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COMMISSION STAFF WORKING DOCUMENT

Report on the implementation of the Council Recommendation of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control (2003/54/EC)

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1. INTRODUCTION

Council Recommendation 2003/54/EC of 2 December 2002 on the prevention of smoking and on initiatives to improve tobacco control (hereafter 'the Recommendation') invites the Commission *inter alia* to report on the implementation of the proposed measures and to consider the extent to which they are working effectively and the need for further action.

The implementation assessment is based on the information received from the Member States as provided for in the Recommendation. A questionnaire was sent to the Member States and information was collected in 2007. Additional information available to the Commission from its contacts with the Member States is reflected in the report as appropriate. The report presents a general assessment of the implementation of the Recommendation and the measures undertaken in the Member States.

Several important developments have taken place since the adoption of the Recommendation:

- The WHO Framework Convention on Tobacco Control was signed and ratified by the EC and 26 Member States in the period 2004-2008 and guidelines have been adopted on four important articles of the Convention.
- The Commission adopted a proposal for a Council Recommendation on smoke-free environments on 30 June 2009.
- Several Member States have introduced new or have amended existing legislation concerning various aspects of tobacco control in the recent past.

2. RESULTS

2.1. Prevention of tobacco sales to children and adolescents

(a) Introduction of age verification requirements

The requirement to verify the minimum age for purchasing tobacco products is a commonly adopted rule in the legal systems of the Member States. Currently, all Member States have minimum age requirements for purchasing tobacco products in their legislation.

The age limits range from 15 years in one Member State to 18 years in the majority of them. Some Member States have set the age limit at 16 years and some of them have recently increased the minimum age from 16 to 18 years.

Most Member States have reported on the enforcement and compliance mechanisms in place. Fines appear to be the most common means chosen by regulators. In some Member States they are backed by the suspension of trade licences and/or criminal sanctions.

A certain lack of commitment from the vendors, and some difficulty to carry out inspections have been signalled as the main difficulty when enforcing this measure. In this context, information campaigns or training for the vendors in order to increase their understanding and commitment have been reported.

(b) Removal from self-service displays in retail outlets

According to the Recommendation, and with the aim of preventing sales of tobacco to minors, tobacco products should be removed from self service displays in retail outlets.

The majority of the Member States reported that they comply with this provision of the Recommendation either because of specific binding national legislation or self-regulatory measures or because they do not practice sale of tobacco products in self service displays.

(c) Restricted access to vending machines

Tobacco sales through vending machines are forbidden as such in about a third of the Member States.

Most Member States, however, allow vending machines but have legislation to restrict the access of minors, complemented in some cases by technical measures making it more difficult for under-age persons to buy tobacco products. At the time of the questionnaire there was only one Member State that had no measure in this regard but in the meantime this Member State has adopted measures to restrict the sale of tobacco products through vending machines to minors.

Access to vending machines is mostly regulated by binding legislation. Only two Member States resort to self-regulatory mechanisms.

The majority of Member States reported to have control and enforcement mechanisms. However, effective enforcement of the age restrictions at vending machines appears to be a challenge. Health Ministries are in most cases responsible for the implementation, but responsibilities tend to be shared with other bodies such as consumer protection, food safety agencies/authorities, and Ministries of Economy and Finance as well as with local authorities.

(d) Restriction of tobacco distance sales

In about half of the Member States distance sales of tobacco are either banned or restricted. Various tools are used for controlling distance sales. Some Member States have adopted specific laws. Other Member States prohibit distance sales whenever age verification is not possible and others consider that the sale of tobacco over the Internet falls under the advertising ban of Article 3(2) of the Tobacco Advertising Directive 2003/33/EC. Enforcement of tax laws and licensing regimes are also used to control distance sales.

The main problem with distance sales of tobacco products appears to be ensuring compliance with existing legislation. Some Member States have empowered postal services operators to check arriving packages containing tobacco products. Several Member States reported cross-border problems due to distance sales, mainly in terms of functioning of the internal market and tax evasion. Enforcement problems were reported by a number of Member States.

(e) Prohibition of sales of sweets and toys which resemble tobacco products

According to the Recommendation Member States should prohibit the sale of sweets and toys intended for children and manufactured with the clear intention that they would resemble in appearance a type of tobacco product.

The situation in Member States on this subject is split. Nearly half of the Member States prohibit such products and nearly half of the Member States still allow them. In some Member States the prohibition is based on the fact that these products constitute indirect tobacco advertising.

Member States which have adopted binding legislation to restrict the sale of these products also reported on enforcement mechanisms. The most frequent sanctions are fines, followed by criminal sanctions in some Member States. Enforcement mechanisms fall mostly under the competence of Health Ministries, which work in collaboration with other institutions (consumer protection bodies, customs and trade authorities, police).

(f) Prohibition of selling cigarettes individually or in packets with less than 19 cigarettes

According to the Recommendation, and with the aim to reduce the accessibility of tobacco products for minors, Member States should ban the sale of cigarettes individually or in packets of fewer than 19 cigarettes.

The majority of Member States has banned the sale of cigarettes individually or in packets of fewer than 19 cigarettes. A few Member States have banned individually sold cigarettes or packets of fewer than 10 cigarettes.

(g) Other measures to restrict sales of tobacco products to minors and adolescents not explicitly covered by the Recommendation

Member States also reported on other measures aiming at limiting the exposure of minors to tobacco products. These measures are diverse:

- sales restrictions in specific areas, mostly where children and adolescents are particularly exposed, such as schools, or educational, cultural and sports establishments;
- signposting of health warning messages and of information concerning the prohibition to sell tobacco products to minors under national legislation; and
- information campaigns aimed at informing vendors of the existing legislation.

Concerning the prevention of tobacco sales to children and adolescents, the Recommendation is generally widely implemented in the Member States.

However, the recommendation to ban the sales of sweets and toys intended for children which resemble tobacco products has not been implemented by many Member States and the recommendation to ban the sales of cigarettes individually or in packets of fewer than 19 cigarettes has only been partly implemented.

For issues, such as vending machines and distance sales, the situation in Member States varies and difficulties are reported in the enforcement of existing measures.

2.2. Tobacco Advertising and Promotion

The Recommendation complements the ban laid down in the Tobacco Advertising Directive 2003/33/EC¹ and in the Audiovisual Media Services Directive² 2007/65/EC that prohibit different forms of tobacco advertising and promotion.

All Member States have implemented the Recommendation with regard to the specific forms of advertising mentioned in the Recommendation: tobacco brand names on non-tobacco products or services, promotional items, sales promotion, billboards, posters and other techniques, and cinemas.

The majority of Member States introduced these prohibitions when transposing the Tobacco Advertising Directive, while only a few have separate pieces of legislation.

Member States with provisions in place also reported enforcement mechanisms such as fines, criminal sanctions or the suspension/withdrawal of licences.

With regard to other forms of advertising, sponsorship or practices directly or indirectly intended to promote tobacco products some Member States reported having banned all forms of advertising through a general ban. Nevertheless, advertising and promotion at the points of sale still appear to be allowed, with or without restrictions, in most of the Member States. This situation is changing and some Member States are currently introducing provisions varying from a total ban to different forms of restriction.

Very few Member States have introduced measures to require manufacturers, importers and traders to provide information concerning the expenditure that they incur on advertising, marketing, sponsorship and promotion campaigns.

The implementation of the Recommendation as regards the prohibition of certain forms of advertising and promotion is very good.

With regard to other forms of advertising and promotion, such as at the points of sale, the situation varies greatly in the Member States and further improvements should be aimed at.

2.3. Environmental Tobacco Smoke (ETS)

All Member States have introduced binding legislative measures to tackle ETS. However, the scope of this legislation varies greatly from Member State to Member State. With regard to educational establishments and places providing services for children, the great majority of Member States have banned smoking altogether, even if a few of them accept some kind of exceptions. Others restrict smoking to smoking rooms or designated areas.

In health care facilities, about half of the Member States have banned smoking altogether. The others have introduced partial bans or restrictions that allow some exceptions or the existence of smoking rooms or designated areas.

¹ Directive 2003/33/EC of the European Parliament and of the Council of 26 May 2003 on the approximation of the laws, regulations and administrative provisions of the Member States relating to the advertising and sponsorship of tobacco products.

² Directive 2007/65/EC of the European Parliament and of the Council of 11 December 2007 amending Council Directive 89/552/EEC on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the pursuit of television broadcasting activities.

Smoking in public transport is banned in the vast majority of Member States, even if some of them allow for some kind of exceptions.

The situation is different concerning other indoor workplaces and public places, in particular in bars and restaurants. The most comprehensive protection is provided in Ireland and in the United Kingdom, where smoking is completely banned in enclosed workplaces and public places, including bars and restaurants. Eight Member States have banned smoking in these places, with the exception of specially enclosed rooms. However, in more than half of the Member States, the protection from tobacco smoke is only partial, especially as regards bars and restaurants.

The enforcement of the smoking bans poses difficulties in some Member States, in particular as regards partial restrictions.

Member States have adopted measures to protect citizens from exposure to tobacco smoke. These measures differ considerably in scope.

The enforcement of partial bans or restrictions has been reported to be difficult.

2.4. Strategies and measures to reduce the prevalence of smoking, programmes to discourage and overcome smoking, and encouragement of the contribution of young people

According to the Recommendation, Member States should introduce strategies and measures to reduce the prevalence of smoking, programmes to discourage and overcome smoking and should encourage the contribution of young people.

Nearly all Member States reported on various measures, which implement this provision. The use of non-regulatory measures, such as awareness-raising actions or tobacco prevention campaigns, has mostly been reported.

With regard to strengthening health education, the range and intensity of the programmes vary considerably, covering initiatives inside schools (projects and activities, video/audio material supports, training for teachers), as well as population-wide measures (national mass media campaigns, information leaflets).

National quit lines exist in all Member States but one, which has regional lines. These services are frequently managed by independent institutes, associations or NGOs but to a great extent publicly funded.

Nicotine replacement therapies are available in practically all Member States, most of the time over-the-counter in pharmacies. Some Member States have expanded the distribution of these therapies to certain forms of sale outside pharmacies. Other pharmaceutical therapies are also widely available, mostly on prescription.

Different kinds of programmes or projects are running and specific training for health care professionals is carried out in a number of countries.

Additional measures and projects, such as campaigns, programmes or trainings are carried out in several Member States.

The majority of Member States also reported that they encourage young people to get involved in various actions against tobacco use. These include school-based and general campaigns; creativity contests; youth organisations, groups or clubs. However, there are few examples of full integration of young people in activities that are initiated, planned, implemented, and evaluated by them.

Member States have widely adopted measures to prevent smoking initiation. These types of activities are of a non-binding nature. They frequently have a local coverage and vary considerably between Member States.

Progress as regards quit lines has been very good. Availability of nicotine replacement therapies over-the-counter in pharmacies is the rule. The involvement of civil society to a certain extent seems to be the rule in the area of smoking prevention and cessation.

2.5. Price measures on tobacco products to discourage tobacco consumption

In the EU, tobacco taxation is the available tool for increasing the final price of tobacco products and consequently reducing consumption.

The Commission adopted on 16 July 2008 a proposal for a Directive to amend the current EU excise duty legislation on tobacco. This proposal has among its objectives the aim to ensure a high level of human health protection by increasing the minimum taxation level for tobacco products.

A number of Member States have reported increases in tobacco taxation to discourage tobacco consumption.

3. CONCLUSIONS

Overall, the implementation of the Recommendation is satisfactory.

This concerns in particular the requirement to verify the minimum age for the purchase of tobacco products, the introduction of measures to restrict the use of vending machines by under age persons and the protection from environmental smoke in educational establishments, health care facilities and public transport.

The provisions related to the prohibition of certain forms of advertising and promotion, are almost fully implemented. However, the recommendations to prohibit the sale of cigarettes individually or in packets of fewer than 19 cigarettes and with regard to the sale of sweets and toys which resemble tobacco products are not fully implemented.

Some measures are not widely implemented; this concerns notably protection from exposure to environmental tobacco smoke other than in educational establishments, health care facilities and public transport and measures to increase the price of tobacco products to discourage tobacco consumption.