 shall be replaced by the following:

'5. On tobacco products other than cigarettes, the general warning provided for in paragraph 1 and the specific warning provided for in paragraph 2a shall be printed or irremovably affixed. Each warning must, in each language used, cover at least 1 % of the total surface of the unit packet. It must, in any event, be easily visible, clearly legible and indelible. The warnings must appear in a conspicuous place on a contrasting background and must not in any way be hidden, obscured or interrupted by other written or pictorial matter.'

4. Article 5 shall be replaced by the following:
'Article 5 The Commission shall adapt to technical progress, in accordance with Articles 6 and 7, the measurement and verification methods referred to in Article 3 (1) and (2) and, if necessary, the definitions referred to in Article 2 (2) and (3).'

5. The following Article shall be inserted:
'Article 8a Member States shall prohibit the placing on the market of tobacco for oral use as defined in Article 2 (4).' 6. The Annex shall be replaced by those attached to this Directive.

Article 2

1. Member States shall bring into force the laws, regulations and administrative provisions to comply with this Directive not later than 1 July 1992. They shall immediately inform the Commission thereof and shall communicate to it the essential provisions of national law they have adopted in the field covered by this Directive.

When Member States adopt these provisions, they shall contain a reference to this Directive or be accompanied by such reference at the time of their official publication. The procedure for such reference shall be adopted by the Member States.

2. The amendment to Directive 89/622/EEC referred to in Article 1 (5) become applicable not later than 1 July 1992. The amendments to Directive 89/622/EEC referred to in Article 1 (3), (4) and (6) shall become applicable not later than 1 January 1994. However, products existing at that date which do not comply with the requirements of Article 4 (2a), (3) and (5) of Directive 89/662/EEC may still be marketed until 31 December 1994.

Article 3

1. The Commission shall publish in the Official Journal of the European Communities the national lists of warnings provided for in Article 4 (2a) (a) of Directive 89/662/EEC for rolling tobacco.

2. Member States which, after 31 December 1993, amend their list of warnings as referred to in paragraph 1 shall notify such amendment, eighteen months before its application, to the Commission, which shall publish it in the Official Journal of the European Communities.

Article 4 This Directive is addressed to the Member States.

Done at Brussels, 15 May 1992.
For the Council The President Arlindo DE CARVALHO

(1) OJ No C 29, 5. 2. 1991, p. 5; OJ No C 260, 5. 10. 1991, p. 7.
(2) OJ No C 240, 16. 9. 1991, p. 24; OJ No C 94, 13. 4. 1992.
(3) OJ No C 191, 22. 7. 1991, p. 37.
(4) OJ No C 184, 23. 7. 1986, p. 19.
(5) OJ No L 359, 8. 12. 1989, p. 1.

ANNEX 'ANNEX I

List of health warnings referred to in Article 4 (2) and (2a) (a)

A. Warnings which must be included on the national lists
1. Smoking causes cancer.
2. Smoking causes heart disease.

B. Warnings from amongst which Member States may choose
1. Smoking causes fatal diseases.
2. Smoking kills.
3. Smoking can kill.
4. Smoking when pregnant harms your baby.
5. Protect children: don't make them breathe your smoke.
6. Smoking damages the health of those around you.
7. Stopping smoking reduces the risk of serious disease.
8. Smoking causes cancer, chronic bronchitis and other chest diseases.
9. More than (...) people die each year in... (name of country) of lung cancer.
10. Every year,... people are killed in road accidents in... (name of country) -.... times more die from their addiction to smoking.
11. Every year, addiction to smoking claims more victims than road accidents.
12. Smokers die younger.
13. Don't smoke if you want to stay healthy.
14. Save money: stop smoking.
15. Smoking causes addiction.

ANNEX II

List of health warnings referred to in Article 4 (2a) (b)

1. Smoking causes cancer.
2. Smoking causes fatal diseases.
3. Smoking damages the health of those around you.
4. Smoking causes heart disease.'