



13 February 2009

Response to European Social Partner consultation on exposure to environmental tobacco smoke at the workplace

Summary

European businesses acknowledge the health risks of exposure to environmental tobacco smoke and that such risks should be dealt with.

However, BUSINESSEUROPE believes that the issue of exposure to environmental tobacco smoke cannot be solely or most appropriately dealt with under the remit of workplace health and safety, as this is largely a societal issue. Therefore action would be more appropriate in the public health area. Member states are encouraged to take initiatives in this respect, if necessary and appropriate.

European employers do not agree with the need for EU level legislative measures to tackle this issue, but believe that the issue should be dealt with at national level. Many member states are already taking or have taken action in this area and steps in this direction are likely to continue at national level.

There are particular challenges for the hospitality sector, where appropriate solutions must be found for the employers, workers and guests/customers concerned, within national frameworks.

BUSINESSEUROPE advocates non-binding initiatives at EU level, such as assistance for companies and action in the public health sphere to encourage member states to take measures in this field.

I. Introduction

1. The European Commission on 10 December launched a consultation of the European social partners on the protection of workers from risks related to exposure to environmental tobacco smoke at the workplace. This consultation is a response to the conclusions of the 2007 Green Paper – Towards a Europe free from tobacco smoke, in particular in response to remarks from the European Parliament and the Council.
2. In addition to commenting on the consultation document, European social partners are also invited to answer a number of specific questions, highlighted in section 5 of the document.



II. General remarks

3. BUSINESSEUROPE welcomes the opportunity to comment on the European social partner consultation on exposure to environmental tobacco smoke at the workplace. European businesses are fully aware of the health risks of exposure to environmental tobacco smoke and agree with the importance in tackling these risks.
4. BUSINESSEUROPE does not, however believe that this issue is appropriately dealt with under the remit of workplace health and safety, but rather should have a broader focus in public health issues. DG Health and Consumer Protection has already consulted a wide-range of stakeholders on policy proposals for dealing with the impact of environmental tobacco smoke. Any further activities should be concentrated in this area. In line with better regulation principles, duplication at EU level on this issue should be avoided.
5. BUSINESSEUROPE does not advocate legislative measures at EU level, whether through a specific directive prohibiting smoking in all workplaces or inclusion of environmental tobacco smoke in the scope of the Carcinogens and Mutagens Directive. This is an issue which is dealt with adequately at national level. Many member states have already taken measures in this area or are in the process of doing so. The diversity of measures across member states shows the need for tailoring to existing national arrangements and cultures.
6. For technical reasons, classifying environmental tobacco smoke as a carcinogen, which would mean changing the scope of the Carcinogens and Mutagens Directive is not an appropriate course of action. This directive protects workers from exposure to carcinogens caused by industrial processes – environmental tobacco smoke cannot be classified as such.
7. BUSINESSEUROPE acknowledges that there are particular challenges regarding the entertainment and hospitality sector, where exposure of workers to environmental tobacco smoke is often a more common feature. The challenge here is to find appropriate solutions for all parties concerned, including workers, management and customers/guests. Such solutions can best be identified at the level of the sectors and/or establishments themselves in the framework of national arrangements.
8. In terms of the EU level, European employers advocate non-binding initiatives in this field, such as the development of practical guidelines to assist employers in taking actions to prevent exposure to environmental tobacco smoke, where this is relevant. Additional non-binding activities in the public health sphere could also be foreseen.



III. Specific remarks

9. BUSINESSEUROPE hereby provides answers to the questions, as requested in section 5 of the consultation document.

(1) *Do you consider that the existing national and EU health and safety legislative framework is appropriate and sufficient to protect workers from health risks related to exposure to environmental tobacco smoke at the workplace?*

10. European employers consider that the existing combination of EU and national measures is sufficient in protecting workers from health and safety risks related to exposure to environmental tobacco smoke at the workplace and therefore that further regulations at EU level are neither necessary nor desirable.

11. As highlighted in the consultation document, there are a number of existing EU occupational health and safety directives, which set out general requirements regarding worker's health and safety risks and some specific restrictions on smoking at the workplace. Firstly the Framework Directive 89/391/EEC obliges employers to take care of workers' health and safety in all work-related aspects and to carry out risk assessment of all risks associated with the workplace. Secondly the Workplace Directive 89/654/EEC obliges employers to make sure that non-smokers are protected against discomfort caused by tobacco smoke, by ensuring that there is sufficient fresh air in enclosed workplaces to protect workers' health and safety. In addition, numerous directives lay down specific restrictions on smoking at work, including:

- protection of non-smokers against discomfort caused by tobacco smoke in rest areas and rest rooms (Mineral and Extractive Industries drilling Directive (92/91/EEC), Mineral and Extractive Industries surface and underground works Directive (92/104/EEC)
- prohibition of smoking in areas where workers are, or are likely to be, exposed to carcinogens or mutagens, due to the effect on health of the interaction between tobacco smoke and carcinogenic/mutagenic substances (Carcinogens and Mutagens Directive (2004/37/EC)
- obligation of employer to assess and mitigate exposure of pregnant workers and workers who have recently given birth or are breastfeeding to substances classified as carcinogenic and carbon monoxide (Pregnant and Breastfeeding Workers Directive (92/85/EEC)

12. Moreover, at national level, although different arrangements exist, in numerous member states smoking is banned in workplaces and public spaces, in some cases with use of smoking rooms or designated areas.¹ Although the focus of this consultation is on workplaces, smoking bans in public buildings and places open to the public (such as banks, airports, public administrations, etc.) and in public transport, not only act as a public health measure to protect service users, but also protect workers in those workplaces.

¹ See report of European Network for Smoking Prevention, July 2008



13. The commitment of a majority of member states to take tailor-made measures in this field, where deemed necessary and appropriate, can be seen as an important development and makes action at EU level unnecessary.
- (2) *In particular, do you think that the absence of comprehensive legislative measures in this area has an adverse impact on the protection of workers' health?*
14. As highlighted previously, BUSINESSEUROPE believes that this is an issue best dealt with in the national context and as far as possible, measures should be adaptable to the sector, individual company and workers concerned. Although arrangements across the EU are diverse, companies do not believe that this has an adverse impact on protection of worker's health. In a majority of member states there is a sufficient level of protection for workers from exposure to environmental tobacco smoke. If gaps still exist, for example in specific member states or in certain sectors, this issue should be discussed at the appropriate level, to find suitable solutions in accordance with national practices and traditions.
15. European employers acknowledge that in some member states exceptions exist in the hospitality sector. In many cases however, these allow for a compromise between guests/customers and workers in the establishments. These include specific rules regarding the size of the establishment or related to the serving of food.
- (3) *Do you consider a legislative initiative under Article 137 of the EC Treaty to be a more comprehensive and explicit way of protecting workers from health risks related to exposure to ETS at the workplace? AND*
- (4) *If you consider such a legislative initiative at EU level appropriate, what form do you think it should take? (For example, the amendment of existing Directives, the adoption of a specific Directive or other approaches.)*
16. European employers are opposed to a legislative initiative at EU level, for example a new directive on workplace smoking. There is already protection through measures which member states have taken and action should remain the prerogative of member states.
17. Regarding the amendments of existing Directives, in 2003 BUSINESSEUROPE gave its position in the social partner consultation on the possible extension of the scope of the directive on the protection of workers from risks related to exposure to carcinogens to classify environmental tobacco smoke as a carcinogen. European employers reiterate that this is not an appropriate measure, as the carcinogens directive deals with exposure to chemicals which are generated from industrial processes. Tobacco smoke does not fit into this category.
- (5) *Do you consider that non-binding measures would be a more appropriate means of tackling this issue? If so, can you identify such measures and say how they could be effective at Community level?*



18. Aside from any further action taken at member state level, European employers consider that non-binding measures would be a more appropriate way to encourage member states to take further action in this field.
19. Particularly useful non-binding initiatives include guidelines, in which examples are used to highlight solutions for protection of non-smokers from passive smoking, which are adaptable to the company level. Practice in companies has shown that solutions which are targeted towards the individual circumstances and needs of smokers and non-smokers at the workplace, are more accepted by both groups.
20. The establishment of technical measures, such as environmental renovation and general smoke extraction systems, if appropriate at national level, can be a more appropriate means of increasing protection of workers' health than EU level legislation.
21. Other non-binding measures may include assistance for companies, particularly in more complicated situations such as hospitality establishments, in finding solutions which suit all parties concerned. This includes workers, employers and guests/customers.
22. Given that this issue is not solely restricted to the workplace, but rather a societal matter, other non-binding measures could also be useful to assist public health authorities and member state governments, such as education and awareness-raising programmes. In particular, recommendations and practical guides will raise public awareness of prevention against negative health effects of environmental tobacco smoke.

Conclusion

23. The narrow focus on the workplace level cannot truly tackle the core of the problem of exposure to environmental tobacco smoke, which is largely a societal and public health issue.
24. In addition to employers, public authorities and member state governments have an integral role in tackling this problem, for example through awareness-raising, information and education. Assisting and encouraging member states in this process should be the focus of EU level action.
25. BUSINESSEUROPE emphasises that the issue is being dealt with by member states, through a range of legislative measures. Although exceptions exist, a new legislative initiative or amendment of existing legislation at EU level is not an appropriate mechanism to increase the health protection of workers and public at large. The diversity of member states' measures reflects the necessity of allowing for differences in cultures and traditions. New EU legislation would require an unnecessary reformulation of legislation for many member states which have already taken effective measures to combat this problem.