

COMMISSION OF THE EUROPEAN COMMUNITIES

COM (88) 674 final

Brussels, 21 December 1988

Draft

COUNCIL RECOMMANDATION

on banning smoking in public places

(presented by the Commission)

EXPLANATORY MEMORANDUM

This Draft Council Recommendation should be seen as one of the measures to "limit and reduce the use of tobacco" deemed to be a priority by the Council and the representatives of the Governments of the Member States, meeting within the Council in its resolution of 7 July 1986 (OJ C184 of 23.07.1986, p. 19).

1. BACKGROUND

In most Member States of the European Economic Community there are regulations banning or restricting smoking in public places.

In the Federal Republic of Germany, where public health questions are also within the field of competence of the Länder, provisions on banning smoking in public places are not uniform. However, smoking is generally banned in schools and other educational establishments and non-smoking areas are provided in certain forms of transport.

In Belgium, France and Spain, the law sets out in detailed form the places where smoking is banned. This ban covers most premises accessible to the public, with particular stress on establishments for young people or where health care is given. However, Belgian and Spanish legislation provides that in some areas where the ban applies an area may be set aside for smokers. Smoking areas are also authorized on certain forms of transport. It should be noted that in the event of a dispute, Spanish legislation provides that the right to health of non-smokers prevails over the rights of smokers in all places where the right to health of non-smokers might be affected.

In Denmark a Government decision establishes that, within its area of competence, the Government should adopt measures to ban or restrict smoking in some public places and some public transport before 1 July 1988.

In Ireland an Order of July 1988 allows the adoption of legislative measures to ban or restrict smoking in some public places.

In Greece, Italy and Portugal, there are restrictions on the use of tobacco in some public places and forms of transport.

In the Netherlands, restrictions are generally confined to hospitals and places of entertainment.

In Luxembourg restrictions are limited to public transport and places of entertainment.

In the United Kingdom the law covers only the right to smoke on public transport.

It should also be stated that in Greece, Luxembourg, Italy, the Netherlands, Portugal and the United Kingdom, draft laws have been tabled in order to improve existing legislation.

2. BASIS FOR COMMUNITY ACTION

It has now been established that involuntary exposure to smoke from tobacco products entails some risk of cancer. Moreover, it affects the elderly, people with cardiac diseases, asthma or allergies, and can provoke respiratory diseases. In pregnant women it can endanger the development of the foetus. Account should also be taken of the many fires and other accidents caused by cigarette smoking.

To protect the right to health of non-smokers and for safety reasons it is essential to lay down rules on smoking in places open to the public.

This is the aim of this Draft Recommendation which seeks to improve the standard of living in the Member States, this being one of the chief objectives of the European Economic Community. It is one of a series of measures to combat smoking (1) and corresponds to proposed Action 11 in the Europe against cancer programme (2). It should be noted that the survey of Europeans and cancer prevention made in 1987 revealed that 77 % of Europeans would approve a European measure to ban smoking in public places (see table).

The underlying principle is to ban smoking in enclosed areas for the use of the public which are part of certain public or private establishments.

The Commission has already proposed measures for the protection of workers banning smoking in places where they are or might be exposed to carcinogens (3).

Finally, in view of the extent to which tobacco addiction affects part of the population, it is appropriate to make provision wherever possible for clearly defined areas where smoking is permitted.

(1) See proposals for a Directive concerning the labelling of tobacco products (COM(87)719 final) and concerning the maximum tar yield of cigarettes (COM(87)720 final).

(2) OJ C50, 26.02.1987

(3) For example, see proposal for a Council Directive on the protection of workers from risks related to exposure to carcinogens at work (OJ C34, 08.02.1988, p. 9)

Extract from table n° 12 of the survey of Europeans and cancer prevention made in April and May 1987

| | Ban on smoking in public places | | |
|--------------------|------------------------------------|------|-----|
| | + | - | ? |
| EEC AS A WHOLE (1) | 77 % | 19 % | 4 % |
| BELGIUM | 74 | 20 | 6 |
| DENMARK | 67 | 26 | 7 |
| GERMANY | 56 | 36 | 8 |
| GREECE | 78 | 18 | 4 |
| SPAIN | 78 | 16 | 6 |
| FRANCE | 91 | 8 | 1 |
| IRELAND | 69 | 26 | 5 |
| ITALY | 93 | 5 | 2 |
| LUXEMBOURG | 65 | 28 | 7 |
| NETHERLANDS | 69 | 24 | 7 |
| PORTUGAL | 82 | 10 | 8 |
| UNITED KINGDOM | 72 | 26 | 2 |

(1) Weighted average. The symbols +, - and ? correspond to the percentage of people questioned who "would approve", "would disapprove" and "did not know", respectively.

**DRAFT COUNCIL RECOMMENDATION ON
BANNING SMOKING IN PUBLIC PLACES**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the Draft Recommendation from the Commission (1),

Having regard to the opinion of the European Parliament (2),

Having regard to the opinion of the Economic and Social Committee (3),

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 (4) set for this programme the objective of contributing to an improvement in the health and quality of life of citizens within the Community by reducing the number of illnesses due to cancer and under this heading gave first priority to measures against smoking;

Whereas there is an increased risk of lung cancer for non-smokers involuntarily exposed to the smoke of tobacco products and, consequently, it is appropriate to protect the right to health of non-smokers against involuntary smoking;

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

Whereas, however, in view of the extent of tobacco addiction affecting part of the population, it is appropriate 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 the Member States of the European Community the protection they are given in some Member States against the damage caused by involuntary smoking;

(1)

(2)

(3)

(4) OJ C184, 23.07.1986, p. 19

RECOMMANDS TO THE MEMBER STATES :

to take the following measures by legislation according to national practice and conditions :

1. Ban smoking in public places which are part of a public or private establishment intended for one of the uses listed in Annex 1 to this Directive.

However, in these establishments, clearly defined areas must be reserved for smokers.

The Member States are free to add to the establishments listed in Annex 1.

2. In case of conflict between the right of the non-smoker to health and the right of the smoker to smoke, the right of the non-smoker prevails in these establishments and at all work-places.
3. Ban smoking in all public transport.
4. Inform the Commission every two years about the implementation of this recommendation.

Done at Brussels,

For the Council,

1. establishments where services are provided to the public, whether for a charge or free of charge;
2. establishments where sick or elderly persons are received or treated;
3. establishments where health care is given for prevention or cure;
4. establishments where children or young people of school age are received, housed or treated;
5. establishments where education and vocational training is given;
6. establishments where entertainment takes place;
7. establishments where exhibition are held;
8. establishments where sports are practised;
9. underground and railway stations, ports and airports.

DRAFT COUNCIL RECOMMANDATION ON BANNING SMOKING IN PUBLIC PLACES

IMPACT SHEET ON COMPETITIVENESS AND EMPLOYMENT

1. What is the main objective of the measure ?

Health protection

2. Characteristics of the enterprises concerned. In particular : most of the establishments concerned do not have a commercial character.

Are they concentrated in regions ?

- eligible for regional aid by Member States ? No

- eligible for EFRD ? No

3. What are the obligations imposed directly on the enterprises ?

The recommendation to post a sign prohibiting smoking in public places of certain establishments.

4. What obligations might be imposed indirectly on enterprises by the local authorities ?

None

5. Are there special measures for SME ?

No

6. What is the predictable effect ?

- a. on the competitiveness of enterprises ?

None

- b. on employment ?

At short term positive because of the recommendation to set up separable spaces for non-smokers and to produce special no-smoking signs.

At long term no significant effect.

7. Have the two sides of industry been consulted ?
What are their opinions ?

Yes