

ITPAC

THE IMPORTED TOBACCO PRODUCTS ADVISORY COUNCIL

Submission to the Directorate-General Health and Consumer Protection in response to the Green Paper 'Towards a Europe free from tobacco smoke: policy options at EU level'

To:
European Commission
Directorate-General Health and Consumer Protection
Unit C6 – Health Measures
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Belgium

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23rd May 2007

Dear Sirs,

ITPAC represents the interests of 12 companies involved in the importation of tobacco products for distribution in the UK. The majority of these are small, private businesses many of which are principally engaged in the distribution of specialist tobacco products such as cigars, pipe tobaccos and snuff.

ITPAC welcomes the opportunity to respond to the EU's Green Paper entitled 'Towards a Europe free from tobacco smoke: policy options at EU level', which is intended to launch a broad public consultation on the best method of promoting smoke-free environments in the European Union.

Having considered the Green Paper's contents carefully we would like to respond to the questions posed as follows:

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

ITPAC Member Companies support measures to address the issue of tobacco smoke that are evidence-based, transparent and proportionate.

With regard to the evidence on the harmful effects of Environmental Tobacco Smoke (ETS), we would refer you to the comment made in Paragraph 77 of the UK House of Lords Select Committee on Economic Affairs report published in June 2006 where it states that "Other evidence we received suggested that the health risks associated with passive smoking are relatively minor..."

2.

In this context we are concerned about the transparency of the justification employed in the UK for the introduction of severe constraints on the personal freedom of smokers under the powers of the Health Act 2006. It seems to us, as it did to the same House of Lords Committee, that the principal driver for such action was likely to be the desire to reduce active smoking by indirect means and yet no mention of this was made in the policy presentation of the Bill.

However, as a responsible industry body, we are aware of the public concern about ETS and support the need to introduce regulations to protect those who do not wish to be exposed to it, whilst also allowing those who enjoy smoking tobacco products to do so in reasonable comfort within appropriate adult venues.

In answer to the question, therefore, ITPAC supports the adoption of ‘Smoke-free Regulation with Exemptions’ across the EU as outlined in Option 2, Section IV of the Green Paper.

This organization believes that the following exemptions should apply:

- All private residential premises including permanent or temporary accommodation; for example, prisons, care homes, and designated hotel rooms.
- Private membership clubs where the members have chosen by a majority to permit smoking in all or part of the premises.
- Hospitality outlets (e.g. restaurants, bars and pubs) catering primarily for adults which, if they occupy an area of less than 100 square metres, should be allowed to permit smoking throughout should they so choose, or, if they occupy an area larger than 100 square metres, should be permitted to set aside a physically separate and ventilated part of their premises for exemption.
- Research, development and testing facilities for tobacco products to enable the continuation of existing regulatory testing, quality control and research activities.
- Sampling of tobacco products, in particular cigars and pipe tobacco, in defined specialist tobacco retail outlets, whose businesses depend on such activity (see ITPAC answer to Question 3).

Further conditions, which should apply, in the case of these exemptions are as follows:

- Smoking should not be banned in any fully outdoor, or partially enclosed, areas including those that comprise part of public places and workplaces.
- No exemptions should apply to any facilities providing services primarily to minors.
- Signage should be mandatory when any place, or part of it, is exempted from the ban so that the public can determine where smoking is permitted.
- Only consenting employees should be expected to work in designated parts of premises where smoking is allowed.

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?

We believe that sensible regulation can ensure that both non-smokers and smokers are accommodated, and would encourage the EU Commission to introduce a policy which is transparent, evidence-based and proportionate and recognises the rights of both groups of people. Any policy option that meets these criteria would be acceptable to our Members.

3.

As is stated in the Green Paper a number of Member States have already introduced, or will shortly be introducing, measures to ban smoking in public places. The measures do, however, vary widely in terms of their extent and their enforcement. We believe there is a strong case for uniformity across the whole EU if the regulations are to be clearly understood and accepted by the populace. Furthermore, any regulations should be supported by clear guidance to ensure consistent interpretation and implementation.

We are unsure of the EU's legal basis in these matters but believe that the most efficient policy option will be a Commission or Council recommendation setting out the *minimum* requirements for Member States.

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?

We would like to draw your attention in more detail to the case of Specialist Tobacconists. These are generally small, family-owned businesses that exist in most but not all EU Member States.

In UK law a Specialist Tobacconist was first defined in the Tobacco Advertising and Promotion Act 2002 as “a shop selling tobacco products by retail (whether or not it also sells other things) more than half of whose sales on the premises in question derive from the sale of cigars, snuff, pipe tobaccos and smoking accessories”. There are estimated to be only 45 Specialist Tobacconists in England.

This definition has proved effective in permitting the UK government to grant certain limited exemptions from tobacco regulation to these types of shops without creating any form of loophole to be exploited by wider commercial interests. Indeed, the England guidance document ‘Everything you need to prepare for the new smoke-free law on 1st July 2007’ highlights exemptions to the ban, including “specialist tobacconist shops may allow people to sample cigars or small amounts of pipe tobacco within the shop premises”.

We would explain the problem posed to this small economic sector by a smoking ban as follows.

The role of Specialist Tobacconists is akin to that of Wine Merchants. They must select a range of cigars and pipe tobaccos to stock, which will be differentiated by their customers largely on the basis of taste. Consequently it is essential that they are able to smoke the products so as to guide their choice and communicate effectively with their customers.

Assuring the quality of the products they choose is important, particularly for hand made cigars from countries such as Cuba, the Dominican Republic, Nicaragua and Honduras, which must be stored in controlled conditions of temperature and humidity. Quality control checks are conducted on the premises, which frequently involve smoking the product.

In the case of pipe tobaccos there is a craft element to their role. Up to one hundred different types of loose tobaccos may be stocked for blending into different mixtures to meet the tastes of individual customers. The Specialist must know the tastes of each tobacco stocked in order to prepare the blends.

4.

By the same token customers who have consciously entered a shop devoted to the sale of tobacco products expect to be able to purchase a small sample of a particular product to smoke on the premises to help them make up their minds on what to buy.

To sum up, Specialist Tobacconists are generally small businesses that would be disproportionately affected by a smoking ban because smoking is an integral part of the way they conduct their business, particularly in product selection, quality assurance, blending loose tobaccos and customer sampling.

As the UK Government stated in the 1998 White paper – Smoking Kills: “Specialist Tobacconists are frequented predominantly by mature, male adults, who smoke. Children and young people are not attracted by the products they sell”.

An exemption for Specialist Tobacconists would have no meaningful public health consequences because there are so few of them and they are usually small places of business.

We would recommend strongly that the Commission develops an EU-wide definition for this business sector, which would allow it to be granted a particular exemption from smoking bans in all Member States.

4. Do you have any further comments or suggestions on the Green paper?

We would like to include a comment about personal liberty and freedom of choice.

It is noticeable that the Green Paper makes virtually no reference to any constraint of personal freedom beyond a passing reference to the possibility of “public scepticism”. Whilst we understand that the Green Paper is the work of the Health & Consumer Protection Directorate, we consider that a proper evaluation of the issue should include an analysis of the trade-off between the freedom of the individual and the inherent risk reduction derived from smoking bans.

Tobacco is a legal product and the intention of the authorities to reduce exposure to ETS is understood. It is nevertheless possible, with segregated smoking areas and proper ventilation, to accommodate both smokers and non-smokers in a manner that respects the rights of those who do not wish to be exposed to the annoyance of tobacco smoke.

ITPAC considers that restricting peoples’ individual freedom of choice to smoke by prohibition or severe regulation is socially divisive and an infringement of individuals’ rights. We believe that people, who choose to do so, should have the right to smoke themselves, or to permit others to do so if they are in a position to make that choice, providing they act in a responsible manner.

In conclusion, **ITPAC supports a ban on smoking in enclosed work places and public places with exemptions**, and believes that this can be best achieved through proportionate, coherent and practical regulation which accommodates the legitimate interests of all stakeholders.

5.

ITPAC believes that this is a proportionate response and would emphasise to the Commission that any measures should be developed through dialogue and consultation with all interested stakeholders, including the tobacco sector.

We do hope that you will give these proposals full consideration, and welcome the opportunity of participating further in the process as the EU Commission moves forward.

Wyndham Carver
Secretary-General

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