Council of the European Union

Brussels, 18 September 2024
(OR. en)

13519/24
ADD 3

Interinstitutional File:
2024/0230(NLE)

SAN 522
SOC 659

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	18 September 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	SWD(2024) 56 final
Subject:	COMMISSION STAFF WORKING DOCUMENT STAKEHOLDER CONSULTATION - SYNOPSIS REPORT Proposal for a Council Recommendation on Smoke- and Aerosol-Free Environments replacing Council Recommendation 2009/C 296/02

Delegations will find attached document SWD(2024) 56 final.

Encl.: SWD(2024) 56 final

EUROPEAN
COMMISSION

Strasbourg, 17.9.2024
SWD(2024) 56 final

COMMISSION STAFF WORKING DOCUMENT

STAKEHOLDER CONSULTATION - SYNOPSIS REPORT

Proposal for a Council Recommendation

on Smoke- and Aerosol-Free Environments
replacing Council Recommendation 2009/C 296/02

{COM(2024) 55 final} - {SWD(2024) 55 final}

Table of Contents

TABLE OF CONTENTS **1**

1. INTRODUCTION **2**

2. OVERVIEW OF CONSULTATION ACTIVITIES **2**

2.1. CALL FOR EVIDENCE 2
2.2. TARGETED CONSULTATIONS 2
2.2.1. Targeted surveys *4*
2.2.2. Targeted interviews *4*
2.2.3. Focus Groups *5*
2.3. CONSULTATION OUTCOMES 5
2.3.1. Protection of people from second-hand smoke and aerosols *5*
2.3.2. Economic impact of the proposed revision *7*
2.3.3. Impact on smoking cessation and expansion of smoke- and aerosol-free policies ..... ***Error! Bookmark not defined.***
2.3.4. Impact on enforcement and compliance *8*
2.4. OTHER CONSULTATION ACTIVITIES 8

Disclaimer: *This document includes contributions made by stakeholders for the Call for Evidence on the revision of the Council Recommendation on Smoke-Free Environments and successive targeted consultation activities. It cannot in any circumstances be regarded as the official position of the Commission or its services. Responses to the consultation activities cannot be considered as a representative sample of the views of the EU population.*

1. INTRODUCTION

This report presents outcomes of the consultations, which were conducted to support the revision of the 2009 Council Recommendation on Smoke-free Environments[1], including namely:

1) 207 contributions in response to a Call for Evidence on the 'Have your say' platform from 22 June until 20 July 2022[2];
2) Outcomes of targeted consultations gathering input from the following relevant stakeholder groups: 1) representatives of Member State competent authorities; 2) civil society organisations (CSOs); 3) Economic Operators (EOs) in the tobacco and related products industry; 4) representatives from the HORECA sector; 4) other relevant stakeholders such as those in education and sports associations. The targeted consultation activities consisted of a targeted survey, targeted interviews and focus groups;
3) Input and feedback from Member States representatives of national competent authorities who are members of the Expert Group on Tobacco Policy (EU Member States plus Iceland and Norway) who participated in a meeting of the Expert Group on Tobacco Policy organised on 3 May 2023[3];
4) Input from the Joint Action on Tobacco Control (JATC-2).

2. OVERVIEW OF CONSULTATION ACTIVITIES

2.1. Call for Evidence

The Call for Evidence resulted in 207 responses. Responses were received from citizens, Non-Governmental Organisations (NGOs), business associations and organisations, consumer organisations, research institutions and pubtlic authorities. The majority of NGOs (total of 28 contributions), academic/research institutions (total of 6 contributions), and Member State public authorities (total of 4 contributions) largely support the objectives of the proposed updates to the 2009 Council Recommendation. In particular, their responses supported the inclusion of emerging products (also mentioning nicotine-free products) in the scope and the expected positive impact on tackling the rising popularity, advertising and use of certain emerging products. Moreover, the importance of ensuring comprehensive and comparable smoke-free policies across Member States was highlighted. The feedback received from businesses (18 from companies/businesses and 20 from business associations) and citizens (101 contributions) largely opposes any updates to the Recommendation mainly on the basis of the claim that the harm caused by exposure to second-hand aerosols originating from emerging products cannot be considered on the same level as the harm caused by exposure to second-hand smoke.

2.2. Targeted consultations

The targeted consultations carried out between March and May 2023 consisted of surveys, interviews and focus groups targeting relevant stakeholders: 1) representatives of Member State competent authorities; 2) CSOs; 3) EOs in the tobacco and related products industry; 4) representatives from the hospitality sector (HORECA); 4) other relevant stakeholders such as

[1] Council Recommendation of 30 November 2009 on smoke-free environments (OJ C 296, 5.12.2009, p. 4)
[2] Have Your Say. Smoke-free environments- updated recommendation. Call for evidence. 22 June 2022- 20 July 2022
[3] Meeting of the Expert Group on Tobacco Policy. 3 May 2023, with the participation of 26 Member States, Iceland and Norway. Flash Report

those in education and sports associations. The stakeholders who were involved in the targeted consultations were identified through a stakeholder mapping exercise.

Stakeholders were selected based on the following criteria:

- Relevance: their standing and level of knowledge within the field of tobacco control and, more specifically, smoke- and aerosol-free environments.
- Representativeness: their contribution to the objective of ensuring an appropriate level of representativeness of a wide range of views and interests.

Below, Table 1 shows the stakeholders which were identified and the planned response targets and Table 2 shows the timing and total number of responses received.

Table 1 Stakeholder Mapping with the planned response targets

Questionnaires	Sub-categories	Survey	Interviews	Focus groups
Member State authorities	Ministry of Health	27 (1 per Member State)	5	NA
	Public Health Institute/Agency			
Civil Society Organisations	Public Health NGO	10	6	8
	Environmental NGO	10	0	
	Research institutes and academia	10	0	
	Consumer organisations	7	1	
Economic Operators in the tobacco and related products industry	Associations of companies operating in the tobacco and related industry	4	4	8
	Manufacturers of tobacco and related products	10	3	
	Retailers/Sellers of tobacco and related products	10	0	
HORECA sector	HORECA sector associations	10	2	6
	HORECA employees' federations			
Other relevant stakeholders	Prisons associations	2	NA	NA
	Sports entities	3		

	Education sector associations	9		

Table 2 Timing and response rate achieved during the targeted consultations

Activity	Timing	Response rate achieved
Surveys	23 February - 17 March 2023	Member States representatives: 89% (24 out of 27) Civil society organisations: 62% (23 out of 37) Economic operators in the tobacco industry: 83% (19 out of 23) Hospitality sector: 30% (3 out of 10) Others: 8% (1 out 13)
Interviews	29 March – 14 April 2023	100% (22 out of 22)
Focus Groups	18, 19, 21 April 2023	Civil society organisations: 88% (7 out of 8) Economic operators in the tobacco industry: 88% (7 out of 8) Hospitality sector: 33% (2 out of 6)

2.2.1. Targeted surveys

All five stakeholder groups were targeted for the surveys: 1) representatives of Member State competent authorities; 2) CSOs; 3) EOs in the tobacco and related products industry; 4) representatives from the HORECA sector; 5) other relevant stakeholders such as those in education and sports associations. The questionnaires were formulated in English and had varying lengths ranging from 23 – 28 questions. They were structured to have a general part common for all stakeholder groups and a specific part unique to each stakeholder group. The questionnaires consisted of closed and open-ended questions and were only accessible through a unique link. The response rates, as outlined in Table 2, varied depending on the stakeholder group.

2.2.2. Targeted interviews

Following the targeted survey, targeted interviews were conducted with the aim of complementing the findings which emerged from the surveys. Four stakeholder groups were targeted for the interviews: 1) representatives of Member State competent authorities; 2) CSOs; 3) EOs in the tobacco and related products industry; 4) representatives from the HORECA sector. The interviews were carried out online in English. The interviewees received a preliminary set of questions 48 hours before the interview allowing them to prepare in advance. The response rate for the targeted interviews was 100% as outlined in Table 2.

2.2.3. Focus Groups

Following the targeted interviews, focus groups were conducted to further discuss key issues and complement the set of findings which emerged from the targeted interviews. Three stakeholder groups were targeted for the focus groups: 1) CSOs; 2) EOs in the tobacco industry; 3) representatives in the HORECA sector. Three focus groups were conducted online in English. The stakeholders received preliminary focus group guides allowing them to prepare in advance. The response rate for this consultation activity varied depending on the stakeholder group and is outlined in Table 2.

2.3. Consultation outcomes

2.3.1. Protection of people from second-hand smoke and aerosols

Extension of coverage to include emerging products

Regarding emerging products, the consultation activities included questions, among others, on the potential health, social and economic impact of extending the scope of the Council Recommendation to include emerging products such as electronic cigarettes and heated tobacco products.

Across all three targeted consultation activities, representatives from Member States and CSOs consider that the extension of coverage of emerging products in the Council Recommendation would have a positive impact in reducing exposure to second-hand smoke and aerosols. CSOs (78%, 18 out of 23) and representatives from Member States (96%, 23 out of 24) held the view that the extension of the Council Recommendation would result in the increased protection of children and young people from harmful exposure to second-hand smoke and aerosols. This same point was highlighted by both stakeholder groups during the interviews. CSOs further highlighted that the extension would help to reduce indoor pollution and avoid conditions like asthma, chronic obstructive pulmonary disease (COPD) and allergies which are associated to the use of emerging products. Furthermore, they held the position that the inclusion of emerging products in a revised Council Recommendation would indirectly contribute to reducing exposure to second-hand smoke and aerosols beyond smoke and aerosol-free spaces by contributing to the de-normalisation of the use of these products.

Stakeholders representing economic operators (68%, 13 out of 29) in the tobacco industry generally did not agree that an extension of the Council Recommendation would have positive impacts. Throughout all three consultation activities, economic operators often chose the don't know/can't answer option to questions on health, social and economic impact of the revision. In interviews, they considered that scientific evidence was 'weak' with regard to the risk of exposure to aerosols from emerging products and, in their view, further restrictions to these products would take consumers away from what they see as 'less harmful products'. Therefore, during the interviews they supported a differentiated approach for the inclusion of emerging products in the revised Recommendation, whereby the smoke-free rules are not applied with the same level of strictness in the Recommendation as for traditional tobacco products. This differentiated approach was not supported by any other stakeholder group.

Three responses were received from representatives in the HORECA sector in the targeted surveys, two responses in the interviews and two organisations participated in the focus group. Throughout these consultation activities the views among the representatives of the HORECA sector differed considerably and depended on whether the HORECA organisations represent

the employees or employers. While the organisations that represent employees in the HORECA sector agree in large part with the opinions from CSOs, the organisations that represent employers in the HORECA sector tended to present their views in a similar fashion to EOs from the tobacco industry.

Finally, one response was received in the targeted survey from an organisation categorised under "other relevant stakeholders"[4]. It was supportive of the revision of the Council Recommendation and is of the position that the extension of the Council Recommendation to include emerging products, especially in spaces where children are present, will have a positive health and social impact.

Extension of scope to include outdoor spaces

Regarding outdoor spaces, the consultation activities included questions, among others, on the potential health, social and economic impact of extending the coverage of the Council Recommendation to possibly include specific outdoor spaces such as the corresponding outdoor spaces of service establishments like restaurants, bars and cafés, corresponding outdoor spaces of workplaces, public transport stations and stops, outdoor spaces of educational facilities, public playgrounds, public buildings, outdoor sports grounds, beaches, cars when children are present.

Representatives from Member States (96%, 23 out of 24) and CSOs (83%, 19 out of 23) consider that the extension of the Council Recommendation to include the mentioned outdoor spaces would have beneficial effects on health and the environment. This position was also reflected during the interviews and focus group discussions. In the interviews CSOs explained that these measures would result in environmental benefits by reducing polluting emissions and waste. During the focus group, CSOs highlighted the role of the extension to outdoor spaces in further protecting children and young people. The response on the possible impact of including the mentioned outdoor spaces from the HORECA sector was less clear and divided between agreeing with the potential benefits of the extension and having a neutral stance.
Some EOs from the tobacco industry (32%, 6 out of 19) support a revision of the Council Recommendation to outdoor spaces when children and adolescents might be present. However, for the majority of the considered outdoor spaces, EOs do not agree with the extension of the Council Recommendation to include them.

The response from the organisation categorised under "other relevant stakeholders" was generally supportive of the fact that the inclusion of the above-mentioned specific outdoor spaces in the revised Council Recommendation will positively contribute to the protection of people from exposure to second-hand smoke and aerosols.

2.3.2 Impact on smoking cessation and expansion of smoke- and aerosol-free policies

Representatives from Member States (66% of survey respondents) and CSOs (78% of survey respondents) support the view that that the revision of the Council Recommendation will contribute to reducing the initial uptake of tobacco/emerging product consumption. In particular, during the interviews, it was highlighted that the revision of the Council Recommendation is an important step in the de-normalisation of smoking and use of emerging products, which is particularly important to also curb the initial uptake among young people

[4] The 'other stakeholders' category includes education sector associations, sports associations and prisons associations. Overall, 14 stakeholders under this category were contacted to participate in the survey and one reply was received.

and increase the general awareness of the harms of consuming and exposure to emerging products. CSOs believe that the revision of the Council Recommendation would encourage and support Member States in expanding smoke/aerosol-free policies at the national level. They also elucidated that the sustainability aspect of a revised recommendation should be highlighted acknowledging the environmental impact of smoke/aerosols and the waste created by the consumption of these products. A revision would have the potential to contribute towards the reduction of littering caused by the disposal of single-use plastics such as disposable single-use devices or cigarette buds.

In contrast, EOs from the tobacco industry did not consider that a revised Council Recommendation would support the cessation of use of traditional tobacco and emerging products. According to them a revision would not contribute to the de-normalisation of smoking and use of emerging products. Rather the inclusion of e-cigarettes and heated tobacco products in a revised Recommendation would remove "less harmful products", thus depriving smokers who want to stop using traditional tobacco products for "safer alternatives". Most EOs from the tobacco industry do not consider that a revision of the Council Recommendation would encourage or support Member States in expanding their smoke- and aerosol-free policies.

2.3.3 Economic impact of the proposed revision

EOs from the tobacco industry did not directly respond to questions concerning the economic impact of this initiative and often mentioned that they are unable to give such estimates on both the revisions regarding products and outdoor spaces. 42% (8 out of 19) of survey respondents selected the don't know/can't answer option on the questionnaire, while another 42% (8 out of 19) responded that the economic impact of the revision would be negative. During the targeted interviews, some EOs considered that the revision would slow the growth rate of the e-cigarette industry and that the potential inclusion of shisha in the recommendation might be harmful to the sector. However, no or limited evidence was provided in support of this.

The responses from representatives of the HORECA sector differed depending on whether their organisation represents HORECA businesses or employees. The respondents representing businesses highlighted their concerns about losing customers, the fact that they might have to potentially spend resources on adapting to new measures and that, in the case of the hotel sector, there could be a shift of their customers towards the short-term rental sector which could create unfair business competition. To the contrary, the HORECA organisations that represent employees considered the impact neutral based on experiences in 'Scandinavia' on the inclusion of outdoor spaces resulting in no major economic issues. According to them, the current concerns resemble those from 2009 ahead of the adoption of Council Recommendation 2009/C 296/02, which did not materialise.

According to CSOs, across all three targeted consultation activities, the revision of the Council Recommendation would potentially result in considerable savings in health costs and waste collection costs. 33% (8 out of 24) Member States representatives reported, in the survey, that the economic benefits resulting from the revision of the Council Recommendation (for both the inclusion of emerging products and specific outdoor spaces) would be large and substantial. None of the Member States representatives expected substantial enforcement and/or implementation costs, 67% (16 out of 24) reported that the implementation costs for the inclusion of emerging products in the revised Recommendation would be minor while 54% (13 out of 24) reported minor costs in the case of including outdoor spaces in the revised

Recommendation. Several Member States already implemented smoke-free measures to varying degrees. In addition, Member States can absorb the administration costs within their current budgets, thus the proposed revisions would have little impact on their budget. This point was complemented during the interviews by the consideration that the expense is already assumed by the civil service or that there would be no administrative costs as it would only be an extension of the already implemented measures.

2.3.4 Impact on enforcement and compliance

A majority of CSOs (75%, 17 out of 23) held the view that a revised Council Recommendation will simplify the enforcement of smoke- and aerosol-free rules in Member States. CSOs pointed out that ensuring compliance can be challenging due to, among others, industry lobbying as well as the rapid industry reaction to regulatory changes. Both representatives from Member States and CSOs consider that allowing or continuing the use of indoor smoking rooms as designated smoking areas would compromise effective compliance and potentially promote opportunistic behaviour to circumvent smoke- and aerosol-free policies. Additionally, it was highlighted that potential enforcement costs would be compensated by fines made for breaches and that the long-term health and social benefits would outweigh the potential short-term costs.

Representatives from the HORECA sector expressed their concern about compliance issues preferring a full and comprehensive to a partial ban in order to avoid grey areas for compliance and enforcement. For HORECA representatives a specific challenge consists of determining the precise area under which the smoke- and aerosol-free rules should be enforced and who takes care of the litter disposed outside of these areas. Different suggestions were made to address challenges such as: 1) developing enforcement and implementation guidelines (for Member States and HORECA); 2) information/sensitisation campaigns (for the public), including visual infographics, to raise awareness and inform the public on the benefit of the measures for public health; 3) training sessions, on the effective implementation and enforcement for HORECA staff. CSOs suggested the inclusion of evaluation, assessment, and monitoring mechanisms to identify possible opportunistic behaviours to circumvent the rules in place and inform future proofing, in order to address potential new market developments and trends.

2.4 Other consultation activities

Further to the targeted consultation activities, the Expert Group on Tobacco Policy was consulted during a meeting on 3 May 2023. The leaders of work package 8 of Joint Action on Tobacco Policy were consulted in writing. The work packages focus on smoke-free environments and tobacco advertising, promotion, and sponsorship legislation in Europe.

During the Expert Group Meeting many representatives of Member States competent authorities highlighted that they have already implemented similar measures at their national level. They suggested to future-proof the text of the revised Recommendation to minimise the possibilities of it being easily circumvented in the future. All representatives stressed the importance of protecting people from second-hand smoke and aerosols, especially children and young people. A revision of the Council Recommendation would be an important step towards this protection. The revision was expected to contribute towards the de-normalisation of smoking and use of emerging products which would have an influence in reducing the uptake of smoking and use of emerging product and encourage cessation. Several Member States representatives recommended that a revised Council Recommendation should be as

comprehensive as possible and should also include products that do no emit smoke and aerosols. This would be an important step to tackle products that do not emit smoke or aerosols but that still contain nicotine and other products which bear the risk of addiction, which is particularly important in the case of young people. A revised Council Recommendation would result in environmental benefits through contributing towards reducing littering from cigarette buds and disposable emerging products. Member States representatives raised that compliance and enforcement challenges might arise as a result of a revised Recommendation.

Similarly, the Joint Action on Tobacco Control largely supported the inclusion of emerging products and specific outdoor spaces in a revised Council Recommendation. They noted that the environmental impact of smoking and the use of emerging products should be considered and that a revised Council Recommendation could contribute to reduce environmental harm. The inclusion of certain outdoor spaces would be relevant also given that smoking traditional tobacco products in natural areas is a well characterised risk factor for fires which creates a hazardous situation for environmental safety.