

Dear Sir or Madam,

Set out below are my suggestions for the GREEN PAPER

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

(1) Which of the two approaches suggested in Section IV would be more desirable in terms of its scope for a 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.

Health protection is non-negotiable!

As a result of burning tobacco, mutagenic and carcinogenic substances as well as poisonous substances are produced and released whose number and composition have not yet been completely researched. There can be no maximum workplace concentration value in the case of tobacco smoke, as any concentration of tobacco smoke, with its 70 carcinogenic substances, can cause a deadly cancer. In any concentration, therefore, tobacco smoke is like a game of Russian roulette. Known substances falling into the above categories and listed here alphabetically, not according to toxicity, include: acetaldehyde, arsenic, cyanide, carbon monoxide, hydrocyanic acid, nicotine, phenols, polonium-210, plutonium, pyridine, toluene, and zinc. These few substances alone are capable of destroying an individual's health. Their supply should be treated by the Public Prosecutor's Office as the supplying of poison, and criminal proceedings should be instituted. Subjecting people to passive smoking amounts to inflicting bodily harm – see Annex, Dr. Jürgen Gschwinder - and should, under the Criminal Code, trigger an indictment by the Public Prosecutor's Office. In Germany, criminal legislation exists which would prohibit the release of tobacco smoke as a highly toxic air pollutant. The fact of the matter is, however, that the victims of passive smoking are scorned by the German Public Prosecutor's Office. See Annexes 3 - 6 (2005-12-07 request for prosecution of Hartmut Mehdorn; 2006-03-30 reply by Public Prosecutor's Office Berlin; 2006-04-14 Complaint, National Office of the Public Prosecution Service).

A particularly insidious aspect of this lies in the reasons given by Public Prosecutor Witte, to whom I have furnished proof that precisely the substances which he has enumerated are contained in tobacco smoke:

"These only include highly toxic chemically acting organic or inorganic substances such as hydrocyanic acid, hydrochloric acid, potassium cyanide or the like, which are liable to destroy the health of human beings." (Ref.: 1 Umw Js 11/06)

Passive smoking is a form of poisoning, and poisoning is prohibited always and everywhere, and today even in Germany. There is no reason to make poisoning permissible. I am therefore in favour of a total ban on smoking in all spheres of life. This concerns not just situations where people meet in a business or private context. In premises or institutions where there is contact with customers, e.g. banks, insurance companies, hairdressing salons, physiotherapist practices, gyms, service establishments, (junk shops and the like, where a lot of people tend to smoke), street sales areas where goods are put in place using roller containers, markets, youth hostels,

leisure facilities such as excursion ships, fairs, zoological facilities, open-air stages, check-out queues, parks, cemeteries.

Additionally, and in particular, it applies to all areas where air-polluting tobacco smoke can penetrate the life-spaces of other people. Above all, it is people's dwellings that deserve to be mentioned here.

Dwellings are a highly sensitive area. Under Article 13 of Germany's Basic Law, the *Grundgesetz*, people are guaranteed particular protection in this regard. The reality in Germany, however, is that even in their own homes a vast number of people are unable to escape being subjected to passive smoking by their neighbours.

People tend to spend most of their lives indoors. It is therefore particularly dramatic if they have no way of escaping from passive smoking in their homes. The same applies to communal facilities such as: clinics, old people's homes, sheltered accommodation, or prisons. In Germany the converse conclusion is currently being drawn, in that these areas are being excluded from a smoking ban, whenever that is to be announced. This cannot be allowed. No-smoking must once again be the norm.

Smoking bans have to be monitored. Requiring Member States to submit annual reports is a suitable way of ensuring that Member States are aware of the problem. This does not yet guarantee, however, that the problem of passive smoking will be solved. Only if the facts and figures supplied by one Member State are checked by another could the target set be achieved. Otherwise, there is too great a temptation to manipulate those facts and figures. We have already witnessed that situation in the assessment by Germany's hotel and catering industry association, DEHOGA, of the 2006 targets for no-smoking areas in restaurants, etc. It stated that the voluntary targets had been reached. (The failure of the voluntary obligation on the part of DEHOGA showed that a voluntary approach does not work. For example, by March 2007 sixty percent of seats in restaurants, etc., were supposed to be in no-smoking areas. In the event, according to an enquiry by the Federal Government, the actual figure was a derisory 11 percent. Even then, the absence of proper partitioning and resultant intermixing of the air meant that those 11 percent of seats were not in genuine no-smoking areas).

(2) Which of the policy options described in Section V would be the most desirable and appropriate for promoting smoke-free environments?

An obligation must be imposed on Germany to assess air-polluting tobacco smoke in real terms, i.e. in terms of what it actually is, namely a toxic gas mixture. Where it is released, the Criminal Code (*Strafgesetzbuch*) must be applied. For example,

#### § 223 Bodily harm

(1) Whoever physically abuses another person or damages that person's health shall be punished with imprisonment for up to five years or a fine.

(2) Attempted bodily harm shall also be a criminal offence.

§ 224 Dangerous bodily harm

(1) Whoever causes bodily harm

1. by furnishing poison or other health-damaging substances,
2. by means of a weapon or other dangerous tool,
3. by means of an insidious attack,
4. jointly with another person or
5. by means of a life-endangering treatment

shall be punished with imprisonment lasting from six months up to ten years, in less serious cases with imprisonment lasting from three months up to five years.

(2) Attempted dangerous bodily harm shall also be a criminal offence.

It is beyond doubt that passive smoking clearly damages health. The most logical and effective approach, therefore, is to institute criminal proceedings in respect of this injury to health. This would make all the planned laws, rules, edicts, agreements, exemption arrangements and other efforts superfluous. If Germany possessed the COURAGE to have its Public Prosecutors take action against this "forced smoking", this would not even clog up the justice system. For after just a few trials, even the least reasonable "smoke-aholic" would understand that his or her action was health-damaging and would result in criminal prosecution.

(3) What form of EU intervention do you consider necessary to achieve the smoke-free objectives?

I do not know what scope the EU has for getting Germany finally to assess passive smoking in the same way that it assesses all other poisons. My complaint against the Federal Republic of Germany before the COUNCIL OF EUROPE in STRASBOURG (Complaint No 46201/06) was not accepted.

It is my wish that all countries which doggedly deny the danger caused by passive smoking and have, by their decades of inaction, contributed to mass murder, and which even now remain inactive in spite of being aware of how deadly the product concerned is, be indicted before the International Court in the Hague for genocide and crimes against humanity.

(4) Would you like to make any other comments or suggestions regarding the Green Paper?

"California puts cigarette smoke on poison list" (SPIEGEL ONLINE - 27 January 2006, 14:56  
URL: <http://www.spiegel.de/wissenschaft/mensch/0,1518,397634,00.html>)

As long as passive smoking is not regarded as being what it actually is, namely bodily harm by poisoning, mostly with a fatal outcome, other measures will have to be effectively implemented.

Above all, sanctions are essential here. Human beings, and in particular addicted human beings, are unfortunately incapable of gauging their own actions realistically. My experience has shown that an addicted smoker will defend his or her addiction with all possible means (insults being a particularly popular recourse). People will only stop harming their fellow human beings if they are made aware of the consequences of their action. Just as money (which constitutes a very effective opinion-forming and convincing argument) persuades decision-makers to bend decisions in the direction which the provider of the money desires, so the enforcement of fines is

a very persuasive means of imposing limits on smokers and of making clear to them that they are the cause of an unacceptable state of affairs.

In the discussions which have taken place hitherto concerning possible "exemptions" from smoking bans where separate rooms are provided, no account has been taken of the fine particulates exhaled by smokers or released from their clothing when they leave such separate rooms. Even if a smoker is separated from non-smokers for the duration of his or her drug consumption, fine particulates cling to his or her clothing, hair and skin for a very long time. Also when a smoker exhales, particulates pass into the ambient air again, so that smoke-free areas are once again contaminated. These fine particulates carried by smokers are capable of causing an allergic person to have an asthma attack.

To date, I have not read anything about the environmentally appropriate disposal of the drug residues. For decades, smokers in Germany have had the disgusting habit of disposing of the smoked – and mostly still burning cigarette - wherever they happen to be walking, standing, lying or driving.

As a result,

1. there is a greater danger of a fire (particularly forest fires) being caused;
2. many people fall victim to house fires;
3. burning cigarette ends are liable to injure other people (particularly children whose heads are at the same level as a smoker's hand);
4. property is damaged by holes burned by cigarettes;
5. there is an extremely high risk of children being poisoned;
6. there is an extremely high risk of children being poisoned [*translator's note: repetition in the German original*]; cigarette ends are disposed of in children's playgrounds in particular;
7. cigarette ends are to be found in ALL areas of everyday living; when they are driven over or trodden on, fine particulates are released time and again into the air;
8. if one sits down on a bench, it is impossible to escape the smell of cigarettes since people often smoke cigarettes while sitting on benches and then simply throw the cigarette end onto the ground; the rising smell can only be caused by the release, once again, of fine particulates;
9. groundwater is contaminated.

It is incomprehensible to me that, on the one hand, any foodstuff merely suspected of endangering health - such that "dangers to health cannot be excluded" – can be and is withdrawn immediately; in the case of tobacco, on the other hand, a drug which demonstrably causes huge numbers of deaths and illnesses, the industry can legally continue to market its products to the detriment of mankind (see Annex; under food law, cigarettes should long since have been banned).

The Green Paper also fails to address the significance of air-polluting tobacco smoke as a barrier for allergy sufferers. Just as a set of stairs is an insurmountable obstacle for someone in a wheelchair, so air-polluting tobacco smoke is an insurmountable hindrance that excludes an allergy sufferer from the world of work and from a social and cultural life.

In order to ensure that parents are taught about the dangers of tobacco as an air pollutant, I would suggest that after every birth the midwife should – either in the clinic or later during aftercare at home - give the parents a copy of Volume 2 (2003) of the German Cancer Research Centre's publication: *Passivrauchende Kinder - Frühe Schädigungen für ein ganzes Leben* [Passive smoking inflicted on children – early damage that lasts a whole lifetime]. (Red Series on Tobacco Prevention and Tobacco Control, Heidelberg). First-time parents in particular are usually open to being educated about health risks for their newly born children.

Cigarettes should be sold ONLY at drug dispensing points – as in the case of methadone – and be given to young people up to the age of about 30 only on presentation of proof of age. This would release vendors from the obligation to gauge the age of the purchaser themselves and ask for an identity document. Such an obstacle would also make consumers aware of their addiction and encourage a desire to kick their drug habit.

As is the case in the USA, the cigarette industry must assume full liability for its product and be open to legal action.

Doris-Kristina Barnekow  
Paediatric Nurse

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Doris - Kristina Barnekow  
Nürnberger Str. 29 / 30  
10789 Berlin Charlottenburg - Wilmersdorf  
030 / 213 32 18  
dokribalo@gmx.de

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