

# Smoking in Society

The pitfalls of extreme smoking bans in Europe  
and an inclusive way forward





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and an inclusive way forward

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## Executive Summary

- The 2009 Council Recommendation (CR) on Smoke-Free Environments called upon EU Member States to adopt measures to provide effective protection from exposure to tobacco smoke in indoor workplaces, public places and public transport.
- The CR achieved its aim: in 2013, all Member States had a variety of legislation in place within the parameters of the CR with actual exposure rates to second-hand smoke for EU citizens dropping overall from 2009 to 2012.
- This combination of the principle of significant protection against second-hand smoke and the flexibility necessary to best adapt this principle at Member State level should continue today.
- Unfortunately, several Member States have deviated from the fair balance achieved by the CR and are now embracing prohibitions that go far beyond the indications contained in it such as street, park, beach bans, the prohibition of smoking inside one's home or car and the extension of smoking ban legislation to vaping.
- Because these extreme regulations seem more suited to banning the presence of smokers in society than protecting the health of non-smokers, it is argued in this report that national legislators pass extreme smoking ban laws as a way to match the political demands of their electorate, to symbolically demonstrate their in-principle commitment to reduce smoking rates while the costs of these policies are supported by others and to comply with a tobacco denormalization strategy chosen by tobacco-control lobby groups and international institutions which questionably endorses government-sponsored stigmatization of a segment of the population.
- Instead of these excesses, sensible regulations exist that receive the approval of most Europeans. The best practices listed in this report are drawn from nine Member States that follow the spirit of the 2009 CR and outline a Europe where it is possible and popular to protect the health of non-smokers without marginalising smokers and vapers.

# Overview of smoking and vaping restrictions in the EU

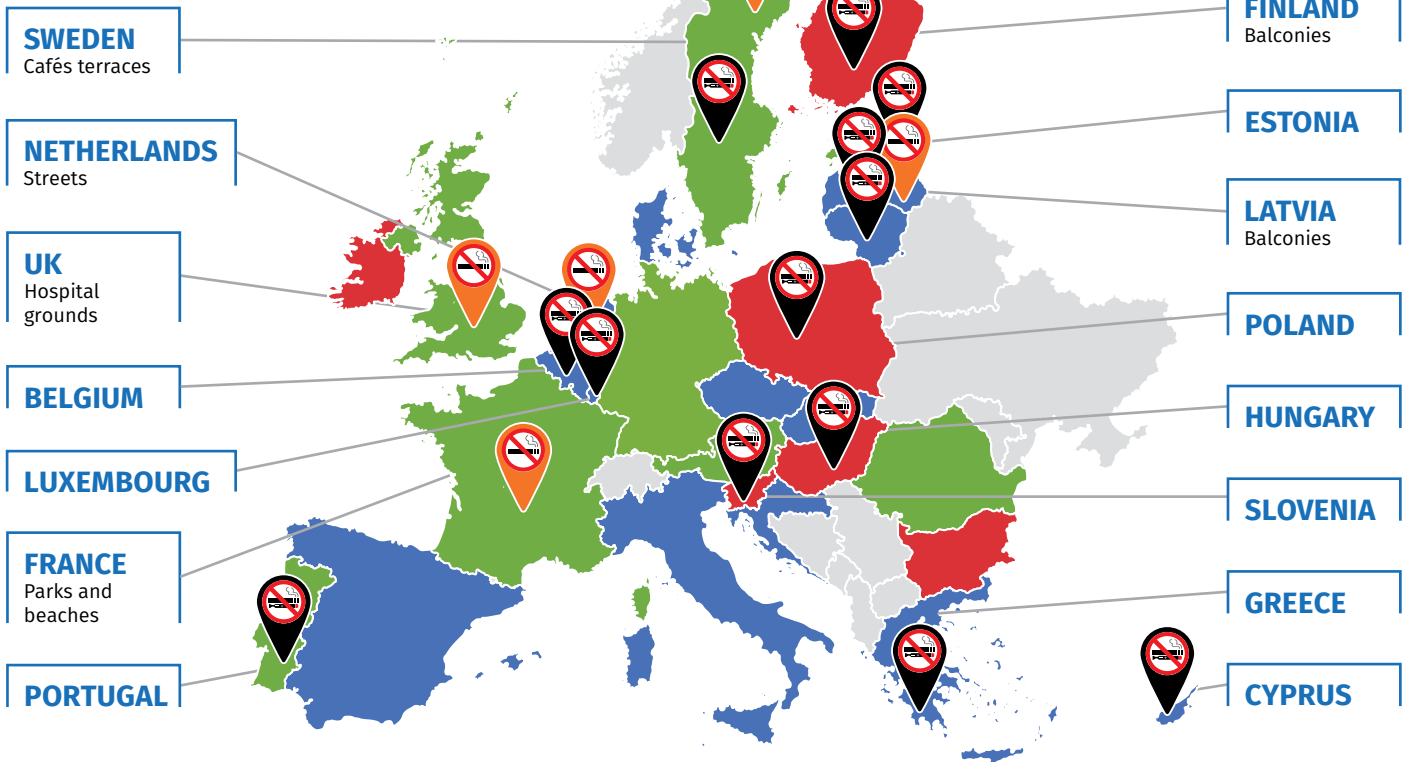
## LEGEND

- C Conventional tobacco products (cigarettes, cigars, cigarillos)
- E Electronic cigarettes
- H Heated tobacco products
- Banned (each occurrence gets -1 point in the index score)
- Restricted with legal option for designated smoking/vaping rooms or areas or with exemptions for certain categories of venues (each occurrence gets 0 point in the index score)
- Recommendations, suggestions, or not applicable (each occurrence gets +1 point in the index score)
- ° Countries where smoking ban legislation is extended to vaping
- \* Passed or discussed open air smoking ban

	Enclosed Public Places	Public Outdoor Areas	Hotels, Restaurants, Cafés	Public Transports	Public Transports Terminals	Workplaces	Educational Facilities	Personal Properties: Homes, Personal Vehicles	Outside Areas of Private Properties	Prisons	Index score (H)	Index score (E)	Index score (C)	Smoking rate
Austria	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+1	+2	+1	26%
Belgium°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-3	-4	-3	25%
Bulgaria	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+10	+10	-4	35%
Croatia	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+10	-2	-2	33%
Cyprus°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-3	-3	-2	31%
Czech Rep.	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+10	+2	-2	25%
Denmark	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-2	+3	-2	23%
Estonia°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	0	+3	0	22%
Finland°*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-4	-4	-4	19%
France*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-1	+4	+1	32%
Germany	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+9	+8	+1	27%
Greece°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-3	-3	-3	38%
Hungary°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-4	-4	-4	30%
Ireland*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+10	+9	-4	21%
Italy	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+7	+5	-3	21%
Latvia°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-1	-1	-1	30%
Lithuania°*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-1	-3	-3	26%
Luxembourg°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-3	-3	-3	21%
Malta	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	0	0	0	20%
Netherlands*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+10	+10	-3	23%
Poland°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-3	-3	-4	28%
Portugal°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+1	+1	+1	25%
Romania	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+10	+5	0	27%
Slovakia	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+2	+2	-2	21%
Slovenia°	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-5	-5	-5	30%
Spain	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	-2	0	-2	29%
Sweden*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+1	+10	+1	11%
United Kingdom*	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	CEH	+5	+6	0	22%



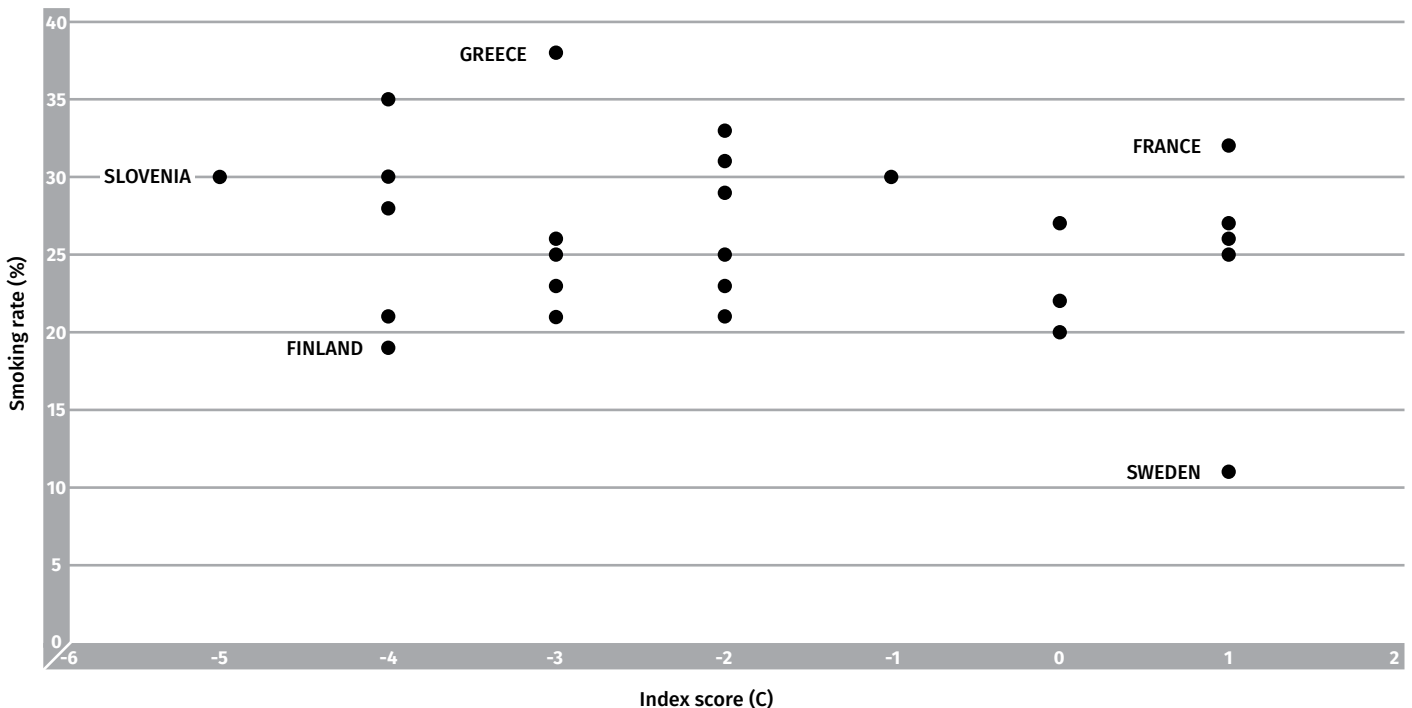
# European Smoking in Society Index



## LEGEND

- Countries getting between 0 and +10 in the Index score (C) for conventional tobacco products
- Countries getting between -3 and -1 in the Index score (C) for conventional tobacco products
- Countries getting between -10 and -4 in the Index score (C) for conventional tobacco products
- 🚫 Passed or discussed open air smoking ban and targeted area (balconies, café terraces, etc.)
- 🚫 Countries where smoking ban legislation is extended to vaping

## No correlation between index score and smoking rate





## Introduction

Forest EU considers bans on smoking in places frequented by the public as one of the main areas of its campaign.

The growth in the number of bans on the places where people can smoke, affecting both inside and outside environments, threatens to further marginalise and criminalise people for smoking.

This report aims to:

- clarify the role of European institutions and national authorities in this area of tobacco regulation;
- present as comprehensive a picture as possible of the diverse smoking bans across Europe;
- highlight the existence of particularly questionable regulations;
- and, based on the best practices observable in Europe, indicate another direction for this public policy, more effective in protecting the non-smoker and more respectful of the dignity of the smoker.

Due to the rapidly changing environment of smoking bans throughout Europe, this report and the data it contains should only be taken as the best available snapshot at this point in time. The information has been collected and summarised from various public sources including databases compiled by anti-tobacco groups, institutional reports and national governmental websites.

This report is not a comprehensive list of all smoking bans existing throughout Europe, nor does it include all the different ways or places smoking is banned.

The information is accurate to the best of our knowledge and we will endeavour to regularly update it.

Guillaume Périgois  
Director, Forest EU  
October 2019



# 1. The Context: the 2009 Council Recommendation on Smoke-Free Environments

In 2009, the European Commission adopted a proposal for a Council recommendation on smoke free-environments.<sup>1</sup> The Council negotiated a draft recommendation on this issue which it adopted in November 2009. This Council Recommendation (CR) warned of the consequences of exposure to environmental tobacco smoke (ETS) and outlined some goals for a common policy.<sup>2</sup>

ETS can be defined as mainstream smoke exhaled by the smoker and side stream smoke released from the burning tip of a cigarette in between puffs. ETS emitted is diluted and mixed with the air in the indoor environment.

According to the CR, the main objective of having smoke-free environments is to protect EU citizens against the exposure to second hand tobacco smoke on the basis that all people have the right to a high level of health protection.<sup>3</sup>

In substance, the 2009 CR called upon Member States to adopt and implement measures to "provide effective protection from exposure to tobacco smoke in indoor workplaces, indoor public places, public transport and, as appropriate, other public places" no later than November 2012.<sup>4</sup> Special emphasis was placed on measures to protect children and adolescents.



<sup>1</sup> Proposal for a Council recommendation on smoke-free environments, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2009:0328:FIN>

<sup>2</sup> Council Recommendation of 30 November 2009 on smoke-free environment (2009/C 296/02), recital 3, [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009H1205\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009H1205(01)&from=EN)

<sup>3</sup> Council Recommendation of 30 November 2009 on smoke-free environment (2009/C 296/02), recital 7.

<sup>4</sup> Tobacco in the EU: Exposure to second hand smoke reduced, but still too high, says Commission report, [http://europa.eu/rapid/press-release\\_IP-13-147\\_en.htm](http://europa.eu/rapid/press-release_IP-13-147_en.htm)

It is important to note that the CR only addresses these commonly used smoking restrictions and that it in no way refers to the adoption of more radical smoking bans such as street, park, beach bans or the prohibition of smoking inside one's home or car.<sup>5</sup>



The CR mentions ineffective results from voluntary policies at national level and states that only national binding legislation, enforcement and monitoring are effective means of protecting people from the health risks of second hand-tobacco smoke.<sup>6</sup> However, there is no evidence in the CR that national policies haven't worked or that EU regulations and actions could achieve better results. Neither the EU Commission nor the Council of the EU gave any evidence to support their claim.

### 1.1 The Effects of the Council Recommendation in Member States

In 2013, one year after the final date by which the Member States had to adopt measures to protect citizens against the exposure to tobacco smoke, the EU Commission published a report on the first findings.

That report indicated that all Member States had reported that they had legislation in place with the aim to protect their citizens from exposure to tobacco smoke at indoor workplaces, indoor public places and public transport.<sup>7</sup>

<sup>5</sup> "While the exposure to tobacco smoke in private places (homes, cars) is not covered by the Recommendation...", European Commission, 'Report on the implementation of the Council Recommendation of 30 November 2009 on Smoke-free Environments, 14 Mars 2013, SWD (2013) 56 final/2, p.2, [https://ec.europa.eu/health/sites/health/files/tobacco/docs/smoke-free\\_implementation\\_report\\_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/smoke-free_implementation_report_en.pdf)

<sup>6</sup> Council Recommendation of 30 November 2009 on smoke-free environment (2009/C 296/02), recital 8.

<sup>7</sup> European Commission, 'Report on the implementation of the Council Recommendation of 30 November 2009 on Smoke-free Environments, 14 Mars 2013, SWD (2013) 56 final/2, p.2, [https://ec.europa.eu/health/sites/health/files/tobacco/docs/smoke-free\\_implementation\\_report\\_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/smoke-free_implementation_report_en.pdf)

In 2013, the overall majority of Member States had completely or partially banned smoking in educational establishments, public transport and healthcare facilities, with some exceptions such as smoking rooms for teaching personnel, smoking areas or designated rooms on long distance passenger ships and smoking rooms or designated smoking areas for either patients and/or employees.

The same outcome was recorded, not only for the general workplace, enclosed public places, hotels, residential care and prisons but also for bars and restaurants where a total smoking ban or the limitation of smoking to zones or separate enclosed smoking rooms with the obligation for employer to protect employees was the rule. The only two exceptions where no ban, either total or partial, was imposed were the Czech Republic (in bars and restaurants) and Slovakia (in bars).

Following the adoption of the CR, the Commission was in close contact with several Member States (notably Poland in 2010, Luxembourg and Hungary in 2011 and Bulgaria in 2012) and assisted them in developing their legislation, by pointing to best practices.

According to the 2013 report, the actual exposure rates to ETS for EU citizens dropped overall from 2009 to 2012. For example, for citizens visiting drinking places the exposure rate dropped from 46% to 28%.



Importantly, national measures differed considerably in the extent and scope to which the measures were implemented. It is interesting to note that the Member States with the strictest anti-smoking measures were not necessarily those that achieved the lowest smoking rates and lowest exposure rates to ETS. Ireland, one of the country that displays the strictest set of smoke-free legislation in Europe with a total ban on indoor smoking in restaurants, bars, the workplace and most public places, showed an increase of two percentage points in exposure to tobacco smoke

in bars, and an increase of one percentage point in restaurants from 2009 to 2012 and a 29% smoking rate according to the Eurobarometer survey the 2013 report on the implementation of the CR bases itself on.<sup>8</sup> The same could be said of Greece where, despite the country's total ban on indoor smoking in restaurants and in all public places except bars, the survey reported a twelve percentage points increase in smoking exposure in eating establishments and an overall 40% smoking rate.<sup>9</sup>

In conclusion, confronted with the challenge of protecting the public from the dangers associated with ETS, the EU took action with the adoption of the 2009 CR and achieved its aim. The result was not a unification of smoking restrictions across Europe but a variety of legislative actions from one Member State to another, according to culture and preferences, that achieved a significant drop in ETS exposure.

This combination of (a) the principle of significant protection against ETS and (b) the flexibility necessary to best adapt this principle at Member State level continues today.

## 1.2. Smoking Ban Policy and Subsidiarity

When assessing the impact of the European Union on Member State tobacco control policies it can be useful to view it through two different mechanisms: the legal mechanism leading to degrees of regulatory harmonisation on the one hand, and an informative mechanism whereby, based on the production and dissemination of public policy ideas or practices, the EU impacts national tobacco control policies through persuasion or through the highlighting of discrepancies.<sup>10</sup>

### Legal Mechanism

While it is natural for European legislators to concern themselves with the health of European citizens, the EU doesn't have exclusive competence to issue binding legislation on health-related matters.

<sup>8</sup> Special Eurobarometer 385. Attitudes of Europeans towards tobacco. 2012 [http://ec.europa.eu/health/tobacco/docs/eurobaro\\_attitudes\\_towards\\_tobacco\\_2012\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf)

<sup>9</sup> Special Eurobarometer 385. Attitudes of Europeans towards tobacco. 2012 [http://ec.europa.eu/health/tobacco/docs/eurobaro\\_attitudes\\_towards\\_tobacco\\_2012\\_en.pdf](http://ec.europa.eu/health/tobacco/docs/eurobaro_attitudes_towards_tobacco_2012_en.pdf)

<sup>10</sup> L'Union européenne, acteur de la biopolitique contemporaine : les mécanismes d'eupéanisation normative et cognitive de la lutte contre le tabagisme, <https://www.cairn.info/revue-internationale-de-politique-comparee-2011-4-page-77.htm?>



Public health remains an area of competence for EU Member State's health policy with each country setting its own standards

The EU can however complement national policies as Article 168 of the Treaty on the Functioning of the EU (TFEU) provides as a basis for action in several public health areas.<sup>11</sup> To achieve these objectives and improve national health systems, the EU can "promote cooperation" with third countries, "encourage cooperation" between Member States and the "coordination" of their health policies and systems, "in particular in border regions".

The lack of exclusive competence for EU action in this field explains why the European Council chose to issue a Council Recommendation, which is not legally binding, to address the issue.<sup>12 13</sup> Other European tobacco control regulations have been based on Article 114 TFEU, where it was possible to adopt harmonisation directives to achieve internal market objectives.

### **Informative Mechanism**

While public policies related to tobacco may well be the subject of normative actions by the EU as outlined above, the EU most often pushes for the harmonisation of standards across the EU through the production and dissemination of information. The 2009 CR represents an excellent example of this mechanism.

Comparison and benchmarking are two central instruments for EU intervention in tobacco control policies in Member States. For example, as part of its work on smoke-free environments, the European Commission has produced many resources including lists, indexes, diagrams and maps showing the existence of laws on smoke-free environments in the different Member States. In one, Ireland and the UK are portrayed as the most advanced Member States with a total ban on smoking in public places and enclosed

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<sup>11</sup> Consolidated version of the Treaty on the Functioning of the European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT>

<sup>12</sup> Version consolidée du traité sur le fonctionnement de l'Union européenne, <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E168:FR:HTML>

<sup>13</sup> European Commission, 'Report on the implementation of the Council Recommendation of 30 November 2009 on Smoke-free Environments, 14 Mars 2013, SWD (2013) 56 final/2, p.2, [https://ec.europa.eu/health/sites/health/files/tobacco/docs/smoke-free\\_implementation\\_report\\_en.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/smoke-free_implementation_report_en.pdf)

workplaces. In contrast, Greece and Austria are highlighted as being far behind in their regulatory development with a partial ban not yet implemented.<sup>14</sup>

Another example of this approach is the Effective Tobacco Control Policies in 28 European Countries project, funded by the European Commission's Public Health Programme 2003-2008. This report assessed the tobacco control policies of the Member States by grading the different policies of the Member States and then allocating the policies of each Member State a set number of points corresponding to its effects on smoking prevalence. The study summarises its results in the form of a table and a histogram ranking the countries by total score, with Iceland at the top and Luxembourg at the bottom.<sup>15</sup>

Although not legally binding, the EU policy instruments that disseminate this information can put pressure on domestic practices and policies to adapt them to ideas formulated at or through the EU level. This power of information is based on the logic of constructing public problems through public denunciation<sup>16</sup>, which consists of changing the behaviour of regulators by exposing their behaviour.<sup>17</sup>

The effect of such activities would seem to contradict some of the core principles that the Juncker Commission sought to promote. Commenting on the launch of the "Task Force on Subsidiarity, Proportionality and Doing Less More Efficiently" in January 2018, its Chairman and the European Commission (EC) First Vice-President Frans Timmermans said that the EC has pushed "*better regulation so that we are ambitious where we must be, and modest wherever we can be. (...) We need to continue this work and explore where the EU can really add value more efficiently but also empower Member States to do all that they can do better themselves.*"<sup>18</sup>

<sup>14</sup> Implementation of smoke-free laws in the EU (as of June 2009), [http://ec.europa.eu/health/ph\\_determinants/life\\_style/Tobacco/Documents/tobacco\\_map.pdf](http://ec.europa.eu/health/ph_determinants/life_style/Tobacco/Documents/tobacco_map.pdf)

<sup>15</sup> Effective Tobacco Control Policies in 28 European Countries, <http://old.ensp.org/files/effectivefinal2.pdf>

<sup>16</sup> The Emergence and Transformation of Disputes: Naming, Blaming, Claiming, <https://www.jstor.org/stable/3053505>

<sup>17</sup> Overt and Covert Institutionalization in Europe, <http://www.oxfordscholarship.com/view/10.1093/019924796X.001.0001/acprof-9780199247967-chapter-3>

<sup>18</sup> Future of Europe: President Juncker appoints members to Task Force on Subsidiarity and Proportionality, [http://europa.eu/rapid/press-release\\_IP-18-341\\_en.htm](http://europa.eu/rapid/press-release_IP-18-341_en.htm)

This was a central point of the Rome Declaration of March 2017 where the EU28 leaders stated "*We want the Union to be big on big issues and small on small ones. We will promote a democratic, effective and transparent decision-making process and better delivery.*"<sup>19</sup>

Public health was also included in the White Paper on the future of the European Union presented in March 2017 by the Commission as one of the programmes on which the EU could withdraw if the Member States decide to "*do less, but more effectively*", i.e. to reduce the competences currently available to the EU.<sup>20</sup>

The active promotion of these principles represents a reaffirmation of the principle of subsidiarity and proportionality as laid down in Article 5 of the Treaty on European Union,<sup>21</sup> which aims to ensure that decisions are taken as closely as possible to the citizen and that the EU does not act unless it is more effective than action taken at national, regional or local level. The proportionality principle limits the exercise of the EU's powers to what is necessary to achieve the objectives of the Treaties.

The CR must be commended for being the most appropriate medium to complement national legislation tackling ETS, for having achieved its aim to improve dramatically this protection while striking a fair balance between the safeguarding of the health of non-smoking citizens and the respect of the free will of adult smokers.

Unfortunately, several Member States, encouraged by the informative mechanisms employed by the Commission highlighted above, have deviated from this fair balance by embracing prohibitions that go far beyond the indications contained in this CR.

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<sup>19</sup> The Rome Declaration, <https://www.consilium.europa.eu/en/press/press-releases/2017/03/25/rome-declaration/>

<sup>20</sup> White Paper on the future of the European Union, [https://ec.europa.eu/commission/sites/beta-political/files/white\\_paper\\_on\\_the\\_future\\_of\\_europe\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/white_paper_on_the_future_of_europe_en.pdf)

<sup>21</sup> Consolidated version of the Treaty on European Union, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012M%2FTXT>

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PARC SANS  
TABAC



## 2. The Problem: Smoking Bans Going Far Beyond the Council Recommendation

We will now review how a series of extreme bans that extend beyond the reasonable balance achieved by the 2009 CR between the protection of the health of non-smokers and the rights of smokers is leading to the unnecessary ostracization of smokers in several European countries.

### 2.1. Some Examples of Extreme Smoking Bans Throughout Europe



Let's start this tour of Europe with the country which hosts the most European institutions. In **Belgium**, smoking rooms in cafés and restaurants are allowed by law, provided they are physically separated from the rest of the guests and are well ventilated.<sup>22</sup> This seems like a good compromise between the need for public health and individual freedoms. But the Belgian legislator saw fit to transform this balanced solution into further social exclusion for smokers: it is forbidden to broadcast music and television in these smoking rooms. It's hard to argue that removing entertainment from smoking rooms improves the health of non-smokers outside of them, instead appearing more as a punitive measure against smokers than an additional protection for non-smokers.

<sup>22</sup> <https://www.health.belgium.be/fr/sante/prenez-soin-de-vous/alcool-et-tabac/produits-du-tabac-et-tabagisme/interdiction-de-fumer>

**Finland** updated its legislation on the sale and import of tobacco products in 2016.<sup>23</sup> The stated purpose of the law is to eliminate the use of tobacco and other nicotine products in Finland by 2030. To reach this goal by that date when the government could start to phase out the sale of all tobacco products<sup>24</sup>, different aspects of smoking are either banned or subject to a transitional period: smoking in cars when children are under the age of 15 is illegal, there is a prohibition on smoking in designated areas such as public housing and banning smoking on personal balconies, terraces and roofs.<sup>25</sup> The government is even considering a smoking ban inside apartments. Although one can reasonably urge residents to be considerate towards one another, a balcony is still someone's private property and should be respected as such.

**France**, where outdoor smoking bans have been implemented at municipal level, is one example of just how far-reaching local government restrictions can be. In 2018, the Strasbourg city hall implemented a smoking ban in public parks, with a €68 fine for the offender, citing not ETS but cigarette filters pollution and denormalization as the two main reasons for the ban.<sup>26</sup> Paris is experimenting with the same idea. As of the summer of 2019, it is forbidden to smoke in 52 public parks. People who get caught smoking will be fined since this measure isn't just a temporary experiment.<sup>27</sup> The Parisian city hall is not excluding the possibility of making this a general rule for all Parisian parks.<sup>28</sup> Some French municipalities have also implemented smoking bans on beaches. In 2018, the measure has already been imposed on fifty beaches. On the Ouistreham beach for example, where smoking is prohibited on two kilometres, the fine is €38 in case of non-compliance.<sup>29</sup>

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<sup>23</sup> Finland Tobacco Act of June 29th, 2016, 549/2016, <http://www.finlex.fi/sv/laki/alkup/2016/20160549> .

<sup>24</sup> How Finland could be a smoke-free country by 2030, <https://cafebabel.com/en/article/how-finland-could-be-a-smoke-free-country-by-2030-5ae00bb8f723b35a145e7d36/>

<sup>25</sup> Smoking on balconies, <https://suomenash.fi/en/tobacco-policy/tobacco-act/smoking-on-balconies/>

<sup>26</sup> "Strasbourg becomes first French city to ban smoking in parks", The Local (fr), 26 Juni 2018, ( <https://www.thelocal.fr/20180626/strasbourg-become-first-french-city-to-ban-smoking-in-parks> ).

<sup>27</sup> C. Henry, "Paris: la cigarette bannie dans six parcs, à partir de ce mardi", Le Parisien, 10th of July 2018, ( <https://www.paris.fr/actualites/bientot-des-parcs-sans-tabac-5981> ).

<sup>28</sup> C. Henry, "Paris: la cigarette bientôt interdite dans 4 parcs", Le Parisien, 3rd of June 2018, (<http://www.leparisien.fr/paris-75/paris-la-cigarette-bientot-interdite-dans-4-parcs-a-titre-d-experimentation-03-07-2018-7805319.php> ).

<sup>29</sup> Cigarettes : les plages sans tabac, [https://www.francetvinfo.fr/sante/drogue-addictions/lutte-contre-le-tabagisme/cigarettes-les-plages-sans-tabac\\_2903977.html](https://www.francetvinfo.fr/sante/drogue-addictions/lutte-contre-le-tabagisme/cigarettes-les-plages-sans-tabac_2903977.html)

***Are outdoor smoking bans ethically and scientifically justified?***

A justification for extending smoking bans from indoor zones to outside spaces must draw on robust moral arguments and empirical data.

Ethically, discussions of public health interventions sometimes mention John Stuart Mill's harm principle<sup>30</sup> which asserts that "the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others."<sup>31</sup> Yet this principle only gives minimal direction about the degree of intercession one may use to avert harm to others.

While it is conceivable that it would be ethically justified to practice control over someone to keep her from inflicting serious direct harm to others, it is less evident that it would be ethically justified to act similarly to avoid insignificant harm to other people, or to keep others from being presented to extremely low levels of harm, particularly so when practicing control over another includes a genuine infringement on their freedoms.

In this manner, the seriousness and probability of the harm that the proposed measure looks to deflect, the reasonable adequacy of the proposed intervention, and whether there are other options that may plausibly accomplish comparable outcomes while infringing less on freedoms are issues that ought to be analysed before implementing a public health measure that implies compulsion.

With this ethical point guiding our thinking, what can science tell us about the degree of harm of open air ETS exposure?

A 2007 Stanford University study on outdoor ETS exposure found that outdoor tobacco smoke dissipates quickly once combustion ends. In addition, the study showed that once you move two meters away from a smoker, exposure to ETS is significantly reduced and

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<sup>30</sup> Smoking Is a Health Issue, Not a Rights Issue; Mill's True Position, <https://www.nytimes.com/1989/02/10/opinion/l-smoking-is-a-health-issue-not-a-rights-issue-mill-s-true-position-495589.html>

<sup>31</sup> John Stuart Mill, On Liberty, [https://books.google.be/books/about/On\\_Liberty.html?id=uWAJAAAAQAAJ&redir\\_esc=y](https://books.google.be/books/about/On_Liberty.html?id=uWAJAAAAQAAJ&redir_esc=y)

comparable to breathing normal air.<sup>32</sup> The lead author of the study stated that it currently cannot be concluded that outdoor ETS represents a long-term health issue for those exposed.<sup>33</sup>

A 2005 report from the California Environmental Protection Agency stated that exposure levels to ETS in the open air are “very localized”; that the wind, the size of the considered area, and the number of tobacco users present are all important variables affecting the degree of exposure; and that even close to a designated smoking area, one can avoid ETS exposure by being upwind.<sup>34</sup>

The fact that outdoor smoking bans tend to appear in parks and beaches even though a significant number of scientific studies accept that ETS in outdoor environments doesn’t significantly impact the health of non-smokers suggests that these measures represent political signalling or denormalisation rather than a way of improving public health.

Indeed, the issue of actual secondhand smoke is rarely presented as a justification for bans on outdoor smoking. Instead, one of the stated objectives of anti-tobacco campaigns for smoking bans in parks, beaches and other open air areas is to “*denormalize smoking to change attitudes towards an unhealthy behaviour.*”<sup>35</sup>

In other words, the argument used by proponents of mandatory outdoor smoke-free areas is that banning smoking in public open air areas such as parks, shorelines and streets would probably lead to a decrease in smoking prevalence since it would serve to correct

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<sup>32</sup> “OTS levels also approached zero at distances greater than approximately 2 m from a single cigarette”, “Generally, average levels within 0.5 m from a single cigarette source were quite high and comparable to indoor levels, and OTS levels at distances greater than 1 or 2m were much lower”, “At distances larger than 2 m, levels near single cigarettes were generally close to background.”, <https://www.ncbi.nlm.nih.gov/pubmed/17518219>, Exposure to secondhand tobacco smoke in outdoor settings a risk, study shows, <https://news.stanford.edu/news/2007/may9/smoking-050907.html>

<sup>33</sup> Anti-smoking battle moves outdoors; bans increase, [http://www.salon.com/2013/08/08/anti\\_smoking\\_battle\\_moves\\_outdoors\\_bans\\_increase/](http://www.salon.com/2013/08/08/anti_smoking_battle_moves_outdoors_bans_increase/)

<sup>34</sup> Proposed Identification of Environmental Tobacco Smoke as a Toxic Air Contaminant, <https://www.arb.ca.gov/regact/ets2006/ets2006.htm>, <https://escholarship.org/uc/item/8hk6960q>

<sup>35</sup> Désintoxiquer les espaces publics : espace sans tabac, [https://www.ligue-cancer.net/article/26128\\_desintoxiquer-les-espaces-publics-espace-sans-tabac](https://www.ligue-cancer.net/article/26128_desintoxiquer-les-espaces-publics-espace-sans-tabac)

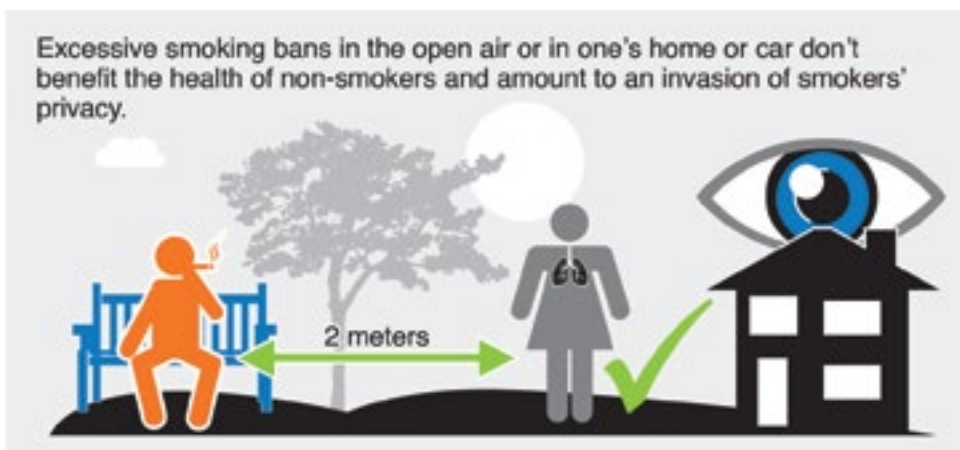


the observed norms that may impact smoking behaviour of the general population, and especially of adolescents.<sup>36</sup>

Considering this argument, let's first agree that that particular risk of indirect harm is far more remote than the direct harm to others posed by passive smoking in enclosed areas: the difference in the likelihood of harm is an ethically noteworthy point that we should think about in our appraisal of such bans.

Furthermore, we might point out that it is far from clear that the studies these advocates often cite in support of the claim that media and peer role modelling norms influence smoking behaviour<sup>37</sup> extend to seeing a complete stranger smoke in a public place.

Indeed, it seems the issue is not settled even among the public health community with anti-tobacco advocate Simon Chapman arguing that society lacks any real empirical evidence for the claim that banning outdoor public smoking would lead to a significant decrease in people taking up smoking.<sup>38</sup>



In **Latvia**, it is prohibited to smoke on balconies and loggias of multiapartment residential houses, if any of the residents of the house has justified objections against it. In addition, private places are not excluded from a child protection law stipulating that the

<sup>36</sup> Call for New York-style ban on smoking in public in UK, <https://www.theguardian.com/society/2015/feb/26/call-for-new-york-style-ban-on-smoking-in-public-in-uk>

<sup>37</sup> Is a smoking ban in UK parks and outdoor spaces a good idea?, <https://www.bmj.com/content/350/bmj.h958>

<sup>38</sup> Is a smoking ban in UK parks and outdoor spaces a good idea?, <https://www.bmj.com/content/350/bmj.h958>

deliberate exposure of a child to tobacco smoke represents a form of physical abuse.<sup>39</sup>

In **Lithuania**, newly proposed legislation would prohibit the use of tobacco products in apartment balconies and terraces. Smoking would also be banned in the open air where catering services are provided and in outdoor areas such as beaches and sporting events.<sup>40</sup>

In **Ireland**, the government is working on a proposal to extend the smoking ban to the outdoor areas of bars, cafés and restaurants.<sup>41</sup>

In the **Netherlands**, at the local level, the city of Rotterdam has suggested a ban on smoking on two streets near a medical centre and two schools. A “much-used” shelter for smokers at the Erasmus Medical Centre would also be removed.<sup>42</sup>

In **Sweden**, an updated legislation passed in 2018 is now applied from July 2019 and introduces a smoking ban in outdoor restaurants and in the entrances of these establishments or in any premises open to the public.<sup>43</sup>

In 2006, the **United Kingdom** introduced the Health Act to make provision for the prohibition of smoking in certain premises, public places (such as restaurants, pubs and hotels) and vehicles. A 2019 Forest UK survey of 176 National Health Service (NHS) Trusts in England provides some illuminating findings on the implementation of smoking bans not just within hospital buildings but instead on the entire grounds of UK health campuses. These bans force

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<sup>39</sup> <https://likumi.lv/ta/en/en/id/282077-on-the-handling-of-tobacco-products-herbal-products-for-smoking-electronic-smoking-devices-and-their-liquids>, [http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Restrictions\\_regarding\\_Salex\\_etc\\_of\\_Tobacco\\_Products.doc](http://www.vvc.gov.lv/export/sites/default/docs/LRTA/Likumi/Restrictions_regarding_Salex_etc_of_Tobacco_Products.doc)

<sup>40</sup> Plain cigarette packaging, outdoor café, balcony smoking ban proposed, <https://bnn-news.com/week-in-lithuania-plain-cigarette-packaging-outdoor-cafe-balcony-smoking-ban-proposed-189763>, Draudimas rūkyti balkonuose, <http://www.diena.lt/naujienos/lietuva/salies-pulsas/draudimas-rukyti-balkonuose-priklausys-ar-priestaraus-kaimynai-896709>

<sup>41</sup> 'People should be entitled to enjoy their meal in a smoke free environment' - proposal to extend smoking ban to outdoor food areas, <https://www.independent.ie/irish-news/politics/people-should-be-entitled-to-enjoy-their-meal-in-a-smoke-free-environment-proposal-to-extend-smoking-ban-to-outdoor-food-areas-36838366.html>

<sup>42</sup> Plans to ban smoking on multiple Rotterdam streets: report, <https://nltimes.nl/2018/08/03/plans-ban-smoking-multiple-rotterdam-streets-report>, Rotterdam may soon introduce smoke-free streets, <https://www.dutchnews.nl/news/2018/08/rotterdam-may-soon-introduce-smoke-free-streets/>

<sup>43</sup> Sweden moves to ban outdoor smoking, <https://www.apnews.com/3f6162f9eb4e497fbc109c9d3ec53f5a>

smokers, whether medical staff, visitors or patients, not only to leave the hospital buildings, but also to move outside the hospital's external areas to light a cigarette. A BBC report covering the smoking ban outside Hull Royal Infirmary in Northern England featured a patient who despite having a catheter and wearing a nightgown has been forced to go off site to smoke. She told the programme, "It's humiliating having to stand at a bus stop. It's like punishing you for smoking."<sup>44</sup> Eighteen NHS Trusts said they plan to tighten restrictions on smoking in 2019 by removing smoking shelters and extending no-smoking areas. When it comes to the enforcement of such smoking bans on hospital grounds, 34% of NHS Trusts expected medics, nurses, kitchen workers or administrative staff to act as enforcers and 32% said they had installed shame-a-smoker buttons that members of the public could press to trigger anti-smoking messages to play over a public address system, while 18% said they used security guards and 14% said they used CCTV to monitor smokers. Making smoking illegal on hospital grounds is an inhumane, petty and difficult to enforce measure that penalises patients.

## 2.2 The Extension of Smoking Ban Legislation to Vaping

A 2015 review commissioned by Public Health England concluded that e-cigarettes were at least 95% less harmful than smoking tobacco.<sup>45</sup>

Yet, 12 EU Member States now include vaping (both heat-not-burn products and electronic cigarettes) in their smoking ban.

In **Belgium**, the consumption in enclosed public places of electronic cigarettes (regardless of nicotine content) is banned (as it is for tobacco) under the 2009 law on the ban on smoking in enclosed public places. Offenders may be fined between €208 and €8,000.

In **Cyprus**, the public health law transposing the EU Tobacco Products Directive (TPD2) puts in place vaping restrictions in the same places as smoking: universities, schools and other educational

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<sup>44</sup> Help or harassment? Hospital targets patients who smoke, <http://taking-liberties.squarespace.com/blog/2017/6/2/help-or-harassment-hospital-targets-patients-who-smoke.html>

<sup>45</sup> E-cigarettes: an evidence update, [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/733022/E-cigarettes\\_an\\_evidence\\_update\\_A\\_report\\_commissioned\\_by\\_Public\\_Health\\_England\\_FINAL.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/733022/E-cigarettes_an_evidence_update_A_report_commissioned_by_Public_Health_England_FINAL.pdf)

establishments, ports and airports, hospitals, homes for the elderly and disabled, private clinics and pharmacies, public transports and private use vehicles with passengers under the age of 16 (fine: €850).

In **Finland**, the law transposing the TPD2 restricts vaping in public in the same places where smoking is banned. Therefore, vaping is banned in any building, vehicle or any other facility open to the public or used by employees. The working group on tobacco set by the Ministry of Social Affairs and Health in 2017 has presented a roadmap with measures to end the use of tobacco and nicotine products by 2030. The group proposes several amendments to the current Tobacco Act in terms of extending smoke-free environments and smoking bans.

In **Greece**, the Act that transposes the TPD2 into Greek legislation extends the public place smoking ban to e-cigarettes. Vaping is therefore banned in enclosed public and private workplaces, enclosed sanitary facilities, especially where food and drinks are offered, and entertainment centres. Vaping is also banned in indoor waiting areas, airports, public transports including taxis, public transport stations and bars and nightclubs (fine: up to €10,000).

In **Hungary**, the law on the protection of non-smokers and the consumption of tobacco products brings e-cigarettes into the regime of tobacco usage in public places. Vaping is therefore forbidden in public institutions, educational and institutions for child-protection, public transports, public transport stops, stations and in their immediate surroundings in a radius of 5 metres, workplaces, public playgrounds and their immediate surroundings in a radius of 5 metres, waiting rooms and within 10 metres from the public entrance of healthcare facilities.

In **Lithuania**, the use of e-cigarettes is regulated in the same way as tobacco products. An amendment to the Tobacco Law restricts the public usage of e-cigs in the same places as tobacco. Vaping is therefore banned, among others, in education facilities, public transportation (with planes and trains having the option to establish a dedicated room), workplaces, health facilities, bars, restaurants, clubs and sporting facilities.

In **Poland**, the Amendment to the Law on the Protection of Health against the Consequences of Tobacco Use bans the public use of e-cigarettes (with or without nicotine) as it bans tobacco product. Vaping is therefore forbidden in the workplace, public transports, schools and education facilities, bars and restaurants, company vehicles used by more than one person, clubs (private and public). Vaping rooms are permitted in some cases such as in bars and restaurants, but vape shops are not included in this exception.

In **Slovenia**, the law on the restriction of the use of tobacco and related products equates vaping with smoking. With some exceptions for smoking rooms, it is forbidden to vape in workplaces, restaurants, bars, malls, public transport, healthcare facilities, and educational facilities or facilities used by minors.

If e-cigarettes and other low risks products can replace cigarettes for many smokers and therefore reduce significantly the risks they face,<sup>46</sup> and if this migration from smoking to vaping is carried on in their own interests, at their own expenses, and with no demonstrable harm to others, it is disappointing to witness how this process has been potentially slowed down by smoking bans that have been gradually extended to e-cigarettes in many European countries.

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<sup>46</sup> Public Health England insists e-cigarettes are 95% safer than smoking, <https://www.bmj.com/content/363/bmj.k5429>



### 3. The Impact: the Costs of Decision-Makers Avoiding Better Regulations

It's necessary to consider the reasons why increasingly legislators in certain EU Member States are taking decisions and enacting smoking bans that go far beyond the balanced approach promoted in the 2009 CR and sometimes seem more suited to banning the presence of smokers in society than in protecting the health of non-smokers.

At least three reasons deserve to be discussed here.

#### 3.1 Electoral Preferences and the Political Market

Firstly, we could view such regulation as a classic example of political economy, where national legislators pass laws banning smoking in public places to gain favour with their electorate whom in every EU Member State are made up of between 65% and 85% non-smokers.

A recent study to explore potential associations between political views, smoking and support for tobacco control policies across the 28 EU Member States using data collected from 22,313 respondents of the 2014 Eurobarometer survey concluded that compared to those placing themselves at the political centre, *“people with far-left political views were more likely to be current smokers, while those in the centre-right were the least likely to smoke”*.<sup>47</sup>

While when it came to giving support for a variety of specific tobacco control policies such as advertising bans, flavour bans, plain packaging, placing tobacco products out of sight in shops and banning online sales of tobacco products, respondents *“on the left side of the political spectrum were more likely to support tobacco control policies and those on the centre-right were less likely to support them, as compared to those at the political centre, after controlling for smoking status”*.

<sup>47</sup> Are political views related to smoking and support for tobacco control policies? A survey across 28 European countries, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5723047/>

Thus, when a particular administration is made up of left leaning parties although they are more likely to smoke they are also more likely to support anti-tobacco policies while with more right leaning administrations although they are less likely to support anti-smoking they are also less likely to smoke and therefore less likely to feel connected to the issue. This may go some way to explaining why poorly thought out and ineffective anti-tobacco regulation so often is not opposed.

### 3.2 Symbolic Commitment and Outcome Costs

A second point worth considering is that since elected officials don't bear the enforcement costs of smoking bans, they use the passage of laws banning smoking in public places to symbolically demonstrate their "in-principle" commitment to reduce smoking rates. This way of publicly showing one's own good character without having to bear the costs of the related choices could be pejoratively referred to as "virtue signalling".

Richer countries (as measured by GDP) are both more likely to have smoke-free policies in restaurants and bars and have a better record of compliance with smoke-free policies. Yet studies have found several differences in the factors influencing adoption and compliance of smoking bans.<sup>48</sup>

A possible explanation for these discrepancies is the potentially uneven costs, as well as the different motives, for adoption and compliance. The real costs of smoking bans are the bureaucratic, technical and legal resources used when governments set out to achieve high levels of compliance. But the mere adoption of smoking bans, which involves little more than the legal or administrative action of promulgating laws, regulations or directives, is in itself comparatively costless and governments may adopt them for no reason other than to symbolically demonstrate their in-principle commitment to reduce smoking rates.

Additionally, the fact that compliance is lower in countries with more smokers and higher tobacco leaf production, whereas these factors make no difference to the propensity of governments to adopt bans

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<sup>48</sup> Adoption and compliance in second-hand smoking bans: a global econometric analysis, [https://www.researchgate.net/publication/264905167\\_Adoption\\_and\\_compliance\\_in\\_second-hand\\_smoking\\_bans\\_a\\_global\\_econometric\\_analysis](https://www.researchgate.net/publication/264905167_Adoption_and_compliance_in_second-hand_smoking_bans_a_global_econometric_analysis)



in the first place, seems to be consistent with the idea that the true costs of smoking bans arise at the enforcement stage.<sup>49</sup>

Voters identify politically along the lines of political messaging that resonates with their ideological sentiments, elected officials perform ostentatious displays of publicity because there is social currency to be gained from doing so, and the true costs of these policies will be supported collectively or by others.<sup>50</sup>



### 3.3 Denormalization and Stigma as Determinants for Extreme Policies

Tobacco is now considered by many decision-makers and health lobbyists as an addiction and as such is regarded by institutions such as the World Health Organization (WHO) and the EU as one of the risk factors of non-communicable diseases.

From 1950 to the present day, tobacco has gradually slipped from being considered an accepted practice to an unhealthy addiction in the public mind.

But this change in perceptions towards smokers<sup>51</sup> and the current drive to enact extended tobacco-control regulations such as smoking bans in outdoor areas and private properties didn't just happen spontaneously. On the contrary, it is the result of a strategy of denormalization by public health groups and governmental institutions. The extension of anti-tobacco legislation can only be understood by considering the general denormalization strategy of which it is a part.

<sup>49</sup> Adoption and compliance in second-hand smoking bans: a global econometric analysis, [https://www.researchgate.net/publication/264905167\\_Adoption\\_and\\_compliance\\_in\\_second-hand\\_smoking\\_bans\\_a\\_global\\_econometric\\_analysis](https://www.researchgate.net/publication/264905167_Adoption_and_compliance_in_second-hand_smoking_bans_a_global_econometric_analysis)

<sup>50</sup> The Political Economy of Virtue Signaling, <https://www.aier.org/article/political-economy-virtue-signaling>

<sup>51</sup> Why people smoke, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC324461/>

As a public health policy, tobacco denormalization describes “all the programs and actions,” including policies and interventions such as media campaigns and smoking bans, “*undertaken to reinforce the fact that tobacco use is not a mainstream or normal activity in our society.*”<sup>52</sup> It is unique in that it endorses government sponsored stigmatisation of a segment of the population rather than the normal course of events where government bodies work to mitigate the stigma associated with a particular behaviour, as in prevention and treatment efforts focused on drug use, for example.<sup>53</sup>

It remains unclear how deliberately stigmatizing part of the population could be compatible with the values of tolerance and openness promoted by such institutions as the EU and the United Nations (UN). But the EU and the WHO have researched this topic<sup>54</sup> and published several documents referring to the denormalization of tobacco,<sup>55</sup> calling for political stakeholders to focus “on social change and denormalization”.<sup>56</sup> This strategy has roots in social learning theory<sup>57</sup> and psychological studies from the 1980s and 1990s.

This policy of stigmatization has certainly produced results. It is claimed that the negative image that smokers develop about themselves, or that society sends back to them, contributes to the reduction of smoking in all countries that have implemented such practices.<sup>58</sup> But groups who experience health inequities and exhibit the highest prevalence of health-compromising behaviors such as smoking also tend to be groups that are historically disadvantaged and characterized by other social identity stigmas such as low socioeconomic status, ethnic minority, or sexual or gender minority status.<sup>59</sup> Regarding the social contempt associated with lung cancer,

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<sup>52</sup> De-normalization of tobacco in Canada, <https://journals.sagepub.com/doi/abs/10.1080/15245004.1999.9961068?journalCode=smqa>

<sup>53</sup> Tobacco control, stigma, and public health: rethinking the relations, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470446/>

<sup>54</sup> Evaluation process for the Commission tobacco prevention media campaign, [http://ec.europa.eu/health/ph\\_determinants/life\\_style/Tobacco/Documents/evalfeelf\\_151203\\_en.pdf](http://ec.europa.eu/health/ph_determinants/life_style/Tobacco/Documents/evalfeelf_151203_en.pdf)

<sup>55</sup> For a life without tobacco, [https://ec.europa.eu/health/sites/health/files/tobacco/docs/help\\_legacy.pdf](https://ec.europa.eu/health/sites/health/files/tobacco/docs/help_legacy.pdf)

<sup>56</sup> Elaboration of guidelines for implementation of Article 12 of the Convention (decision FCTC/COP2(14)), [http://apps.who.int/gb/fctc/PDF/cop3/FCTC\\_COP3\\_8-en.pdf](http://apps.who.int/gb/fctc/PDF/cop3/FCTC_COP3_8-en.pdf)

<sup>57</sup> Social Foundations of Thought and Action: A Social Cognitive Theory, <https://psycnet.apa.org/record/1985-98423-000>

<sup>58</sup> Smokers' reasons for quitting in an anti-smoking social context, <https://www.sciencedirect.com/science/article/pii/S0033350610000478>

<sup>59</sup> Tobacco Denormalization as a Public Health Strategy: Implications for Sexual and Gender Minorities, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4638269/#bib10>

the stigma anti-tobacco campaigns have created also causes many smokers and non-smokers to delay getting a diagnosis, reducing their chances of survival.<sup>60 61</sup> Denormalization, with its implied ostracisation of smokers, seems to stand in the way of public health campaigns that focus on informing smokers about the health risks associated with smoking, showing empathy and respect for their choices.<sup>62</sup>

Behind these mixed results, an ethical question looms. To what extent is it morally justifiable for governments to use techniques derived from psychological research to control the evolution of morals of a minority within a society? Some have argued that stigmatization is never ethical because it is always a “*cruel form of social control.*”<sup>63</sup>

Furthermore, even if it were to be shown that stigmatization did contribute to reducing smoking uptake in underage people, are the personal burdens it creates for adults morally justifiable? Much depends on how the tobacco-control movement deploys stigmatization as an instrument of social control. For example, policies and cultural standards that result in isolation and severe embarrassment are different from those that cause discomfort.<sup>64</sup>

A study funded by the European Research Council found that there currently may be “an overreliance on strategies (...) to change smoking norms and increase smoke-free public spaces”, described as policies “which focus on negative reinforcement”, i.e. on smoking self-stigma that can have profoundly negative consequences for some smokers and may make quitting more difficult.<sup>65</sup>

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<sup>60</sup> Smoking’s deadly stigma, <https://www.politico.eu/pro/lung-cancer-kills-stigma-makes-it-deadlier/>

<sup>61</sup> Smoking, stigma and tobacco 'denormalization': Further reflections on the use of stigma as a public health tool, <https://www.ncbi.nlm.nih.gov/pubmed/20044187>

<sup>62</sup> Smoking in pregnancy: Stigma 'causes women to do it in private', <https://www.bbc.com/news/uk-wales-47200606>

<sup>63</sup> Ethics and policy: a commentary on Bayer’s “Stigma and the ethics of public health: not can we but should we”, <https://www.ncbi.nlm.nih.gov/pubmed/18423825>, Stigma and the ethics of public health: not can we but should we, <https://www.ncbi.nlm.nih.gov/pubmed/18502551>

<sup>64</sup> Tobacco Control, Stigma, and Public Health: Rethinking the Relations, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470446/#r12>

<sup>65</sup> The Downside of Tobacco Control? Smoking and Self-Stigma: A systematic review, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4630105/>

In fact, whether it is related to intolerance towards minorities,<sup>66</sup> victims,<sup>67</sup> or offenders,<sup>68</sup> many documents produced by the EU institutions state that any form of ostracizing, marginalisation and denormalization of any individual is unacceptable and must be decreased and eliminated, not promoted.

As the microbiologist Rene Dubos observed, health should not be considered an end in itself, but as “the condition best suited to reach goals that each individual formulates for himself”.<sup>69</sup> In the case of smoking bans, regulations that seek to limit the contexts in which smoking is permitted are different from those that, in practice, restrict the access to working places and healthcare facilities, or to reside in houses and communities of one’s choice.



<sup>66</sup> Antigypsyism: increasing its recognition to better understand and address its manifestations, [https://ec.europa.eu/newsroom/just/document.cfm?doc\\_id=55652](https://ec.europa.eu/newsroom/just/document.cfm?doc_id=55652)

<sup>67</sup> Supporting survivors of sexual and gender-based violence to heal and work again, [https://ec.europa.eu/echo/field-blogs/photos/supporting-survivors-sexual-and-gender-based-violence-heal-and-work-again\\_fr](https://ec.europa.eu/echo/field-blogs/photos/supporting-survivors-sexual-and-gender-based-violence-heal-and-work-again_fr)

<sup>68</sup> Erasmus+ KA2 – Prison, Reintegration, Education. Trainings to Support Social and Labour Market (Re)Integration of People in/or After Detention, <https://ec.europa.eu/epale/en/blog/erasmus-ka2-prison-reintegration-education-trainings-support-social-and-labour-market>

<sup>69</sup> Determinants of Health: Theory, Understanding, Portrayal, Policy, [https://books.google.be/books?id=UUISlaL\\_ljIC&pg](https://books.google.be/books?id=UUISlaL_ljIC&pg)





## 4. The Solution: Best Practices to Accommodate Smokers and Non-Smokers

While the measures outlined in the 2009 CR and legislation on indoor smoking restrictions according to local preferences could be seen as appropriate policies to the issue of ETS, banning smoking in the open air and on private property are completely disproportionate responses.

The solution, we believe, is not a complete ban on smoking in society, banishing smokers from outdoor public places with threats of fines or other penalties that disproportionately impact certain groups of people but instead the implementation of balanced regulation.

Forest EU therefore advocates for sensible regulations that respect the dignity of both smokers and non-smokers in our bars and restaurants as well as outdoors and in residential buildings. Where absolute bans have been imposed, they should be relaxed to allow the legal option of signposted spaces where smoking in some degree of comfort throughout the year wouldn't impose significant inconvenience to non-smokers.

This approach isn't only pragmatic, it's also popular in Europe. According to a 2018 Populus survey, seven out of ten (68%) Europeans think that cafes and restaurants should have the legal option to provide well ventilated, separate smoking rooms.<sup>70</sup>



<sup>70</sup> Attitudes towards tobacco policies in the EU, <http://forestonline.eu/wp-content/uploads/2018/11/Forest-EU-%E2%80%93-Infographic-%E2%80%93-Attitudes-towards-tobacco-policies-in-the-EU.pdf>

Although Forest EU doesn't endorse specific national regulations, the practices below are collected from several EU Member States (Belgium, Denmark, Estonia, Poland, Spain and Thuringia in Germany for smoking and Bulgaria, Malta and the Netherlands for vaping) and do follow the spirit of the 2009 CR by protecting citizens from the harmful effects of ETS without marginalizing smokers with a policy that is more punitive than health-related. As such, they should be of interest to the national and European legislator.



### ***Enclosed public places***

- Separated, well-ventilated smoking rooms should be an option in enclosed public places.

### ***Public outdoor areas***

- Smoking in outdoor areas like parks, beaches and streets shouldn't be restricted except for situations where minors are present.

### ***Hotels, restaurants and cafés***

- Smoking rooms should be permitted if completely separated, clearly designated and not accessible to persons under 18 years. Smoking in one-roomed bars and casinos smaller than a reasonable surface (75m<sup>2</sup> for example) should be permitted. Smoking should be allowed in hospitality tents.
- Separated, designated and well-ventilated smoking rooms should be allowed in bars, restaurants and nightclubs.



### ***Public transport and terminals***

- Separate, well-ventilated smoking rooms and standing smoking cabins on trains and passenger ships should be allowed.
- Separate, well-ventilated smoking rooms in airports and in waiting halls in bus and train stations should be permitted, together with open-air smoking areas inside airports.

### ***Workplace***

- The principal rule should be a smoking ban in indoor private workplaces.
- However, employers should be allowed to smoke in cranes, company cars and other commercial vehicles which are occupied solely by the employee who wishes to smoke.
- An employer should also be entitled to allow smoking in designated, well-ventilated and separated smoking rooms.

### ***Personal properties***

- The law should not restrict smoking in private properties such as houses, apartments, terraces, balconies and gardens.
- In residential institutions i.e. old people's homes, residents should be allowed to decide whether or not to smoke in the room constituting the resident's home. However, smoking may be prohibited when employees are present.

### ***Prisons***

- Prisoners should be allowed to smoke in prison cells; however, smoking may be prohibited when employees are present. Smoking may also be prohibited in visiting rooms.


### ***Healthcare facilities***


- Individual hospitals should be allowed to devise policies on smoking that best suit their patients, visitors and staff. Options should include separate, well-ventilated smoking rooms, designated smoking areas and terraces, designated smoking shelters or no restrictions on smoking in the open air.
- Hospitals should have the possibility in very special cases to allow patients and next-of-kin to smoke.


### Vaping


- Unlike smoking, the use of e-cigarettes in public places should be permitted, with individual premise owners allowed to restrict their usage.


Best practices drawn from six EU Member States show it is possible to have sensible policies and an inclusive culture by protecting the health of non-smokers without marginalising smokers.


 **The law should not restrict smoking in private properties such as houses, apartments, terraces, balconies and gardens.**



 **Smoking in outdoor areas like parks, beaches and streets shouldn't be restricted except for situations where minors are present.**



 **Separate, well-ventilated smoking rooms in airports, train stations, hospitals, prisons, cafés and restaurants should be permitted.**



## Core Perspectives on Smoking in Public Places

It is important that policy makers bear in mind the following points:

- Tobacco is a legal product that 100 million European adults enjoy. But the European Union (EU) and national policy makers are under increasing pressure from anti-smoking activists to prevent members of the public from smoking in public places – even outdoors.
- Banning people from smoking in public places where there is no significant inconvenience to others represents an unwarranted restriction of people's freedom of choice and responsibility, part of a drive to denormalise smokers when they are doing nothing wrong.
- Certain smoking bans also establish a worrying precedent about the role of the state in governing people's private lives. Such steps include prohibiting people from smoking in their home, as is already the case in some countries in Europe. It is a sign that society is becoming less tolerant of any activity deemed undesirable by decision makers or vocal minorities.
- Forest EU is not against reasonable regulations that protect public health, nor do we dispute the fact that smoking can be bad for you. But we believe strongly that adults should be free to decide whether to smoke or not and should not be singled-out by governments if they do. When legislating on specific issues such as smoking it is crucial that policy makers bear in mind the general principles they want to uphold in a free society.
- It is quite possible to formulate regulations that accommodate both smokers and non-smokers. Forest EU therefore advocates for sensible regulations that respect the dignity of both smokers and non-smokers in our bars and restaurants as well as outdoors and in residential buildings. Where absolute bans have been imposed, they should be relaxed to allow the legal option of designated spaces where

smoking wouldn't impose significant inconvenience to non-smokers.

- What is important here is the principle rather than its exact interpretation in national law. With this principle in mind, rules must be allowed to take shape in response to differing local preferences.

## About Forest EU

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Forest EU is a campaign that informs smokers about the issues that affect them in the European Union and engages with stakeholders so that the views of informed adult smokers and non-smokers with an interest in tobacco policy are considered within the EU's decision-making process.

Since 1979 Forest has been the leading voice defending tolerant non-smokers and adults who choose to smoke and don't want to quit. Our core message is that adults who are aware of the health risks but chose to smoke should be able to choose to consume a legal product without excessive regulation. Forest EU advocates for respectful policy measures that maintain individual freedom and personal responsibility.

Forest EU is supported by Tobacco Europe whose members are Japan Tobacco International (JTI), British American Tobacco (BAT) and Imperial Brands PLC (IMB), and by the members of the European Smoking Tobacco Association (ESTA). Our annual budget in 2019 is €165,000. Forest EU has an independent organizational structure and advocates for smokers and not the tobacco industry.

Forest EU accepts there are serious health risks associated with smoking and does not, through its campaigning activities, seek to promote or encourage smoking or tobacco products.

For more information, visit [forestonline.eu](http://forestonline.eu)

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Carnets de Norman, picture of the covered and open air smoking area inside Palma de Mallorca airport in Spain by Guillaume

Périgois, picture of the top floor, open air smoking terrace inside

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<<https://www.stockvault.net/photo/135673/smoking-cabin-in-billund-airport-denmark>> of a smoke cabin in Billund airport in Denmark.



