

For the attention of:
the European Commission
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From:
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Response to the public consultation on 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 scope for a smoke free initiative: a total ban on smoking in all enclosed public places and work places or a ban with exemptions granted to selected categories of venue? Please indicate the reason(s) for your choice.

Without any doubt the best option is a total ban on smoking in all enclosed and semi-enclosed public places and work places, plus outdoor areas around the entrances to buildings and all open-air spaces where crowds inevitably gather for a period of time (entertainment venues, bus stops, train platforms, queues at entrances to cinemas, etc.).

Reason: A ban which allows exemptions is always a source of ambiguities and opportunities to subvert the rules. In Spain, where a partial ban has been in place for over a year, the best results have been obtained in enclosed workplaces where the ban has been total. In the catering and hospitality sector, where exemptions were allowed and operators were allowed to designate smoking areas, the results have been extremely negative.

With the outlawing of tobacco use at workplaces smokers have shifted their smoking more to bars and restaurants, so that, although tobacco use in general has fallen substantially, smoking in catering establishments has increased sharply. In the major cities, barely 5% of bars and restaurants that could choose whether to let their customers smoke have opted to do so [*TRANSLATOR'S NOTE: This is an accurate translation, but it makes no sense in the context. I am sure the author meant to say "barely 5% of bars and restaurants that could choose whether to let their customers smoke have opted **not** to do so"*], and this figure is even worse in small localities, to the extent that most of them do not have a single non-smoking establishment. There is no doubt that the decision to allow exemptions in the catering and hospitality sector has hampered the process of denormalising smoking in Spain.

The assumption that a smoking ban would hit bar and restaurant owners hard financially has been shown to be a fallacy by the experience of countries which have introduced a total ban. The financial impact is nullified when all operators are obliged to apply the same conditions and only becomes genuinely damaging and discriminatory when exemptions are allowed on the basis of arbitrary criteria such as the surface area of the establishment or the operator's ability to afford the cost of redesigning his premises.

More serious still is that the situation discriminates against bar and restaurant employees, who generally come from the poorest sectors of society, leaving them defenceless. This is totally incompatible with occupational safety and health legislation, and even with basic texts such as the Spanish Constitution, which enshrines the principle that all are equal before the law and all have a right to health protection.

Consequently, if exemptions were to be allowed it would be essential to make absolutely clear the requirements that would have to be met in those spaces where smoking was allowed, by including details of building specifications, technical specifications of independent ventilation systems and smoke extraction systems, door opening and closing systems, exterior and interior signposting, etc.

Similarly, the competent authorities should rigorously monitor these spaces, requesting to see installation, operating and regular maintenance certificates and keeping a computerised register. Naturally these spaces would need to be barred to minors and all staff employed in the establishment in which they were located.

These conditions have not been imposed in Spain and it is normal to find smoking zones with no physical separation from non-smoking zones, no independent ventilation and no restriction on minors, and also, of course, premises where smoking is permitted throughout even though this is unlawful. The situation has been allowed to arise because of the ambiguity introduced by allowing exemptions, so that people do not know for certain whether an establishment is acting lawfully or unlawfully. Moreover, monitoring these exemptions poses a huge burden on the authorities, in terms of the number of inspectors and the amount of time required.

To conclude, a ban which allows exemptions produces uncertainty, is expensive to monitor and is expensive for establishments affected, because of the exemptions and the costs to their employees' health, not to mention the social costs of smoking continuing to be seen as a "normal" social practice. In contrast, a total ban implements itself, with no need for outside intervention.

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?

On the basis of the Spanish experience, the only suitable option is binding legislation.

This legislation should cover all the spaces and venues described in the answer to the previous question, but particularly covered or partially covered environments, irrespective of any revision and adaptation of the existing occupational health and safety directives and those on carcinogens and mutagens.

Binding legislation would allow the legislations of all the Member States to be harmonised and would eliminate inequalities in the level of protection offered against environmental tobacco smoke (ETS). In Spain, despite the fact that the law was approved by all the groups in Parliament, a political war has broken out between the State and the Autonomous Communities governed by the opposition party. This party war has exploited the most ambiguous points and exemptions contained in the Act to put forward certain interpretations that undermine the smoking ban. Riding the populist bandwagon, the opposition have argued that banning smoking is yet another example of excessive interference in people's private lives and that passive smokers should show tolerance, even if this means ignoring the risks to their own health. Binding EU legislation would put an end to all this, overcoming local party rivalries.

It is very important that this European legislation should be precise, clear, detailed and allow no exemptions, so as to avoid the deplorable self-interested behaviour of certain regional governments that we are having to suffer in Spain.

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?

The data on the health, social and economic effects of tobacco smoking have been known for more than 20 years, and everything points in the same direction: the need to denormalise smoking in public as a social habit and to adopt and enforce widespread bans on the consumption, sale and advertising of tobacco and tobacco products.

The data on anti-smoking policies are much more recent but they too point in the same direction. This Green Paper is a good summation of what we already know and a good first step towards the creation of a Europe free from tobacco smoke.

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

The Green Paper does not mention the importance of the pressure exerted by the tobacco industry to conceal or refute the scientific and epidemiological data on the harmful effects of their product on both active and passive smokers. As this European policy against smoking gestates we must not give a voice to or allow ourselves to be pressurised by those who are directly responsible for this plague.

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