

## **Dutch response to the European Commission's questions in the Green Paper 'Towards a Europe free from tobacco smoke: policy options at EU level'**

The Dutch government considers that the European Commission's Green Paper describes every aspect of the problem at hand adequately, correctly and comprehensively. The Commission has drawn attention once more to the importance of ensuring that enclosed spaces in the public domain are smoke-free.

### *The situation in the Netherlands*

The Tobacco Use Reduction and Non-Smoker Protection Act of 10 March 1988 (Tobacco Act) entered into force on 1 January 1990. The smoking bans resulting from this Act were initially limited to government buildings and to buildings and institutions in semi-public, state-financed fields like health care, education and social and cultural work. Private businesses fell at first outside the Tobacco Act's scope. For about ten years, the social partners (employers and employees) attempted self-regulation in the private sector.

In the plenary debate in 2002 on a bill to amend the Tobacco Act, Parliament concluded that the results of private sector self-regulation fell far short of expectations. It therefore decided to place private businesses directly within the Act's purview that same year. The resulting new provision of the Tobacco Act (Section 11a) entered into force on 1 January 2004.

On that same date the Smoke-Free Workplace Exceptions Decree, based on Section 11a of the Tobacco Act, took effect. The most important exception in this Decree concerns hospitality businesses (hotels, restaurants and pubs). Employers in the hospitality industry are exempt from the statutory requirement to ensure smoke-free working environments for their employees. When the exemption was introduced, a decision was made to institute self-regulation.

Prime Minister Jan Peter Balkenende's new coalition took office in February 2007. The coalition agreement provides that this government will work with the sector to make all hotels and catering establishments smoke-free during its term of office.

***(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.***

From a public health standpoint, a total ban on smoking in all enclosed public spaces and workplaces is the best approach. This means first and foremost that no sector, including the hospitality sector, should be exempt from the applicable legislation.

Whether businesses and organisations should be allowed to create enclosed, special spaces reserved exclusively for smoking is a different question. Establishing such spaces is currently permitted in the Netherlands in the sectors that fall within the scope of the Tobacco Act. There is now a discussion under way as to whether hotels and catering establishments should be allowed to establish enclosed smoking areas.

European countries where the hospitality sector is already smoke-free do not have a uniform approach to smoking rooms. In countries like Italy, Malta and Sweden, hotels and catering establishments are permitted to create special enclosed spaces reserved exclusively for smoking. Experience shows by the way that most hospitality business operators choose not to take advantage of this option. Countries like Ireland, Norway and shortly England do not allow smoking rooms.

***(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 objectives?***

To respond to this question, we first discuss the five different policy options, presenting the advantages and disadvantages of each of them. We then express a preference for one option on the basis of the overview.

#### 1. No change from the status quo

In the existing situation, legislation in this area is left to the Member States, which decide for themselves whether to introduce requirements for smoke-free areas, and the FCTC process. As the Commission rightly observes, the trend towards smoke-free areas is very likely to continue even if the existing situation at EU level remains unchanged. The preparation and publication of FCTC guidelines will create additional momentum. The Netherlands therefore sees no overriding reason to change the existing situation. We do realise that this will perpetuate differences among the Member States with regard to protection from environmental tobacco smoke. From a public health standpoint, this is unfortunate. But it can hardly be maintained that the differences seriously disrupt the functioning of the internal

market. Choosing among the options presented should definitely include consideration of the principle of subsidiarity. We will return to this point when we discuss option 5.

## 2. Voluntary measures

As the Commission rightly observes, experience shows that voluntary measures (self-regulation) are not always effective in discouraging smoking. This applies particularly to the hospitality and recreation industries. The Dutch experience, as laid out above, confirms this. The formal exemption still in effect for Dutch hotels and catering establishments reflects the fact that there was not enough political and public support yet in 2002-2003 for a ban. The self-regulation now in effect is an intermediate phase in the transition towards a statutory requirement for a smoke-free hospitality industry. On these grounds the Netherlands does not view self-regulation as a serious option at EU level.

## 3. Open method of coordination

The Netherlands sees no added value in the open method of coordination in this policy area. The EU and WHO have been facilitating exchanges of information and experiences for many years. The subject of smoke-free workplaces and public spaces is also invariably on the agenda at the World Conference on Tobacco or Health that meets every three years. There is by now so much knowledge available on the topic and so many best practices that there is really nothing left to be done but put them in practice.

## 4. Commission or Council Recommendation

The Commission or Council can of course systematically draw attention to this issue. The question is whether an official Commission or Council Recommendation ('soft law') is needed for this purpose. Reference can also be made to article 4 of the Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control (2003/54/EC). Yet another Recommendation would amount to duplication of effort and needless accumulation of policy. Virtually all EU Member States and the Community itself are in any event parties to the WHO Framework Convention on Tobacco Control. Article 8 of the Convention requires the parties to take effective measures to provide protection from exposure to environmental tobacco smoke. A guideline to this effect will in all likelihood be adopted this summer at the second Conference of the Parties.

## 5. Binding legislation

The principle of subsidiarity was mentioned above in our discussion of policy option 1. The question has been raised more and more emphatically in recent years, in the Netherlands and elsewhere, whether various matters should be dealt with by the Community or can be left to the Member States. Dutch policy on subsidiarity is that Community action is justified only if both requirements of the principle of subsidiarity have been met:

- 1) the objective of the proposed action cannot be adequately achieved by the Member States in the framework of their national constitutional systems; and
- 2) due to the scale or the consequences of the proposed action, the objective can be achieved better by the Community.

It cannot be maintained that both these requirements are met in this case. Some Member States have already completely eliminated smoking in all enclosed spaces in the public domain.

#### Preference for option 1

Having weighed the advantages and disadvantages, the Netherlands has a clear preference for policy option 1.

#### ***(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?***

In the Netherlands' view, the Green Paper provides an adequate, correct and comprehensive description of the problem at hand and the policy options for addressing it.

#### ***(4) Do you have any other comments or suggestions on the Green Paper?***

No (see answer to question 3).

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