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To Whom It May Concern

Netherlands consultation - amending the Tobacco and Smoking Products Order: ACPAN Response

Thank you for allowing the opportunity to submit to the consultation on amending the Tobacco and Smoking Products Order to prohibit flavours in vaping products.

We are ACPAN Romania, a consumer association and an educational charity representing users of low-risk nicotine products such as vaping products, nicotine pouches, smokeless and heated tobacco products. ACPAN is supported by experts in tobacco control and nicotine research. As consumers, we have a direct interest in the regulation of these products and the consequences for personal health and public policy choices made by governments. We are not affiliated with or endorsed by the industry tobacco or electronic cigarettes. Our comments are based on academic research and on our own experience of the benefits of alternative nicotine products for smokers who cannot or do not want to quit smoking.

ACPAN represents the voice of over one million Romanian citizens who consume products with safer nicotine. Together with European partners from European Tobacco Harm Reduction Advocates (ETHRA) we reach 27 million¹ consumers of safer nicotine products throughout the territory of the European Union.

Amendment amounts to a de facto ban on e-liquids for vaping

This final amendment will see all flavoured e-liquids banned. “Tobacco” is the only permitted flavour, but the exhaustive list of just 16 permitted substances would not permit any of the currently available tobacco flavours to be produced. RIVM notes that manufacturers currently use a total of 503 different flavours in tobacco-flavoured liquids² Tobacco flavour is just one of thousands of e-liquid flavours. It bears little resemblance to the taste of cigarette smoke itself. It is unclear why this flavour has been chosen to be the one that would be permitted while all other flavours are banned.

The benefits of vaping

Vaping products have led to steep declines in smoking wherever they have been allowed to flourish. In the UK, an unprecedented and dramatic decline in smoking followed vaping products going mainstream in 2012. Rates plummeted from 21 percent in 2011 to less than 15 percent in 2020³

A May 2022 study researching “the impact of vaping introduction on cigarette smoking across settings with varied regulatory approaches to vaping” concluded that “In environments that enable substitution of cigarettes with e-cigarettes, e-cigarette introduction reduces overall cigarette consumption. Thus, to reduce cigarette smoking, policies that encourage adults to substitute cigarette smoking with vaping should be considered.”⁴

A study published in the New England Journal of Medicine in 2019 concluded that vaping products were approximately twice as effective as nicotine replacement therapy⁵, while the Cochrane Review also concluded in September 2021 that smokers are more likely to quit using an e-cigarette than traditional NRT methods.⁶

Furthermore, other research shows that in countries where liberal policies towards electronic cigarettes and vaping have been adopted, the decrease in smoking rates is twice as fast as the global average.⁷ The Smoking Toolkit Study conducted by University College London has tracked e-cigarette use since 2011 in England and found that vaping is the most successful quitting aid for smokers.⁸

Conclusion and policy recommendations

Nicotine is the primary reason people smoke, but nicotine itself is not the cause of smoking-related disease. Low-risk alternatives all share a common characteristic – they do not involve combustion and there is no smoke to inhale. They do, however, provide nicotine and can satisfy smokers who would not otherwise wish to quit or would find it hard to quit. Though not harmless, they are much less harmful – with likely risk reductions of one to two orders of magnitude. When smokers completely switch from smoking to a low-risk product, they avoid nearly all the incremental health risks of continued smoking. This allows for ‘harm reduction’, a well-established concept in public health policy, for example, in drugs, alcohol and HIV. This concept should be central to tobacco control policy in the Netherlands.

We do not believe traditional tobacco control measures are effective without also recognising the potential benefits of harm reduction. We are concerned that consensus positions of tobacco control and medical organisations reflect the measures they find agreeable, not necessarily what will work to maximise the number of smokers who quit combustible tobacco or switch to safer forms of nicotine use.

In our view, the key strategy for reducing smoking prevalence in the Netherlands, especially in individuals and communities where smoking is deeply entrenched, is switching from high-risk smoked products to low-risk smoke-free products. This is a more straightforward pathway to follow for many smokers because it does not demand the user gives up nicotine or many of the sensory or behavioural aspects of smoking. Yet switching is likely to reduce health risk by 95% or more.

We believe the Netherlands government’s plan to prohibit all flavours in vaping products is extremely reckless and risks deterring many Dutch adults from switching to vaping as an alternative to smoking, may drive current vapers back to combustible tobacco use, will create a significant black market and increase, rather than reduce, risks to young people who may otherwise smoke or continue to smoke in the absence of viable vaping products.

A wide variety of flavours is essential to the success of vaping products

Data from the Netherlands Expertise Centre for Tobacco Control¹⁴ shows that vaping products are used almost exclusively by smokers and ex-smokers (99.7%) as a means to quit or reduce their use of smoked tobacco. Product appeal, including through the availability of a wide range of flavours, is a crucial element in attracting smokers to vaping in the first instance, and to avoid relapse to smoking. There is robust evidence that vaping non-tobacco flavours significantly increases the chances of successful smoking cessation.^{9,10}

Evidence from the Netherlands also points to the important role flavours play in quitting smoking. Havermans et al¹¹ concludes that “adults who completely substituted the use of conventional cigarettes by e-cigarettes have often initiated e-cigarette use with fruity flavours rather than tobacco flavours, or switched from tobacco to non-tobacco e-liquid flavours over time.” A study of Dutch consumers of vaping products concluded that vape flavours are a contributing factor in smokers completely switching to vaping and recommended that they should remain available to adult smokers.¹²

Some smokers do initiate vaping with a tobacco flavour, but migration to fruit and sweet flavours over time is very common.^{13,14}

The Netherlands has performed relatively well in regard to smoking cessation: smoking prevalence has fallen from 25.7% in 2014 to 20.6% in 2021. However, there is scope to improve, and every available cessation method should be utilised. Of the 2.9 million smokers in the Netherlands, only 30% made a serious quit attempt in the past year.

Flavoured vaping products could offer millions of Dutch smokers an exit ramp from smoking, at vast benefit to their health.

A flavour ban could trigger a wide range of behavioural responses.

Policymakers should consider the full range of likely behavioural responses to a flavour ban, given that the ban would not in itself lessen the drive to use nicotine. Such responses might include the following, all with higher risk than using regulated products:

- Switch from vaping to smoking
- Initiate smoking, instead of vaping
- Access flavoured products from outside the EU
- Access flavoured products from the black or grey market
- “DIY” their flavours (home mixing)

In our ETHRA 2020 survey of nicotine consumers in Europe, which was the largest survey of its kind in the EU and received over 35,000 responses, we asked how vapers would react to a flavour ban. 28% of respondents said there was a high possibility that they would relapse to smoking, and 71% would consider using the black market or other alternative sources to access flavours.¹⁵

Responses to a predicted flavour ban, highlighted in the 2020 ITC Smoking and Vaping Survey in Canada, England and the United States, suggested that 28.3% of vapers would find a way to get the flavours they wanted and 17.1% would stop vaping and smoke instead.¹⁶

Real world evidence of consumer response to a flavour ban can be found in Estonia. In 2020 Estonia banned all flavours apart from tobacco. In 2022 almost 60% of vapers continue to use fruit, sweet and dessert flavours. Products are being sourced through the black market and by DIY mixing.¹⁷ In response to this, the Estonia parliament voted to permit some e-liquid flavours.¹⁸ Denmark too has seen a huge rise in the use of black-market products.

Health spokesperson Lars Boje Mathiesen believes the strict legislation [flavour ban] has created a large illegal market, because the demand for flavours is still there.¹⁹

The Netherlands has set ambitious goals to reduce smoking rates and as tobacco harm reduction advocates, we share these goals. However, we must stress that banning flavours for e-cigarettes is likely to have the opposite effect. Policymakers must be aware that flavoured vaping products are a direct competitor to smoking. Banning or severely restricting a rival product protects the cigarette trade and keeps people smoking.

On behalf of ACPAN Romania members,

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