

COMMISSION DECISION
of 5 September 2003
on the use of colour photographs or other illustrations as health warnings on tobacco packages

(notified under document number C(2003) 3184)

(Text with EEA relevance)

(2003/641/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to 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 ⁽¹⁾, and in particular Article 5(3) thereof,

Whereas:

(1) According to Directive 2001/37/EC each unit packet of tobacco products, except for tobacco for oral use and other smokeless tobacco products, and any outside packaging, with the exception of additional transparent wrappers, must carry a general warning and an additional warning taken from the list set out in Annex I to that Directive.

(2) Member States can decide whether health warnings in the form of colour photographs or other illustrations are required on the packages of some or all types of tobacco products, except for tobacco for oral use and other smokeless tobacco products.

(3) Where Member States require additional warnings in the form of colour photographs or other illustrations these must be in accordance with the rules to be adopted by the Commission.

(4) Directive 2001/37/EC has introduced new labelling provisions which significantly change the aspect of tobacco packets, in particular as far as the size of the warning texts and their graphical presentation is concerned. In order to take maximum advantage of the visual impact achieved with this new design, it should remain unchanged for a certain length of time before colour photographs or other illustrations are introduced.

(5) As research and experience in other countries which have adopted health warnings with colour photographs has proved, health warnings which include colour

photographs or other illustrations can be an effective means of discouraging smoking and informing citizens about the health risks related to smoking. The use of photographs on tobacco packages therefore is a key element of a comprehensive and integrated tobacco control policy.

(6) Given the cultural diversity existing across the European Union, a choice of several colour photographs or other illustrations should be made available for each of the additional warnings listed in Annex I to Directive 2001/37/EC.

(7) Where Member States require health warnings in the form of colour photographs or other illustrations, it should be ensured that these visual elements are not concealed or otherwise impaired.

(8) Where Member States require health warnings in the form of colour photographs or other illustrations, transitional periods should be provided for in order to allow for the necessary changes in the production and packaging process for tobacco products and for the disposal of stocks. The use of irremovable labels should be allowed for tobacco products other than cigarettes.

(9) The introduction of picture-based warnings needs to be monitored and its effectiveness periodically assessed.

(10) The measures provided for in this Decision are in accordance with the opinion delivered by the Committee set up under Article 10 of Directive 2001/37/EC,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter and scope

1. This Decision establishes rules for the use on tobacco packages of colour photographs or other illustrations to depict and explain the health consequences of smoking.

⁽¹⁾ OJ L 194, 18.7.2001, p. 26.

2. This Decision shall apply to those Member States that decide to use colour photographs or illustrations together with the additional warnings required by Directive 2001/37/EC on the packages of some or all types of tobacco products, except for packages containing tobacco for oral use and other smokeless tobacco.

3. Where Member States require health warnings in the form of colour photographs or other illustrations, these shall be in accordance with the rules established by this Decision.

Article 2

Definitions

For the purposes of this Decision, the definitions in Article 2 of Directive 2001/37/EC shall apply.

The following definitions shall also apply:

1. 'tobacco package' means any form of unit packet and any outside packaging used in the retail sale of tobacco products, with the exception of additional transparent wrappers;
2. 'additional warning' means any of the warnings referred to in Article 5(2)(b) and in Annex I to Directive 2001/37/EC;
3. 'source document' means any of the electronic files made available by the Commission which contains a combined warning;
4. 'combined warning' means the warning consisting of a photograph or other illustration and the corresponding text of the additional warning provided for in Article 5(2)(b) and in Annex I to Directive 2001/37/EC, as contained in each source document.

Article 3

Library of source documents

1. By 30 September 2004 at the latest, the Commission shall provide a library of pre-tested source documents in order to make available a choice of several photographs or other illustrations for each of the additional warnings listed in Annex I to Directive 2001/37/EC.
2. The source documents shall be made available by the Commission on request. The technical specifications for printing shall be made available by the Commission and shall not be modified in any way.
3. The Commission shall be assisted by scientific and technical experts in preparing the library of source documents.
4. The selected source documents shall be submitted, for opinion, to the Committee established under Article 10 of Directive 2001/37/EC.

Article 4

Use of the combined warnings

1. Where Member States require health warnings in the form of colour photographs or other illustrations, tobacco packages for which such photographs are required shall carry a

combined warning taken exclusively from the source documents provided by the Commission, without any changes to any of its components.

Member States may choose the source documents best adapted to consumers in their countries.

2. The combined warnings shall:

- (a) be rotated in such a way as to guarantee the regular appearance of all of the additional warnings;
- (b) be printed on the other most visible surface of the tobacco package, respecting the format and proportions of the source document and the graphical integrity of the picture and the text;
- (c) occupy the entire area reserved for the additional health warning, and be positioned parallel to the top edge of the package, and in the same direction as the other information on the package;
- (d) be reproduced in accordance with the technical specifications for printing to be made available by the Commission;
- (e) be surrounded by a black border not less than 3 mm and not more than 4 mm in width which in no way interferes with any textual or visual element of the combined warning.

3. The combined warning shall cover not less than 40 % of the external area of the other most visible surface of the unit packet of tobacco. That proportion shall be increased to 45 % for Member States with two official languages and 50 % for Member States with three official languages.

However, in the case of unit packets intended for products other than cigarettes, the most visible surface of which exceeds 75 cm², the combined warning shall cover an area of at least 22,5 cm² of the other most visible surface. That area shall be increased to 24 cm² for Member States with two official languages and 26,25 cm² for Member States with three official languages.

4. In the case of tobacco products other than cigarettes, the combined warnings may be affixed as stickers, provided that such stickers are irremovable. The reproduction of the combined warnings on the stickers shall be in accordance with the technical specifications for printing made available by the Commission.

5. Member States may stipulate that the combined warnings are to be accompanied by a reference, outside the box for warnings, to the issuing authority. Moreover, if Member States so require, the combined warnings may include other visual elements, such as logos with or without smoking cessation phone numbers, e-mail addresses and/or Internet sites designed to inform consumers about the authorities issuing the warning and the programmes available to support those who want to stop smoking.

6. Except for the cases provided for in paragraph 5, the combined warnings shall not be commented on, paraphrased or referred to in any form on the tobacco package.

Article 5

Visual integrity of the combined warnings

1. The combined warnings shall:
 - (a) be irremovably printed, indelible and in no way hidden or interrupted by other written or pictorial matter or by the opening of the packet. The printing of the combined warnings on the tax stamps or price marks of unit packets shall be prohibited;
 - (b) be displayed in a manner that ensures that none of the textual or visual elements of the combined warnings will be severed when the package is opened.
2. Where Member States decide to require the use of combined warnings on tobacco packages, they shall adopt the necessary rules to prevent the use of any type of wrapper, pouch, jacket, box or other device from partially or entirely hiding or interrupting the combined warnings or any of their elements.
3. Tax stamps or price marks shall not be placed in a way that partially or entirely hides or interrupts the combined warnings or any of their elements.
4. The references or other elements mentioned in Article 4(5) shall not hinder or impede the visualisation of the combined warnings.

Article 6

Implementation

Where Member States decide to require the use of combined warnings on tobacco packages, they shall adopt and publish the provisions necessary to comply with this Decision.

They shall apply those provisions at the earliest from 1 October 2004.

Those provisions shall provide for adequate transitional periods in order to allow for the necessary changes in the production and packaging process for tobacco products and for the disposal of stocks, in particular as regards small and medium enterprises.

When Member States adopt those provisions, they shall contain a reference to this Decision or shall be accompanied by such reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Decision and inform the Commission every two years of their implementation. This information should include an impact assessment with specific reference to consumer habits, and with a particular focus on children and young people.

Article 7

Reporting and adaptations

1. By 30 September 2006 at the latest, and every two years thereafter, the Commission shall report to the Committee established under Article 10 of Directive 2001/37/EC on the implementation of this Decision. The information received from Member States pursuant to the fourth paragraph of Article 6 of this Decision shall form the basis of these reports.
2. On submission of the reports the Commission shall indicate in particular the features which should be reviewed or developed in the light of past experience and new scientific evidence.
3. The scientific and technical experts referred to in Article 11 of Directive 2001/37/EC may assist the Commission in the preparation of these reports.
4. Information on the implementation of this Decision shall also be part of the two-yearly reports which the Commission is to submit to the European Parliament, the Council and the European Economic and Social Committee on the application of Directive 2001/37/EC in accordance with Article 11 of that Directive.

Article 8

Addressees

This Decision is addressed to the Member States.

Done at Brussels, 5 September 2003.

For the Commission

David BYRNE

Member of the Commission