

Letter dated:
12.04.2007

From:
Austrian Chamber of Commerce (WKO)

To:
DG SANCO, Unit C6

Subject: Consultation on Green Paper "Towards a Europe free from tobacco smoke"

Ref.: Sp 541 / 02 / Mag. CS/KR, Mag. Schweng/rauchgbsek

Dear Sir/Madam,

Below is the opinion of the Austrian Chamber of Commerce (the legal representative body for all businesses in Austria) on the Commission's Green Paper "Towards a Europe free from tobacco smoke".

Introductory remark

In our opinion, the debate on smoking bans in public places should focus on public health aspects rather than employee protection. It would therefore make sense for any activities undertaken by the European Commission to be limited to supporting measures in the area of education, awareness-raising and the exchange of best practices (active assistance to give up smoking – yes, control in the form of regulations – no).

Individual Member States have already, at their own pace, taken various steps to prevent passive smoking (ETS – Environmental Tobacco Smoke). We believe that Community-wide action in this area infringes the subsidiarity principle, as the mentality of people in the individual Member States very much affects their approach to smoking and to a ban on smoking. The Eurobarometer survey of January 2006 entitled "Attitudes of Europeans towards tobacco" shows clearly that attitudes vary widely towards, for example, the issue of smoking in restaurants and bars: while 85% of people in Malta approve of a smoking ban in restaurants, in Austria only 37% support it. It is therefore very much in doubt whether a European initiative would be more effective than a national one.

The results of an OGM survey of 500 Austrians on lifestyle and consumption patterns conducted in February 2007 (see attachment) were as follows:

- In the opinion of 39% of Austrians the State should intervene only with a view to protecting young people. Non-smokers in particular held this view.
- For one in two Austrians health is the top priority, followed by tolerance (27%).
- Almost one third of respondents believe that the State has in the past intervened too much in their private lives.
- The majority of Austrians believe that the best way to encourage a healthier lifestyle among the population is for the media, politicians, parents and schools to set an example. Interestingly, smokers believe that education and information are the most effective tools in achieving this goal.

- Three quarters of respondents believe that politicians should undertake more information activities before adopting new regulations.
- Social conflict should be resolved by means of information and education, according to 58% of Austrians. Here, too, smokers prioritise information and education to a large extent (68%).
- In the current EU debate on smoking, Austrians, and in particular smokers themselves, take the view that the EU and/or the State should protect young people, while adults should be allowed to make their own decision for or against smoking.
- 70% of Austrians (83% of smokers) would wish to leave it up to proprietors to decide whether their establishment should be smoking or non-smoking or to set up a smoking or non-smoking area.
- Only 20% of Austrians believe that a smoking ban in bars and restaurants would lead to a general reduction in smoking. They suspect that people would move to other areas instead.
- Austrians are very well informed (80%) about the current ban on smoking in public places, irrespective of whether they themselves smoke.

For 20 years there have been concerns about the possible health effects of passive smoking in enclosed spaces, and some governments have taken action in this area to protect public health. Nevertheless, the experts do not all agree, as some scientific findings on ETS reach different conclusions (see for example the study by James E. Enstrom and Geoffrey C. Kabat: Environmental tobacco smoke and tobacco-related mortality in a prospective study of Californians, 1960-98 British Medical Journal, Volume 326, pp. 1057-1067).

Tobacco is a legal product which is consumed by approximately 30% of the EU population. Solutions should therefore take into account the needs of smokers as well as those of non-smokers. The approach chosen in Austria (and also, for example, in Germany), where restaurants and bars set up smoking and non-smoking areas on a voluntary basis, is in line with this general principle.

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.

The Commission essentially offers two possible approaches. One is a highly comprehensive ban on smoking which includes not only smoking in enclosed public spaces and workplaces but also proposes extending the restriction to surrounding outdoor areas. The other is a ban on smoking with exemptions for restaurants and bars and for hospitality establishments which do not serve food. According to the European Commission, either approach should be supported by awareness-raising campaigns.

We believe that a decision on the scope of smoking bans should be taken at national level only.

Even if a total ban would offer the highest reduction in ETS exposure, it is important not to lose sight of the disadvantages associated with such a measure:

The Austrian Treasury would lose up to EUR 1.8 billion in tobacco and sales tax revenue alone. There would also be social consequences: in Austria, and in other countries, tobacconists' shops are largely run by people with disabilities, whose livelihood is threatened by an extension of the smoking ban. The approximately 7 700 tobacconists' shops in Austria provide employment for some 20 000 people, i.e. 0.67% of all employees, a much higher figure than the 0.13% quoted by the Commission.

Smoke-free legislation with exemptions for restaurants would certainly reduce the financial consequences for that sector, but here there is no need for European legislation: the Member States which have already adopted strict regulations have done so without the "help" of Brussels, and other Member States will follow suit if this is in keeping with the wishes of their population.

Finally, it must be asked whether the Community even has jurisdiction in the field of public health, as it is on this basis that such a comprehensive smoking ban in public places and workplaces could be implemented.

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?

In our view, maintaining the status quo (Option 1) with national and European supporting activities on information, education and awareness raising is the most sensible strategy:

It is correct that the trend in all Member States is towards smoke-free legislation and more or less comprehensive smoking bans. However, experience shows that people do not change their habits overnight, and this applies to smoking too. Instead of rushing from one restriction to the next on the basis that the previous one does not (yet) work, we should first allow the many restrictions of the last few years (warnings, advertising bans, reduction the toxicity of ingredients, increases in tobacco tax, national smoking bans, etc.) to take effect over 5-10 years and if necessary then assess the effects on smoking behaviour.

The pace at which individual Member States introduce smoke-free legislation should in any case be respected. The European Commission could assist this process by undertaking awareness-raising measures and offering the opportunity for the exchange of best practice at EU level. Smoking in restaurants must be dealt with as a separate issue, as this sector depends on various factors across Europe, e.g. cultural differences, climate factors.

This has led to a variety of approaches in recent years with a view to minimising the effects on non-smokers of ETS exposure and taking into account the needs of smokers.

The results of an OGM survey of 1 001 Austrians conducted in November 2006 on smoking in hospitality establishments were as follows:

- 70% of all respondents and 67% of non-smokers are in favour of separate smoking and non-smoking areas.

- 21% of all respondents and 26% of non-smokers are in favour of a complete smoking ban.
- Arguments against a complete ban on smoking: freedom of choice is better than a ban (63% of all respondents, 66% of non-smokers), harmful to restaurants (45% of all respondents, 44% of non-smokers).
- Arguments for a complete ban: passive smoking is harmful to health, poor air quality and smell are irritants.
- Two thirds of non-smokers also sit in smoking areas when they go out with friends who smoke.
- The majority do not go to different establishments because of a smoking ban BUT 9% of non-smokers would go out more often and 35% of smokers would go out less often.
- Therefore overall loss for restaurants.

It is clear that the majority of the population is in favour of smoking areas but against a complete ban on smoking.

In our view the open method of coordination would, however, be less useful in this area. Setting common goals and timetables for harmonising legislation could be counterproductive in Member States which need more time to prepare for a smoking ban.

Voluntary measures at European level raise the question of European added value: in Austria, experience with self-regulatory measures at national level has been positive, both in restaurants and with regard to voluntarily preventing young people from using cigarette machines. However, this option requires constant persuasion to ensure that member firms accept the voluntary implementation of measures. European self-regulatory measures would be less useful, however, because of different national mindsets and a lack of opportunity for significant action.

Consulting the social partners is inappropriate because of a lack of jurisdiction: a smoking ban in public places belongs to the area of public health, which falls outside the jurisdiction not only of the social partners but also of the EU.

We firmly reject the option of binding legislation on employee protection, as proposed in the Green Paper, as the provisions of the Workplace Directive, according to which non-smokers are to be protected from ETS in rest areas, already stipulate the necessary rules. We also reject the proposal to extend the scope of the Carcinogens Directive, as ETS is neither a substance nor a preparation under the meaning of this Directive. The idea of including it in Directive 67/548 on the labelling of dangerous substances needs to be completely reviewed in light of REACH legislation.

As the Commission says, any legislative measure would be met with strong resistance from the individual Member States. The experience of the Directive on optical radiation, which did not help to improve the EU's image, should also be borne in mind.

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?

With regard to the comprehensive approach, namely a smoking ban without exemptions, the European Commission says in relation to the "possible harm to the hospitality industry" that there have been no overall negative experiences in the countries which have already introduced a smoking ban. We would therefore like to draw the Commission's attention to the following figures:

According to the 2005 annual report of the Irish licensed Vintners Association the smoking ban in Ireland led to a 20 to 30% reduction in turnover in pubs and a loss of 7 600 jobs in bars and restaurants.

In Ireland, according to the figures of the Office of Tobacco Control, in the years following the introduction of the smoking ban in restaurants almost as many adults smoked as before (2004: 24%; 2005: 23.9%).

According to a press release on 22 March 2007 from the Scottish Licensed Trade Association (SLTA), which refers to a study by A. C. Nielsen, in 2006 pubs' turnover fell by 11% for beverages and 3% for food.

According to a statement by the Italian trade organisation FIPE, in 2006 turnover fell by 20 to 25% in pubs, discos and gaming establishments, despite the fact that because of the Mediterranean climate many establishments, particularly in central and southern Italy, have outdoor tables where customers are free to smoke.

Immediately after the smoking ban was introduced in 2005, the Italian tobacco industry suffered a slight loss in demand (0.4%), but by 2006 there was already an increase (1.1%) in the number of cigarettes smoked.

According to the ICR study "Smoking ban in New York" conducted in October 2003, employment fell immediately after the introduction of the smoking ban, by an average of 10% (17% for service personnel).

In Norway, according to official statistics for 2004 from the Ministry, 0.3% fewer adults smoked while among young people (16-24 years) the number of smokers actually increased.

This shows clearly that a smoking ban in restaurants and bars does not lead to a sustainable reduction in tobacco consumption and is therefore not a suitable means to prevent addiction or help stop smoking.

4. Do you have any other comments or suggestions on the Green Paper?

A modern Europe free of discrimination should aim to achieve a win/win situation in which smokers and non-smokers can coexist peacefully. This is best achieved by means of national measures. Radical approaches at European level, as proposed by the Commission, harm the economy, individuals and our colleagues.

Yours faithfully,

[signed]

Dr Christoph Leitl, President

Dr Reinhold Mitterlehner, Deputy Secretary-General

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