

VERBAND DER DEUTSCHEN RAUCHTABAKINDUSTRIE

Trade Association for Smoking Tobacco, Chewing Tobacco and Snuff
Trade Association for the Association of Importers and Distributors of Tobacco
Products in the EC (*Tabakwaren-Importeure und EG-Distributeure e.V.*)
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Comments from the VdR on the European Commission's Green Paper: Towards a Europe free from tobacco smoke: policy options at EU level COM (2007)27 final

Introduction

The Association of the German Smoking Tobacco Industry (*Verband der deutschen Rauchtabak-industrie – VdR*) represents the interests of the predominantly medium-sized producers and sellers of fine-cut tobacco, pipe tobacco and also chewing tobacco and snuff, as well as the interests of importers of cigars/cigarillos. Most of these firms are family-run businesses of long standing, the majority of which are based in those parts of Germany with poor infrastructure.

Fine-cut tobacco, pipe tobacco, cigars and cigarillos are products consumed for enjoyment by responsible adults in Germany and in other Member States of the EU. In future, the question of mutual tolerance will figure prominently in the relationship between these consumers and non-smokers. The smoke from an aromatic pipe tobacco or a cigar is often viewed sympathetically by non-smokers.

As the responsible market operator, we would like to make the following observations on behalf of our members with regard to the Green Paper: "Towards a Europe free from tobacco smoke: policy options at EU level":

Green Paper: "Towards a Europe free from tobacco smoke: policy options at EU level"

Our members are opposed to a total ban on smoking both at EU and national level. Instead, we are in favour of national legislation providing for exemptions, alongside health policy measures to educate the public and maintain the idea of tolerance and mutual respect between smokers and non-smokers. In the Green Paper, the Commission rightly refers to the national provisions for the protection of non-smokers in the Member States, in which the constitutional bodies with democratic legitimacy lay down legal provisions meeting national and regional requirements. Solutions are therefore sought and found within a framework of consensus. We therefore do not see any need for the introduction of legislation at European level.

Europe is a Europe of the regions with great cultural diversity, to which the way of life of ordinary citizens is also adapted. In order to maintain its existence, we support the proposal, also put forward by the Commission, to "encourage Member States to adopt national smoke-free legislation" (p. 18). It is then up to all social organisations in a Member State to find suitable, rational solutions.

Article 152 EC – Cooperation in the field of health; measures

Article 152(4)(c) of the EC Treaty specifically excludes any harmonisation of the laws and regulations of the Member States designed to protect and improve human health. In this connection, we share the view taken by the German *Bundesrat* (parliamentary doc No 82/07 of 30 March 2007) that Article 152 EC provides for a clear allocation of tasks between the EC and the Member States. Given the principle of subsidiarity, we do not see any scope for the introduction of legal provisions at European level. The *Bundesrat* also takes this view on the grounds that the aim of providing protection against passive smoking can be adequately achieved at the level of the Member States, and that a limit is therefore put on the exercise of powers by means of Community provisions.

Article 137 EC – Improving the working environment; minimum requirements; social security

Article 137(1), first sentence, of the EC Treaty specifically states that the EU shall merely "support and complement" the activities of the Member States with regard workers' health and safety. On this basis, action is thus required only where the aim of any measures cannot be adequately realised at the level of the Member States and, in view of their scope or implications, can therefore be achieved more effectively at Community level. Here again, we refer to the resolution of the *Bundesrat* (see above) to the effect that the minimum requirements of the Council Directive of 30 November 1989 on the minimum safety and health requirements for the workplace (89/654/EC) are sufficient to ensure effective protection for non-smokers in workplaces and thus in the working environment. This can be seen clearly even now, with individual Member States imposing smoking bans in public areas and workplaces, and in the current debates in the Member States on the introduction of such smoking bans.

We would also point out that, unlike Article 95(3) EC, Article 137 EC does not assume a high underlying level of protection.

Summary

- The current legal provisions on the protection of non-smokers in the Member States take full account of the needs of society as a whole. This means that, in view of the principle of subsidiarity, there is no need for legislators at European level to table proposals in the form of a directive or an EU-wide smoking ban without taking account of the Member States' particular national and cultural characteristics.
 - We are in favour of appropriate solutions which meet the needs of both smokers and non-smokers, and which take account of the requirements of employers and employees in economic and social terms.
 - We deplore the growing tendency towards the State dictating how people should lead their lives, and instead support the idea of those affected being prepared to seek individually tailored solutions. The aim of the debate on further smoking bans at EU level cannot be to create a social climate in which smokers are marginalised and discriminated against. Instead, the freedom of adult and responsible EU citizens to decide whether to enjoy fine-cut tobacco, pipe tobacco, cigars and cigarillos should be respected by the politicians.
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