



The Smokefree Partnership contribution to the Consultation on the protection of workers from risks related to exposure to environmental tobacco smoke at the workplace

The Smokefree Partnership

The Smoke Free Partnership is a strategic, independent and flexible partnership between the European Respiratory Society, European Heart Network, 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.

General Comments

The Smokefree Partnership welcomes the DG Employment initiative to consult with social partners and other organisations about exposure to environmental tobacco smoke (ETS) at the workplace. We understand that the consultation is targeted at the social partners but hope that the EC takes our contribution into account. We also understand that there are a number of ongoing initiatives on smokefree places at EU level and hope these actions will be coordinated in order to achieve the best outcome possible: introduction of total smoking bans in all EU Member States. Below please find our detailed response to your questions:

1. Do you consider that the existing national and EU health and safety legislative framework is appropriate and sufficient to protect workers from health related risks related to exposure to environmental tobacco smoke at the workplaces?

No.

At EU Level, health and safety legislative framework is not appropriate and sufficient to protect workers from health risks related to exposure to ETS at the workplaces. As the consultation document points out, the existing EU occupational health and safety Directives address this issue, but some of them tackle the matter only indirectly while others do not provide a comprehensive level of protection.

At national level, smoke-free laws have been adopted in a number of Member States. However, the measures taken are diverse in nature and, in certain cases, include exemptions for particular workplaces. As a consequence, the protection of workers' health from risks related to ETS is neither complete nor uniform across all employment sectors and Member Statesⁱ. There are two main challenges:

ⁱ See interactive SFP smokefree map: <http://www.smokefreepartnership.eu/Smoke-free-legislation-in-the-EU>

- The first is to ensure that the Member States introduce laws that meet the requirements and guidelines of the Framework Convention on Tobacco Control (FCTC), the international tobacco control treaty, i.e. laws that protect **everyone**, and do not leave the most highly exposed workers at risk. Indeed, the FCTC, requires all ratifying nations to adopt effective smokefree policies. Furthermore, the member states of the FCTC have unanimously adopted implementation guidelinesⁱⁱ which clarify the meaning of FCTC Article 8 (please see details in Annex 1)
- The second is to address the **geographical disparity** in smokefree laws.

The existing health and safety legislative measures are very strong in Ireland and the United Kingdom. In these countries, the governments have enacted 100% smokefree laws that ban smoking in all indoor workplaces and public places, including bars, pubs and restaurants. The existing health and safety legislative measures in Italy, Malta, Sweden, Latvia, Lithuania, Finland, Slovenia, France are adequate. In these countries, the governments have introduced effective smoke-free legislation, allowing enclosed smoking rooms only under very strict criteria. The experience of the above countries has proven that smokefree air laws are effective, popular, enforceable and inexpensive. Also the public acceptance of smokefree air laws is extremely high, even among smokers.

However, in **more than half of the Member States**, health and safety legislative measures are not appropriate and sufficient to protect workers from health related risks related to exposure to environmental tobacco smoke at the workplaces

2. In particular, do you think that the absence of comprehensive legislative measures in this area has an adverse impact on the protection of workers' health?

Yes. The dangerous health effects of ETS have been documented by a number of scientific papers and reports, from the International Agency for Research on Cancerⁱⁱⁱ (IARC) to the US Surgeon General^{iv}: ETS is a proven and classified carcinogen and scientific evidence shows that passive smoking kills and damages health. The report 'Lifting the smokescreen'^v published by the SFP and mentioned in the consultation document, found that exposure to ETS kills at least 79,000 people in the EU each year. Passive smoking is considered by the International Labour Organisation as an occupational health hazard.

ⁱⁱ Adoption of the guidelines for implementation of Article 8⁷. World Health Organization, Conference of the Parties to the WHO Framework Convention on Tobacco Control, second session, decision FCTC/COP2(7). Available at: http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_DIV9-en.pdf. (Accessed 6 February 2009)

ⁱⁱⁱ World Health Organization/International Agency for Research on Cancer IARC. *Tobacco smoke and involuntary smoking: summary of data reported and evaluation*. Geneva, Monographs on the Evaluation of Carcinogenic Risks to Humans, Volume 83, 2004(<http://monographs.iarc.fr/ENG/Monographs/vol83/volume83.pdf>, (accessed 5 February 2009)

^{iv} The Health Consequences of Involuntary Exposure to Tobacco Smoke: A Report of the Surgeon General, U.S. Department of Health and Human Services <http://www.surgeongeneral.gov/library/secondhandsmoke/factsheets/factsheet7.html> (accessed 4 February 2009).

^v <http://www.smokefreepartnership.eu/Lifting-the-smokescreen-10-reasons> (accessed 6 February 2009).

Therefore, it is beyond doubt that the absence of comprehensive legislation has an adverse effect on the health of workers.

3. Do you consider a legislative initiative under Article 137 of the EC Treaty to be a more comprehensive and explicit way of protecting workers from health risks related to exposure to ETS at the workplaces?

As acknowledged in consultation document, the gaps in Community legislation and national law in this area could argue for a legislative initiative under Article 137.

In 2005 the European tobacco control community adopted a set of recommendations on smokefree policies, the *Limassol recommendations*^{vi}, which recognised the **unique cultural elements of introducing smoking** bans and identified a number of relevant steps which can contribute to developing comprehensive smokefree legislation. These include:

- adoption of binding legislation **with no exemptions**;
- need for public support, which requires proper preparation;
- a media strategy
- a broad coalition of organisations and supporters.

At the present state, the above criteria only seem attainable at national level.

For legislation to be effective, it is absolutely essential that it prohibits smoking in all public and work places. Indeed, there is no safe level of exposure to secondhand tobacco smoke which is a toxic air contaminant^{vii,viii}. Scientific evidence has unequivocally established that exposure to tobacco smoke can cause death, disease and disability and anything less than a comprehensive approach would not meet the goal of protecting all workers.

The SFP would, in principle, welcome a legislative initiative under, under Art 137, introducing a complete ban of smoking in all workplaces, including restaurants and bars etc. However, as pointed out above, currently it seems that the best way to achieve full support for this is at a national level

We do believe that there is a need for further EU action to protect workers from ETS. Please refer to our consideration under question 4.

4. If you consider such a legislative initiative at the EU level appropriate, what form do you think it should take?

^{vi} <http://www.smokefreepartnership.eu/The-Limassol-recommendations>

^{vii} Office of Environmental Health Hazard Assessment. *Health Effects of Exposure to Environmental Tobacco Smoke: Final Report*, Approved at the Panel's June 24, 2005 Meeting (September 2005) Sacramento, Environmental Protection Agency, http://www.oehha.ca.gov/air/environmental_tobacco/2005etsfinal.html (accessed 5 February 2009)

^{viii} Scientific Committee on Tobacco and Health. *Update of evidence on health effects of secondhand smoke*. London, Scientific Committee on Tobacco and Health, 2004 (http://www.dh.gov.uk/prod_consum_dh/idcplg?IdcService=GET_FILE&dID=13632&Rendition=Web, (accessed 5 February 2009).

In our general comments, we stated that it is our understanding that some initiatives to address ETS are ongoing at EU level. We understand that a proposal for a Council Recommendation is currently in interservice consultation. We strongly favour a Council Recommendation based on the Article 8 Guidelines^{ix}, giving an incentive and a reminder to the 26 EU MS that have ratified the WHO Framework Convention on Tobacco Control that they are legally obliged to protect everyone from exposure to second-hand smoke.

We also recommend a revision of existing directives based on the Framework Directive on workplaces safety and health 89/391/EEC, including:

- a) Extending the scope of the Carcinogens and Mutagens Directive 2004/37^x to cover ETS, and
- b) Strengthening the requirements for the protection of workers from tobacco smoke in Directive 89/654/EEC on minimum health and safety requirements^{xi}

5. Do you consider that non-binding measures would be a more appropriate means of tackling this issue? If so, can you identify such measures and say how they could be effective at Community level?

Although not legally binding, the SFP considers that a Council Recommendation could put pressure on governments that have so far failed to implement effective smokefree measures. Thus to be effective, the recommendation should:

- Stress the importance and relevance of Article 8 of the FCTC and the Art 8 guidelines,
- Urge Member States to adopt comprehensive legislation such as that passed in Ireland, the United Kingdom as best practice.
- Refer to the need for mass media education campaigns to raise awareness about secondhand smoke and increase support for smokefree laws
- Recommend the collection of data on smoking prevalence and attitudes towards smokefree provisions

Finally, we would like to remind the Commission that long experience and hard evidence shows that industry voluntary measures do not protect workers and members of the public from exposure to second-hand smoke. Years of voluntary agreements in the UK resulted in little perceptible improvements in exposure levels. In Germany the voluntary agreements between the hospitality associations (DEHOGA) and the Federal Ministry of Health to provide smokefree areas came into effect on 1 March 2005 also failed.

^{ix} World Health Organization. Conference of the Parties to the WHO Framework Convention on Tobacco Control (http://www.who.int/gb/fctc/PDF/cop2/FCTC_COP2_17P-en.pdf, (accessed 5 February 2009)

^x Council Directive 89/654/EEC of 30 November 1989 concerning the minimum safety and health requirements for the workplace, OJ L 393, 30.12.1989

^{xi} Directive 2004/37/EC of the European Parliament and of the Council of 29 April 2004 on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, OJ L 158, 30.4.2004

ANNEXE I

Implementation Guidelines Clarify the Meaning of FCTC Article 8

The member states of the FCTC have unanimously adopted implementation guidelines for countries to follow in meeting their FCTC obligations under Article 8.2. The guidelines provide that:

- “Effective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the WHO Framework Convention, require the total elimination of smoking and tobacco smoke in a particular space or environment in order to create a 100% smoke-free laws environment.”
- “Approaches other than 100% smoke-free laws environments, including ventilation, air filtration, and the use of designated smoking areas ... have been repeatedly shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke.”
- “All people should be protected from exposure to tobacco smoke. All indoor workplaces and indoor public places should be smoke-free.”
- “Legislation is necessary to protect people from exposure to tobacco smoke. Voluntary smoke-free policies have repeatedly been shown to be ineffective and do not provide adequate protection. In order to be effective, legislation should be simple, clear and enforceable.”
- “Good planning and adequate resources are essential for successful implementation and enforcement of smoke-free legislation.”
- “Civil society (as defined in the FCTC) has a central role in building support for and ensuring compliance with smoke-free measures, and should be included as an active partner in the process of developing, implementing and enforcing legislation.”