

Position Paper

UEAPME's position paper on the proposal by the European Commission for a Council Recommendation on smoke-free environments

Introduction

On 30th June 2009 the European Commission published its proposal for a Council Recommendation on smoke-free environments. This follows an informal consultation and a publication by the European Commission of a Green Paper "Towards a Europe Free from Tobacco Smoke: Policy Options at EU level in 2007, to which UEAPME positioned itself.

General remarks

Whilst UEAPME recognises that Environmental tobacco smoke (ETS) is of concern to employers, it is by nature a public health issue, which should not be restricted to health and safety at the work place. Therefore UEAPME welcomes that the proposal for a Council Recommendation sets out a wider legal base than the Health and Safety legislation in the Workplace, where the responsibilities automatically lie on employers. In fact the Recommendation foresees the adoption of wide-ranging efficient measures to protect people from the exposure to tobacco smoke comprehensively encompassing indoor workplaces, indoor public places, public transport and "as appropriate" "other public places".

This focus brings the policies in line with the international impetus on smoke-free environments, notably a more rigorous implementation of the WHO Framework Convention on Tobacco Control, thereby attempting to decrease the currently varying degrees of regulations applied in Member States.¹

Specific comments

So far at European level there has been a substantial legislation package concerning the responsibility of employers to limit - directly or indirectly - smoking at the workplace. There is notably the Health and Safety Framework Directive (89/391/EEC), the Workplace Directive (89/654/EEC) and restrictive legislation in place to protect certain categories of persons from smoke more specifically, such as through the Carcinogenic and Mutagens (2004/37/EC) and Pregnant and Breastfeeding Workers (92/85/EEC) directives.

The purpose of the Recommendation is to consolidate compliance with smoke free laws by reinforcing existing structures and putting in place new management systems at EU and national level. This includes strategic monitoring, evaluations in a systematic approach, including on process and output, to name but a few aspects. It should facilitate and renew efforts of consolidation of existing legislation and any other new measures. UEAPME warns of the extent and complexity this may pose for employers, notably for SMEs and requests to keep it as simple as possible.

¹ FCTC signed by all WHO members in 2003, ratificators included EC and 26 Member States. Guidelines on protection from exposure to tobacco smoke adopted by the Second Conference of the Parties to the WHO Framework Convention in July 2007.

On subsidiarity and proportionality

UEAPME welcomes that the principles of subsidiarity and proportionality are recognised, both of which are important for the implementation process. In particular UEAPME welcomes subsidiarity in the context of a Recommendation². Moreover, UEAPME particularly appreciates the recommendations to Member States to further consult with stakeholders at national, regional and local level to find appropriate solutions. It is important to create a dialogue regarding implementation with employers and social partners more widely.

On the definition of “indoor” or “enclosed” workplaces and “workplaces”

The Recommendation clearly reinforces the obligations put on employers to protect workers from ETS at the workplace. UEAPME sees with some concern the very restrictive definition regarding “indoor” workplaces, specifying that protection needs to be provided in all indoor or enclosed workplaces, including motor vehicles used as places of work. Furthermore, there is the rather broad all encompassing definition of “workplace”. Here it will depend on national definitions and actual application, which must provide a level playing field for employers and not unequal conditions. Even more so as the Recommendation takes a strict stance since it justifies no exemptions on the grounds of health or law.

Regarding compliance for employers and possible penalties it is necessary to find an adequate solution at national level, also supporting employers in the implementation process of possible new requirements. Efforts to pursue better regulation and fewer administrative burdens, notably for SMEs, need to be upheld by the European Commission.

Time factor and economic and financial arguments

Compared to a few years ago there is more evidence available by way of impact assessments on the financial and notably economic effects. Based on the experience and statistics with implementing smoke free laws in Member States, the concerns appear to have weakened regarding possible economic effects on loss of revenue and loss of employment in certain sectors. Certainly the financial arguments for the protection of workers has grown. It is useful to set a suitable timeframe until 2012 for businesses and Member States to adapt administrative and decision-making structures as necessary.

Sectors and social partners

National or sectoral initiatives involving social partners have an important role to play, in particular in view of the specificities of the bar, restaurant, catering and hospitality sector. The current definition used for “enclosed” workplaces entailing “any space covered by a roof or enclosed by one or more walls or sides, regardless of the type of material used for the roof, wall or sides, and regardless of whether the structure is permanent or temporary” has very far-reaching consequences for the HORECA sector. In practice this means a smoking ban covering all HORECA terraces, patios or bars with umbrellas being used in such a way so as to serve as a roof. Therefore, there is a real need to proceed on a case-by-case basis at national level following impact assessments to address the issue accordingly.

Non-binding measures

UEAPME is very much in favour of EC initiatives, such as awareness-raising campaigns for sensitisation purposes. Regardless of the policy option chosen, non-binding measures clearly remain important. Crucial themes include the consequences of smoking for health in general, trying to actively support people to change their habits voluntarily and not opting for legislative obligations. Prevention can evidently only be successful if it starts from an early age and thus a clear focus should be put on specific prevention campaigns at school aimed

² See UEAPME response to the first stage consultation of the Social Partners on the protection of workers from risks related to exposure to environmental tobacco smoke at the workplace

at young people to avoid tobacco addictions. The tobacco advertising bans already are an important component of any protective measures from ETS.

In line with the Open Method of Coordination (OMC) the creation of national focal points are a vital component to ensure a renewed emphasis on exchanging best practice and policy coordination amongst Member States.

Conclusions:

- UEAPME takes note of the proposal of the European Commission for a Council Recommendation on smoke free environments, avoiding a binding tool at EU level. The decision is based on solid consultations and impact assessments by the European Commission.
- UEAPME welcomes the broader approach of the Recommendation consisting of setting up strategic and systematic structures for monitoring and evaluating purposes and not solely focusing on health and safety at the workplace.
- UEAPME would like to highlight the clear need to respect subsidiarity and proportionality. This should ensure adequate implementation, but at the same time it is important to avoid overly strict definitions and applications of the concepts “indoor” workplace and “workplace” at national level.
- The proposed timeframe for implementation by 2012 allows for adaptive measures, including a gradual phase out, whilst weighing up economic and financial aspects. However, the specificities of the HORECA Sector must be recognised.
- Further awareness raising measures are crucial, in particular at local and regional level. Here the newly created national focal points should play a significant role to ensure the exchange of best practice and policy coordination.

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