



Smoke Free Partnership

Response to the Green Paper Towards a Europe free from tobacco smoke: policy options at EU level

The Smoke Free Partnership is a strategic, independent and flexible partnership between the European Respiratory Society, Cancer Research UK and the Institut National du Cancer. It aims to promote tobacco control advocacy and policy research at EU and national levels in collaboration with other EU health organisations and EU tobacco control networks. www.smokefreepartnership.eu



1. Introduction

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2. General Comments

We would like to congratulate the unit responsible for the Green Paper within DG Sanco for the clarity of the documents published on this topic. The informal consultation issued prior to the drafting of the Green Paper was extremely useful, as it outlined the problem and gave a list of policy issues and options.

The Smoke Free Partnership welcomes the Commission Green Paper as a timely addition to the EU and global debate on smokefree policies. We find the Green Paper to be a well-researched document based on strong scientific evidence which presents a range of possible options for smokefree policies.

3. Specific comments

Which of the two approaches suggested in Section IV would be more desirable in terms of its scope for smoke-free initiative: a total ban on smoking in all enclosed public spaces and workplaces or a ban with exemptions granted to selected categories of venues? Please indicate the reason(s) for your choice.

A total ban on smoking in all enclosed public places is the only approach that should be adopted.

Secondhand smoke is a proven and classified carcinogen. The dangerous health effects of the SHS have been documented in over 20 reports ranging from the International Agency for Research on Cancer (IARC) to the US Surgeon General. On a very conservative estimate exposure to SHS kills at least 79,000 people in the EU each year. The only legitimate response to this data, as the Green Paper recognises, is a complete ban on smoking in all enclosed work and public places.

Passive smoking is considered by the International Labour Organisation¹ as an occupational health hazards. Passive smoking kills and damages health and every worker regardless of its place of work deserves the same level of protection. Extending protection from a known carcinogen to some workers but excluding others cannot be justified under any existing principles of occupational health and safety. This is particularly the case when workers in the hospitality sector – known to be exposed to some of the highest levels of passive smoking and

¹ *Workplace smoking. ILO. 2004.*

http://www.ilocarib.org.tt/oldwww/infosources/safety_health/ILOWorkplaceSmokingreport.pdf



toxins² – are most likely to be denied the protection conferred by workplace smoking bans if exemptions are granted. In addition, partial bans, particularly in the hospitality sector, do not work and lead to confusion and non-compliance. They are economically unfair because they lead to an uneven playing field created under the imposition of arbitrary limits. If given the choice, employers tend to choose the status quo and to continue to allow smoking. This has been the experience in all countries which have permitted the establishment of smoking zones in workplaces. In Spain, for example, where bars and restaurant under 100 metres sq have the right to remain smoking or to become non-smoking, less than 10% of establishments elected to become non-smoking after the imposition of the Spanish smokefree law on 1 January 2006³. Some HORECA sector trade Union in some countries like the SYNHORCAT in France have argued in favour of a total ban for all workplaces so as the only fair option to avoid creating economic distortion⁴.

Which of the policy options described in Section V would be the most desirable and appropriate for promoting smoke-free environments? What form of EU intervention do you consider necessary to achieve the smoke-free objectives?

a) No Change from the status quo

Given the risks to health from passive smoking this is not an option.

b) Voluntary measures

Long experience and hard evidence show that voluntary measures do not protect workers and members of the public from exposure to secondhand tobacco smoke. Years of voluntary agreements in the UK resulted in little perceptible improvement in exposure levels. As stated above, when some bar and restaurant owners were given the opportunity to go smokefree or maintain smoking establishments in Spain, 90% chose to continue to expose their staff, customers and themselves to secondhand smoke.

In Germany the voluntary agreement between the hospitality associations (DEHOGA) and the Federal Ministry of Health to provide smokefree areas which came into effect on 1 March 2005 has failed. Only 10% of establishments comply with the full terms of the voluntary agreement in terms of offering smokefree areas with good signage to customers. The actual target was only 60%. Over two thirds of hospitality outlets have no smoking restrictions at all. The remaining third offer minimal levels of protection to staff and customers. The failure of

² Jarvis M. *Quantitative survey of exposure to other people's smoke in London bar staff*. London: Department of Epidemiology and Public Health, University College, 2001 & Nebot M, Lopez MJ, Gorini G, Neuberger M, Axelsson S, Pilali M, Fonseca C, Abdennbi K, Hackshaw A, Moshammer H, Laurent AM, Salles J, Georgouli M, Fondelli MC, Serrahima E, Centrich F, Hammond SK. *Environmental tobacco smoke exposure in public places of European cities*. *Tob Control*. 2005 Feb;14(1):60-3.

³ Press release from the Ministry of Health, Madrid 2 February 2006

⁴ *Rapport mission parlementaire sur l'interdiction de fumer dans les lieux publics*. France. 2006
<http://www.assemblee-nationale.fr/12/mita/05-06/index.asp>



the voluntary agreement has led the German Drugs Commissioner to call for the agreement to be abandoned and binding legislation to be adopted⁵.

We also have strong concerns about any agreement likely to be negotiated by the Social Partners under Article 138 EC. At the smokefree conference held in Luxembourg in June 2005 CEEP, one of the EU social partners, declared themselves in favour of national legislation on smokefree places. A voluntary agreement would thus be a step down from that position. As of 21 March 2007 neither of the other two social partners, Business Europe (formerly UNICE) or ETUC have declared any formal position on smokefree workplaces despite the fact that exposure to secondhand smoke is one of the biggest killers in the EU's workplaces. This failure to show leadership or express any public position on the need to eliminate smoking in the workplace by two of the EU social partners does not inspire confidence that a sufficiently strong agreement would be negotiated or respected.

c) Open Method of Coordination

Whilst we appreciate the benefits that the Open Method of Coordination (OMC) may be capable of bringing to this issue, we remain convinced that a voluntary approach is not capable of introducing completely smokefree enclosed public and workplaces. We encourage Member States which have already gone smokefree to share their experiences with their colleagues still contemplating this step but do not believe that this, in itself, would be sufficient to protect Europe's workers.

d) Commission or Council recommendation

A Council Recommendations already exist in the field of smokefree policy⁶. The evidence shows that following the introduction of the 1989 recommendation, Member States did introduce legislation which led to some sectors of the workforce and the public becoming smokefree⁷.

The Smoke Free Partnership believes that a further Commission or Council Recommendation could enjoy similar success provided that it is adapted to recent legislative and evidential developments in the Member States and beyond. Such a recommendation would need to:

- Urge Member States to adopt comprehensive legislation such as that passed in Ireland, the United Kingdom and Norway as best practice.

⁵ *Press statement from Sabine Bätzing and the German Federal Health Ministry, 27 February 2007*
http://www.bmg.bund.de/cln_041/nn_599776/sid_E43613307D01DCF27522B70894D6D1E7/DE/Presse/Pressemitteilungen/Presse-Drogenbeauftragte/pm-26-2-07.param=.html_nnn=true

⁶ *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 Official Journal C 189, 26/07/1989 P. 0001 - 0002*

⁷ *Commission Report to the Council, the European Parliament, the Economic and Social Committee and the Committee of the Regions of 14 November 1996 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 [COM(96) 573 final - Not published in the Official Journal]. The report outlines the situation regarding the application of the Resolution, based on information provided by the Member States.*



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- Refer to the need for mass media education campaigns to raise awareness about secondhand smoke and increase support for smokefree laws.
- Stress the importance and relevance of Article 8 of the FCTC and the COP guidelines⁸.
- Recommend the collection of data on smoking prevalence and attitudes towards smokefree provisions.
- Recommend a revision of existing directives based on the Framework Directive on workplace safety and health 89/391/EEC, including:

- (a) Extending the scope of the Carcinogens and Mutagens Directive 2004/37 to cover secondhand smoke, and
- (b) Strengthening the requirements for the protection of workers from tobacco smoke in Directive 89/654/EEC on minimum health and safety requirements.

e) Binding legislation

The Limassol Recommendations⁹, on smokefree policies developed by consensus by the European tobacco control community in April 2005, recognised the uniquely cultural elements of introducing smoking bans and identified 12 factors which need to be present for the successful implementation of smokefree legislation. These led us to conclude that the best way to introduce effective legislation that would be supported and complied with would be at the national level.

The Smoke Free Partnership appreciates the efforts of DG Sanco to obtain the support of DG Employment for any future EU legislative initiative but we take the view that national legislation would be preferable to EU level action.

We also have concerns that the introduction of EU legislation would slow down the momentum towards smokefree laws. Given the time it would take to draft and agree a legislative proposal within the Commission, the European Parliament elections in 2009 and the usual period of grace before a directive enters into force, EU legislation could effectively mean that Member States who might otherwise enact legislation in the next couple of years would delay it until 2012 or later.

We are also not encouraged by the recent almost unanimous decision of the Bureau of the European Parliament to overturn the Parliament's own smoking ban after only 6 weeks. We fear that this lack of awareness amongst some MEPs, including those from countries in which successful smokefree legislation has already been implemented, would result in a watered down and ineffective directive.

In Conclusion, the organizations submitting this response to the Green Paper would be in favour of a Council/Commission Recommendation on smokefree work and public places.

⁸ The documents for the second Conference of the Parties, including the draft guidelines on Article 8 (smokefree) are now available at: http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_7-en.pdf

⁹ <http://www.smokefreepartnership.eu/The-Limassol-recommendations>



Are there any further quantitative or qualitative data on the health, social or economic impact of smoke-free policies which should be taken into account?

In order to assess the expected short-term, intermediate and long-term outcomes of the smoking ban in Scotland (introduced in March 2006), Health Scotland in conjunction with the Information Services Division (ISD) Scotland and the Scottish Executive have developed a comprehensive evaluation strategy.

Using routine health, behavioural and economic data and commissioned research, the research assesses the impact of the smoke-free legislation in eight key outcome areas:

- knowledge and attitudes,
- ETS exposure,
- compliance,
- culture,
- smoking prevalence and tobacco consumption,
- tobacco-related morbidity and mortality,
- economic impacts on the hospitality sector and health inequalities.

It is expected that the findings from this evaluation will make a significant contribution to the international understanding of the health effects of exposure to ETS and the broader social, cultural and economic impacts of smoke-free legislation¹⁰.

Do you have any other comments or suggestions on the Green Paper?

The successful implementation of smokefree legislation throughout Europe should be monitored and the Commission should provide a report (or fund research) every two years bearing in mind the following expected milestones:

- Has there been an increase in people's awareness of the dangers of active and passive smoking, contributing to the “de-normalisation” of smoking within society and increasing the number of people who successfully quit?
- Has there been an impact on social equity in countries which introduced comprehensive bans?

Finally, we would like to reiterate that the tobacco industry must be excluded from smokefree policy debates because of the unique role of its products in causing harm and because of its track record of deceptive behaviour. Indeed, despite the overwhelming evidence on secondhand smoke, much of the tobacco industry continues to deny the scientific evidence. In a BBC article published on the 30th January 2007, Imperial Tobacco, the maker of John Player, Davidoff and West cigarettes, stated that “*there was insufficient scientific evidence to establish that other people's tobacco smoke is a cause of any disease*”. In the UK, in a letter to peers on the Health Bill dated 27th April 2006, Frank Rogerson, Corporate Affairs Director of

¹⁰<http://www.smokefreeconference.co.uk/images/Smoke%20free%20PDFs/FRIDAY/5%20-%20Sally%20Haw.pdf>



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Imperial Tobacco Group, stated that: *“properly analysed and understood, the scientific and statistical evidence ... leads to the conclusion that a ban on smoking in public places cannot be justified on health grounds”*¹¹.

The Framework Convention on Tobacco Control, FCTC, excludes the involvement of the tobacco industry in framing tobacco control policy precisely because the industry has fought for many years to undermine tobacco control, as industry documents uncovered through litigation in the US have revealed. It is also worth noting that the preamble to the FCTC recognises, *“the need to be alert to any efforts by the tobacco industry to undermine or subvert tobacco control efforts and the need to be informed of activities of the tobacco industry that have a negative impact on tobacco control efforts”*.

¹¹ *Letter to peers, copy available from ASH*