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INTERIM COMMISSION REPORT TO THE COUNCIL, THE EUROPEAN PARLIAMENT AND THE ECONOMIC AND SOCIAL COMMITTEE

on the response to the Resolution of the Council and the Ministers for
Health of the Member States meeting within the Council on banning smoking
in places open to the public

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on the response to the Resolution of the Council and the Ministers for Health of the Member States meeting within the Council on banning smoking in places open to the public (OJ C 189 of 26 July 1989).

I. Introduction

On 18 July 1989, the Council and the Ministers for Health meeting within the Council asked Member States to inform the Commission every two years on action taken in accordance with the above Resolution on banning smoking in places open to the public (Annex I).

This document is based on information submitted to the Commission by the competent authorities in the Member States and on the responses received from national institutions - both private and public - to a supplementary questionnaire drawn up by the Commission.

Annex II contains a brief overview of national regulations. A table setting out the situation in the various Member States may be found in Annex III.

This working document does not set out to provide a comparative assessment of national regulations but rather to examine all the different options adopted by Member States as a response to the initiative called for in the Resolution of 18 July 1989.

II. Analysis of the situation in the Member States

In all Member States, measures are currently in force to restrict smoking in places open to the public. These measures are remarkable for their diversity, not only with regard to their legal form but also in terms of their field of application and their source.

In eight Member States, regulations were instituted shortly before or after the adoption of Resolution C 189/01: France (Law of 10 January 1991, Executive Decree published on 19 March 1992), Belgium (15 May 1990), Ireland (23 February 1990), Luxembourg (24 March 1989), Portugal (30 August 1989), the Netherlands (29 December 1988 and 10 March 1989), Denmark (23 March 1988), Spain (4 March 1988 - the regulation being subsequently modified, including by the Decree-Law 14 May 1992, to bring it into line with the Resolution). In the United Kingdom, a new code of practice in this field was published in December 1991. Finally, a new draft law has been put before the Italian parliament.

Information campaigns, and schemes to promote "voluntary" codes, have also been launched.

The issue of smoking in public places has become a higher profile one in all Member States, as is shown by recent media discussion.

Moreover, surveys organised by the European Commission in February-March 1992 indicate that a majority of European citizens are in favour of regulations:

- . 80% of Europeans are in principle in favour of regulations to ban smoking in public places;
- . fewer than one European in two (45%) believes that such regulations exist throughout his or her own country, or at least in many public places;
- . only half of the European population considers that regulations are generally obeyed.

One should note the strengthening of the concern already expressed in Resolution C 189/01, to the effect that non-smokers must be afforded protection against the damage caused by involuntary smoking. This should make it possible to resolve conflicts.

1. Legal Instruments

Member States have resorted to a wide range of legal instruments to deal with this issue:

- * National laws (in some cases supplemented by regulations) in Italy, France, Luxembourg, Portugal, the Netherlands and Ireland.
- * National regulations adopted by the governments involved: Spain and Belgium.
- * Regulations of some other kind such as decrees, orders or circulars: Greece, Germany, Denmark and the United Kingdom. With regard to the last-named Member State, these regulations concern government and local authority buildings and certain means of transport. Moreover, since December 1991, a code of practice has set out the conditions to be met, on a voluntary basis, by persons responsible for premises open to the public.

2. Application fields

To a considerable degree, national instruments are modelled on the measures set out in the Resolution and apply to the localities mentioned in its annex.

- With regard to private premises serving the public, however, a distinction must be drawn between cinemas, theatres, exhibition halls and sports centres, (which are generally covered by national regulations) on the one hand, and cafés, hotels and shops, where the right to smoke has been restricted in only three Member States (Belgium, France, Ireland), on the other.
- With regard to transport, there is a total smoking ban on urban transport with the exception of taxis. There are some restrictions on other forms of transport, zones being reserved for smokers. This is particularly true of trains and ships. Regulations differ more widely with regard to buses and often depend on the length of the journey.

In the field of air transport, the airlines themselves have sometimes taken the initiative. Several have acted to institute a total ban on smoking on particular flights. Luxair and British Airways (for domestic flights) have also restricted smoking. In some Member States, these restrictions have been imposed by the government, such as in Greece (where there is a total smoking ban on domestic flights), France (with effect from 29 November 1992) and Spain (with effect from 1 July 1992). In the latter countries, smoking will be banned on domestic flights lasting less than two or one and a half hours respectively.

- With regard to health-care establishments and old people's homes, a distinction must be made between public and private establishments: with regard to the former, virtually all Member States have a general no-smoking rule. In the case of private establishment, the question of banning or restricting smoking is left up to the management.
- In schools and other establishments catering for children or adolescents, bans exist in all Member States but to varying degrees. Areas are often set aside for smokers (teachers, visitors, pupils above a certain age).
- It is also essential to tackle the issues associated with smoking at the workplace. There are significant similarities between this field and that of places open to the public. In the majority of cases, places open to the public are simultaneously workplaces. Passive smoking is a health hazard to which employers will in the future have to pay much greater attention. In particular, it affects personnel working in enclosed areas, such as planes or other public transport, or in restaurants or cafés.

In this field, the Community has already armed itself with an instrument for the protection of non-smokers. Annexes to Directive 89/654/EEC on minimum health and safety standards at the workplace, which will come into force on 1 January 1993 in respect of new workplaces and on 1 January 1996 in the case of workplaces already existing on 1 January 1993, require the adoption of appropriate measures to protect non-smokers in rest areas and those used by all staff. It also requires the use of ventilation systems that can guarantee workers sufficient clean air. Similarly, Directive 83/477/EEC on the protection of workers from the risks associated with exposure to asbestos imposes an obligation to inform workers or their representatives of the need to abstain from smoking while exposed to, or handling, this material.

3. Awareness-enhancement campaign and voluntary agreements

In all Member States, the growing awareness of the damage caused by tobacco has given rise to information and awareness-enhancing campaigns based either on observance of existing regulations or on the content of "codes of practice" or voluntary agreements (in cases of conflict).

With regard to the latter point, one should highlight the approaches adopted in countries such as the United Kingdom (Code of Practice "Smoking in public places: guidance for owners and managers of places visited by the public"), the Netherlands (Recommendation by the Minister of Social Affairs on the resolution of conflicts in private enterprise) or Germany (information campaigns in hospitals).

Projects have also been launched since 1987 as part of the "Europe against Cancer" programme, particularly within the hospital environment, in schools and in companies. The development of major information and public-awareness campaigns as part of this programme has also led to greater motivation of the authorities and changes in the behaviour of individuals. This is particularly the result of campaigns stressing effective observance of existing regulations and the content of voluntary acceptance codes.

Final remarks

The information supplied by national authorities and private institutions is insufficient for a systematic assessment of measures to ban smoking in public places. It would also be useful if every Member State could assess the impact of the relevant provisions and national campaigns. These assessments could then form part of the next report on the implementation of the Resolution of 18 July 1989.

I

ANNEX I

(Information)

COUNCIL

RESOLUTION
OF THE COUNCIL AND THE MINISTERS FOR HEALTH OF THE MEMBER
STATES, MEETING WITHIN THE COUNCIL

of 18 July 1989

on banning smoking in places open to the public

(89/C 189/01)

THE COUNCIL OF THE EUROPEAN COMMUNITIES
AND THE MINISTERS FOR HEALTH OF THE MEMBER
STATES, MEETING WITHIN THE COUNCIL,

Having regard to the Treaty establishing the European
Economic Community,

Having regard to the draft recommendation from the
Commission,

Having regard to the opinion of the Economic and
Social Committee (*),

Whereas the European Council held in Milan on 28 and
29 June 1985 stressed the importance of launching a
European action programme against cancer;

Whereas the Council and the Representatives of the
Governments of the Member States, meeting within the
Council, in their resolution of 7 July 1986 on a
programme of action of the European Communities
against cancer, set the objective of contributing to an
improvement in the health and quality of life of citizens
within the Community by reducing the number of cases
of cancer and under this heading gave priority to
measures against smoking;

Whereas, in addition to the potential encouragement to
smoke and the unpleasant physical effects and the
nuisance which smoke causes for non-smokers, there is
an increased risk of respiratory illnesses for non-smokers
involuntarily exposed to the smoke of tobacco products;
whereas consequently, it is appropriate to protect the
right to health of non-smokers against involuntary
smoking;

Whereas, to ensure respect for the right to health of
non-smokers, it is essential to ban smoking in public
places in certain establishments and in forms of
transport;

Whereas, however, in view of the extent of tobacco
addiction affecting part of the population, it is appro-
priate to make provision to permit smoking in part of
these establishments and forms of transport;

Whereas it is necessary to extend to the citizens of all
Member States the protection they are afforded in some
Member States against the damage caused by involuntary
smoking;

Whereas, finally, the initiative set out in this resolution
will have an even more beneficial effect on public health,
particularly for the workers directly concerned, when
coupled with health education programmes during the
years of compulsory education and with information and
public awareness campaigns,

INVITES THE MEMBER STATES:

to take the following measures by introducing legislation
or by other methods in accordance with national
practices and conditions:

1. Ban smoking in enclosed premises open to the public
which form part of the public or private estab-
lishments listed in the Annex. Member States may add
to the said list;
2. Extend the ban on smoking to all forms of public
transport;
3. Provide, where necessary, for clearly defined areas to
be reserved for smokers in the above establishments
and, if possible, in public transport, particularly for
long journeys;
4. Ensure that in the event of a conflict, in areas other
than those reserved for smokers, the right to health of
non-smokers prevails over the right of smokers to
smoke;

to inform the Commission every two years of action
taken in response to this resolution.

(*) Opinion delivered on 26 April 1989 (not yet published in the
Official Journal).

Public and private establishments referred to in point 1 of the resolution
(non-exhaustive list)

1. Establishments where services are provided to the public, whether for a charge or free, including the sale of goods;
 2. Hospitals, establishments where health care is given and all other medical establishments;
 3. Establishments where elderly persons are received;
 4. Schools and other premises where children or young people are received or housed;
 5. Establishments where higher education and vocational training are given;
 6. Enclosed establishments used for entertainment (cinemas, theatres, etc.); radio and television studios open to the public;
 7. Enclosed establishments where exhibitions are held;
 8. Establishments and enclosed places where sports are practised;
 9. Enclosed premises of underground and railway stations, ports and airports.
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Brief review of national regulations

The scope and value of the contributions vary. Some give a full, detailed analysis, while others simply give a general, limited outline of existing legislation.

GERMANY - The German authorities submitted a detailed report describing the various initiatives taken in this field.

The following points emerge after an initial examination:

At the present time there is no general regulation covering all aspects of the problem under German law.

It is difficult to assess the situation in view of the division of responsibilities between different administrative bodies - Federal Government, autonomous governments (Länder), local authorities and other intermediary local bodies.

Some problems associated with smoking in the federal administration's establishments have been solved at national level by administrative regulations from the Minister of the Interior, supplemented by internal memos in the various ministries on the subject of smoking in the civil service.

The above texts associate the principles of consensus and protection of non-smokers. The supervisory staff must give its approval in respect of all areas other than communal areas and visitor reception areas where non-smoking is the rule.

The majority of problems associated with smoking on public transport are also dealt with at national level: there is a total ban on smoking on commuter trains, urban buses or regular services and on underground trains. Areas or carriages reserved for non-smokers are provided in trains, aeroplanes and stations.

A ban on smoking in public places for young people under sixteen years of age has helped reinforce protection measures in schools.

A whole series of administrative standards regulate the situation in public administration buildings at regional and local level. These standards are sometimes more recent than national provisions and are to a certain extent more stringent.

Following the Council's Resolution, the situation has remained virtually unchanged with regard to laws and regulations. The German authorities have preferred to lay emphasis on information and awareness campaigns, particularly in hospitals, together with statements and recommendations from the public authorities. The report does not give detailed information with regard to restrictions on private premises open to the public.

BELGIUM - Source of regulations: Royal Decree of 15 May 1990, followed by the Ministerial Decree of 9 January 1991. The Royal Decree of 1990 defines, on the basis of the Annex to the Community Resolution, the various areas open to the public in which smoking bans are imposed.

In the majority of cases (establishments in which services are supplied to the public, health care is administered, children are taught or minded, shows or exhibitions organised or sports performed), there is a general ban on smoking. Clearly demarcated areas reserved for smokers may be provided. As from 1 January 1993 these areas must not exceed half of the surface area of the premises.

In establishments in which the main activity is the presentation of foodstuffs for consumption, a ban will be introduced in premises of more than 50 m².

Ventilation facilities are obligatory in any premises where smoking is permitted.

The above Decree does not refer expressly to public transport, which is covered by the Royal Decree of 25 September 1976. Stations, airports, etc. are covered by the 15 May 1990 Royal Decree.

DENMARK - Source of regulations: circular of 23 March 1988.

The circular is applicable only to hospitals and social welfare and education centres and to state-run public transport. Government offices are also included. Where smoking is prohibited, areas should be reserved for smokers.

In general, smoking is banned in meetings and in communal areas unless everyone present agrees that smoking should be allowed.

The circular does not cover buildings under regional or local authority control nor private premises open to the public. The situation differs from one regional or municipal authority to another but the Minister of Health has invited them to adopt the criteria set out in the circular.

SPAIN - Source of regulations: Royal Decree 192 of 4 March 1988 and Royal Decree 510 of 14 May 1992.

The decree introduces the general principle that, in case of conflict, a non-smokers' right to health must take precedence over smokers' rights. There is a total ban in workplaces where there is increased risk to health due to handling of harmful substances, in areas where pregnant women are working and in lifts.

There is a general ban on smoking (associated with the provision of areas reserved for smokers) in health centres, educational and child-care establishments, libraries and exhibition rooms, covered commercial premises, theatres, cinemas, sports centres and areas in which food is prepared, processed or sold, except for premises where the products are consumed on the spot.

There is a total smoking ban on urban transport. On other means of transport there are areas set aside for smokers and the principle of priority of the rights of non-smokers in taxis is actively applied (unless smoking is prohibited by local regulations). A ban on smoking on all domestic flights (of less than 90 minutes) came into force in July 1992.

FRANCE - Source of regulations: Law of 10 January 1991 and Decree 478 of 29 May 1992.

French law provides for a general ban on smoking in public areas, in particular schools, and on public transport, except in areas set aside for smokers. A decree laying down implementing conditions for this law was issued on 29 May 1992.

The new Decree provides for:

A general ban applying in principle to all enclosed and covered places open to the public that are at the same time workplaces, and to public transport. Wherever possible, however, areas are to be set aside for smokers, such areas being determined (in accordance with the minimum ventilation standards required under the Decree) by the person or organisation responsible for the premises.

With specific regard to workplaces, smoking is banned in enclosed and covered areas used by the entire staff. In the case of other zones (offices, workshops), and depending on the ventilation, the employer is required (after consultations with occupational physicians and staff representatives) to draw up standards for the allocation of areas reserved for smokers, or at least organisational plans to ensure the protection of non-smokers.

More stringent and specific provisions apply to schools and in general to educational establishments.

In the case of public transport, a total ban will be enforced in urban and regional transport of the Ile de France, and on commercial French airliners on domestic flights of less than two hours' duration. In the case of other means of transport, areas will be set aside for smokers.

GREECE - In 1979 and 1980 various decrees from the Minister of Health introduced bans and severe restrictions on smoking in hospitals and private clinics and in all enclosed public areas and on all public transports. A ban on smoking on all national domestic flights has also been in effect since May 1980. Smoking is banned on the domestic flights of all national airlines. Information and education campaigns are being conducted by the Ministry, aimed in particular at medical personnel and schools.

IRELAND - Source of regulations: Health Promotion and Protection Regulations 1990.

The text provides for two different categories of public places. There is a total ban on smoking, with a few very limited exceptions, in all communal areas (corridors, lifts, rooms, etc.) in public administration buildings and in public offices, primary and secondary schools, universities, supermarkets, stations, sports centres, cinemas and theatres, etc. The same applies to buses and underground transport.

In addition, there are smoking restrictions on all premises in which health care is administered, restaurants, cafés, bars, stations, airports and ports, trains and aeroplanes. The persons responsible for the premises in question, i.e. the owners or persons in charge of establishments, are responsible for any breaches of these regulations which are punishable by fines or even imprisonment.

ITALY - Source of regulations: Law 584 of 11 November 1975.

This law provides for a ban on smoking in the majority of public places such as hospitals, schools, libraries, museums, but also concert halls, cinemas, theatres and enclosed ball-rooms. In some cases dispensations may be obtained from the local administration provided that air conditioning equipment is installed. Smoking is banned on public transport except in areas set aside for smokers.

A new draft law codifying and consolidating the bans was submitted to the Italian Parliament in 1991.

LUXEMBOURG - Source of regulations: Law of 24 March 1989.

The law generally covers premises open to the public (hospitals, schools or accommodation for young people under 16 years of age, sports halls, cinemas, theatres, museums, as well as pharmacies, doctors' and dentists' waiting rooms and waiting rooms in stations).

It introduces a total ban on scheduled buses. There are no provisions concerning private establishments open to the public such as bars, restaurants, hotels, etc..

NETHERLANDS - Source of regulations: Decree of 29 December 1989 implementing Articles 9-12 of Law 342-1988.

This decree provides for a ban on smoking in areas open to the public or intended for communal use and administered or under the control of the Government or other public administrations and also in health care establishments, teaching establishments, social welfare and cultural institutions and covered state-run sports establishments. Areas may be set aside for smokers where necessary.

Smoking is banned in public transport (buses, trams and underground trains). Non-smoking sections are required in trains and aeroplanes.

Furthermore, emphasis has been placed on an information campaign accompanying implementation of the above measures. One such example is a recommendation by the Minister of Social Affairs concerning the introduction of non-smoking policies in companies which led almost a third of companies to adopt policies restricting smoking.

PORTUGAL - This country has long-standing laws banning smoking in public places. The decrees in force since 1978 were amended by the law on the prevention of smoking in 1982 and subsequently by decrees or decree-laws in 1983, 1987, 1988 and 1989.

The legislation covers extensively the various places open to the public: hospitals and health care or educational establishments, areas reserved for minors, concert halls, covered sports halls, etc., with provision for areas set aside for smokers. Smoking is prohibited on urban public transports and, as a general rule, on all means of transport (trains, coaches, boats, etc.) for journeys of less than one hour. Areas must be set aside for smokers on longer journeys.

The legislation also provides for the introduction of non-smoking areas in restaurants, hotels and other similar establishments and at places of employment, particularly in establishments controlled by the public authorities. However, the ban on smoking does not apply if it is not possible to set aside areas for smokers.

UNITED KINGDOM - Source of regulations: Code of practice, smoking in public places.

There are regulations concerning public areas under Government or local authority control. There is a total ban on smoking on public transports: urban buses, underground trains and some domestic flights. Non-smoking areas must be provided on other means of transport. New legislation, with provision for banning smoking in taxis, is currently under examination.

At the end of 1991 the Government published a code of practice endorsed by the various administrative bodies competent in the field of health. The code gives instructions and contains recommendations which should be applied voluntarily by those in charge of all private establishments normally visited by the public. The key principle of the code is that a ban on smoking should be the norm in all establishments open to the public but that special areas should be set aside for smokers.

ANNEX III

	BE		D		DA		ES		FR		GR		IRL		IT (1)		LUX		PB		P		UK (2)	
	INT	ERF	INT	ERF	INT	ERF	INT	ERF	INT	ERF	INT	ERF												
1. Establishments where services are provided to the public whether for a charge or free including the sale of goods;	X	X							X	X			X	NO/X	X						X	X	X	X
2. Hospitals, establishments where health care is given and all other medical establishments;	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
3. Establishments where senior citizens are received;	X	X			X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X
4. Schools and other premises where children or young people are received or housed;	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	NO	X	X	X	X	X	X
5. Establishments where higher education and vocational training are given;	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X			X	X	X	X	X	X
6. Enclosed establishments used for entertainment (cinemas, theatres, etc.); radio and television studios open to the public;	X	X					X	X	X	X	X	X	X	NO	X	X	X	NO			X	X	X	X
7. Establishments and enclosed places where exhibitions are held;	X	X					X	X	X	X	X	X	X	X/NO	X	X	X	NO			X	X	X	X
8. Establishments and enclosed places where sports are practised;									X	X	X	X	X	NO	X	X	X	NO	X	X	X	X	X	X
9. Enclosed premises of underground and railway stations, ports and airports;			X	X			X	X	X	X	X	X	X	X	X	X		X				X	X/NO	

	BE		D		DA		ES		FR		GR		IRL		IT(1)		LUX		PB		PT		RU(2)	
	INT	ERF	INT	ERF	INT	ERF	INT	ERF	INT	ERF	INT	ERF												
10. Public transports;																								
10 A.- Airplanes			X	X	X	X	X	X	X		X	NO	X	X	X	NO	X	X	X	X	X		X	X/NO
10 B.- Urban transportation (bus, underground)			X	NO	X	X	X	NO	X		X	NO	X	NO	X	NO	X	NO	X		X	NO	X	X
10 C.- Trains			X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X		X	X	X	X

(1) On the basis of the project of law discussed at the Italian Parliament in 1991.

(2) This classification takes into account the "Code of Practice 1991" which is not a restricting instrument and difficult to evaluate on a legal basis.