



UNION EUROPEENNE DE L'ARTISANAT ET DES PETITES ET MOYENNES ENTREPRISES  
EUROPÄISCHE UNION DES HANDWERKS UND DER KLEIN- UND MITTELBETRIEBE  
EUROPEAN ASSOCIATION OF CRAFT, SMALL AND MEDIUM-SIZED ENTERPRISES  
UNIONE EUROPEA DELL' ARTIGIANATO E DELLE PICCOLE E MEDIE IMPRESE

## **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**

### **Introduction**

On 10th December 2008 the European Commission launched its first stage consultation of the Social Partners on the protection of workers from risks related to exposure to environmental tobacco smoke at the workplace. Herewith UEAPME submits the following responses to the questions raised in the consultation.

### **On the specific matters for consultation:**

*(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?*

While agreeing that environmental tobacco smoke (ETS) is a concern, UEAPME would like to stress the public health dimension of this issue. Tobacco smoke should not be considered as a classical workplace health and safety topic. Therefore, UEAPME is of the opinion that any solution should not be based on the Health and Safety in the Workplace legislation.

UEAPME believes that the current EU legislative framework on health and safety is also in respect of ETS comprehensive enough. Moreover, there is 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.

At national level we have seen over the last few years that nearly all Member States have been regulating smoking in workplaces and in public areas and that there has been considerable progress in this domain. At EU level we also see a strong movement towards smoke free environments, more recently through the green paper process by DG SANCO and the adopted resolution of that paper by the European Parliament.

Looking beyond the EU, Member States have even taken international commitments within the context of the WHO Framework Convention on Tobacco Control, which was ratified by 26 out of 27 Member States. This creates evident legal obligations to protect citizens from ETS.

In the interest of better regulation and less administrative burdens, UEAPME sees no requirements for further detailed binding measures. Any decisions on ETS need to

adhere to the subsidiarity principle. It very much depends on the culture and mindset of governments and citizens in individual Member States to decide how they deal with tobacco smoke and ETS bans.

As far as certain sectors are concerned, we need to bear in mind the specificities of the restaurants, catering and hospitality sector and here national social partners certainly have an important role to play. For example in 2008 Austrian social partners drew up a special collective agreement in order to protect these workers from ETS. Crucial elements of the agreement include special leave for diagnostic examinations related to passive smoke at the workplace, retention of dismissal payments in the case of a resignation of an employee if conditions are deemed unreasonable and ensuring that young persons primarily work in non-smoking areas. This shows clearly the added value of national and/or sectoral initiatives.

Therefore, any decision to include the HORECA sector in a possible binding smoking ban has to be taken on a case by case basis at national level and follow a serious impact assessment.

In addition, from an SME and entrepreneurial perspective, we must not forget the potential impact of a smoking ban at the workplace on the economy, in particular in restaurants and the hospitality sector as such. An introduction of a general smoking ban could lead to a massive decrease in the number of employed people in this sector.

*(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?*

As stated, so far overall appropriate provisions have been made at Member State level regarding the protection of workers health. European legislation in this field is adequate for the health protection of workers and there is no necessity for additional legislation at EU level in such an area.

*(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?*

As pointed out by the European Commission in the consultation there is already a comprehensive occupational health and safety legislation in place, which also applies to smoking and there is thus no need to go any further.

Because the exposure to ETS at the workplace varies according to countries and sectors, the attempt to set minimum standards would be virtually impossible to implement and bring unnecessary administrative, financial and legal burdens for small businesses.

Employers take the health and safety of their employees seriously and are fully aware of this imperative. Furthermore, the Health and Safety Framework Directive clearly spells out that employers are legally responsible regarding preventive health measures for their employees.

*(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.)*

As pointed out before, UEAPME does not see the need to either amend the current EU legislation or come up with specific and new legislative initiatives on smoking at the workplace.

*(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?*

UEAPME believes that Member States and public authorities should make a particular effort to effectively apply already existing national binding measures in public or enclosed areas.

Non-binding measures represent the right way forward and in this context EC initiatives supporting awareness-raising campaigns for sensitisation purposes are very welcome. Themes could 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 must start from an early age and thus a clear focus should be put on specific prevention campaigns aimed at young people to avoid tobacco addictions. Among these tools the tobacco advertising bans in place certainly are already a powerful instrument and an important component of any protection measures from ETS.

Furthermore, the EC could contribute with guides on prevention and good practice and information. Evidently any exchange of best practice should also consider the restaurant and hospitality sector dimensions in an adapted way.

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