

ASH Response to the European Commission's Green Paper:
'Towards a Europe free from tobacco smoke:
policy options at EU level' - April 2007

About ASH

Action on Smoking and Health (ASH) is a non-governmental health organisation working to eliminate the harm caused by tobacco. Although the focus of ASH's work is primarily in the UK, ASH works with partners in Europe and other countries to campaign for the implementation of effective tobacco control strategies internationally. ASH played a pivotal role in the campaign for smokefree legislation in England and Wales. This resulted in the adoption of a comprehensive smokefree law covering virtually all indoor workplaces and public places. From 1 July 2007, the whole of the United Kingdom – 60 million people – will be protected in law from environmental tobacco smoke, making this the largest jurisdiction in the world by population to go smokefree.

The EU Green Paper

The European Commission's Green Paper is a welcome addition to the debate about the best means of tackling secondhand smoke. As the number of EU Member States adopting smokefree measures continues to rise it is appropriate for the European Commission to take a position on this policy at an EU-wide level. In particular, the Green Paper should assist Member States that have not yet adopted robust smokefree measures.

Section IV – Scope of the smokefree initiative

Question 1. – 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.

ASH Response:

As the Green Paper notes, there is now robust evidence to show conclusively that breathing other people's tobacco smoke is a cause of disease and premature death. In response to growing public awareness of the harmful effects of secondhand smoke and consequential growing demand for smokefree provision, more and more countries are adopting comprehensive smoking bans in workplaces and public places.

ASH believes that a total ban on smoking in all enclosed workplaces and public spaces is the best policy.

Experience from the UK shows that anything less than a comprehensive approach would substantially weaken the smoke-free measure, thus offering less than optimal

health protection, and would also impose a needless bureaucratic burden on the Commission in determining exemptions to the law. It would also provide a loop-hole that could be exploited by the tobacco industry.

In the UK, until the smokefree legislation is implemented, a voluntary agreement system remains in place. Although there has been a gradual shift towards smokefree environments in some public places such as shops, theatres, medical and educational facilities, many other workplaces and entertainment venues continue to allow smoking. In 2000, the hospitality trade made an agreement with Government to increase smokefree provision and set a number of targets. However, the agreement, known as the Public Places Charter – failed to meet even its own minimal standards. Pubs and restaurants were encouraged to provide separate smoking and non-smoking areas and to put up signage indicating the nature of their smoking policy. However, three years after the launch of the campaign, only 43% of licensed premises were compliant with these requirements while 47% of premises allowed smoking throughout and only a handful of pubs were totally smokefree.¹

Partial smoking bans not only fail to protect employees working in such areas but may also be exploited by the tobacco and hospitality sectors. For example, loopholes in the New York City smoking ban allow smoking in designated cigar bars² whilst in some states the promotion of shisha (waterpipe) smoking has been allowed to proceed unchecked even where strong local smokefree laws exist.³

Partial smoking bans fail to fully protect the public or workers from secondhand smoke but politicians may opt for these in the belief that they are popular. However, in countries where comprehensive policies have been introduced, support for total bans has grown. Surveys conducted in countries that have implemented comprehensive smokefree legislation show that the laws are popular and compliance is very high. In California, for example, bar/restaurant patron compliance with the smoking ban rose from 92.2% to 98.5% between 1998 and 2002 and from 45.7% to 75.8% in freestanding bars.⁴ In Ireland, compliance has been consistently over 90% since the law was implemented.⁵

Section V – Policy Options

Question 2 – 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 objective?

ASH Response:

No change from the status quo.

¹ Smoking policy research in pubs and bars. England and Wales. Curren Goodden Associates Ltd, May 2003.

² New York statewide smoking ban signed into law. CNN 27 March 2003
<http://www.cnn.com/2003/ALLPOLITICS/03/27/smoking.ban.ap/>

³ An emerging deadly trend: Waterpipe tobacco use. American Lung Association, Feb 2007

⁴ Weber MD et al. Long term compliance with California's smoke-free workplace law among bars and restaurants in Los Angeles County. Tobacco Control 2003; 12: 269-273

⁵ Fong, G et al. Reductions in tobacco smoke pollution and increases in support for smoke-free public places following the implementation of comprehensive smoke-free workplace legislation in the Republic of Ireland. Tobacco Control 2006; 15 (suppl 3): iii51-iii58

This is not an acceptable option as it would result in the weakest possible outcome in terms of protection from secondhand smoke. It would also represent a missed opportunity to capitalise on the current groundswell of support for smokefree measures.

Voluntary measures.

As noted above in response to Question 1, evidence from the UK reveals that voluntary measures are not effective and result in many vulnerable groups of people still being exposed to secondhand smoke, particularly those working in the leisure and hospitality sector.

Open method of co-ordination

Whilst the sharing of best practice and experience is laudable and can be valuable in determining policy, there is little evidence that this would be sufficient by itself to effect real change. The fact that the method is voluntary and there would be no sanctions for non-compliance would result in little meaningful change from the status quo.

Binding legislation via a new Directive

Although binding legislation should result in strong EU policy and a positive health outcome, the legislative route is likely to be very lengthy and the outcome unpredictable. Furthermore, it could result in inertia among Member States that have not yet embarked on smokefree measures as they wait for EU-wide legislation rather than implementing their own laws.

A further risk is that, as with the Tobacco Advertising Directive, new legislation could be challenged and or weakened during its passage through the parliamentary process. Currently 11 Member States already have strong smokefree laws in place or are about to adopt such measures. A weaker EU Directive might be seized upon by those hostile to such laws to challenge or undermine existing national legislation, arguing that the EU Directive take precedence.

On balance, therefore, ASH believes that new binding EU legislation is unlikely to be the best option although it is preferable to the other methods listed above.

Commission or Council recommendation

A Commission or Council recommendation, whilst not legally binding, would put pressure on governments that have so far failed to implement effective smokefree measures. In addition to the adoption of a recommendation, ASH calls on the Commission to strengthen existing Directives to increase workers' protection from tobacco smoke, as detailed below. Thus to be effective, the recommendation should:

- Urge Member States to adopt comprehensive legislation such as that passed in Ireland, the United Kingdom and Norway as best practice.
- 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 guidelines.
- 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:
- Extending the scope of the Carcinogens and Mutagens Directive 2004/37 to cover secondhand smoke, and
- Strengthening the requirements for the protection of workers from tobacco smoke in Directive 89/654/EEC on minimum health and safety requirements.

If the above factors are taken into account, **ASH supports Option 4 – a Commission or Council recommendation of best practice as a minimum standard** for the move towards a Europe free from tobacco smoke.

Question 3 - 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?

The following studies provide further evidence in support of smokefree policies being extended to include the hospitality industry:

Health Impact

Siegel M, Barbeau E and Osinubi O. The impact of tobacco use and secondhand smoke on hospitality workers. *Clinics in Occupational and Environmental Medicine* 2006; 5 (1): 31-42

Economic Impact

Luk R and Ferrence R. The economic impact of smoke-free legislation on the hospitality industry. Toronto, ON, Ontario Tobacco Research Unit, Special Report Series, February 2005.