

AIV Opinion on the Draft Amendment of the Tobacco and Smoking Products Order

AIV is forwarding you the following opinion on the provisions of the Ministry of Public health, Welfare and Sports' Draft Amendment of the Tobacco and Smoking Products Order for regulation of e-cigarette flavours.

Among other things, the draft amendment intends to ban flavours in e-liquids, with the exception of tobacco, to *“reduce the temptation for young people and former smokers to purchase e-cigarettes”*, which is *“justified by the need to protect public health”*. The statement also says that, *“preventing smoking in general and helping current smokers quit are more likely to be achieved if e-cigarettes are less attractive.”*, with a view to achieving the objective of a smoke-free generation by 2040

AIV has serious doubts about the potential effectiveness of this Draft Amendment, which limits the number of additives that can be used to only 17. This is in effect a ban on the use of flavours in e-liquids.

We believe that this ban is not an effective mean to reach the stated objectives of this measure as it does propose measures that, while severe, would only restrict the movement of goods, and encourage many people who are trying to quit to go back to smoking.

Moreover,

- The Act on Tobacco and Similar Products already covers the market and prevents adolescents under 18 years old from buying such products (Chapter 5, article 18).
- Flavoured products will still be sold, but on the black market instead of regulated markets.

AIV asks the Government of Netherlands to recall the provisions that would institute a ban on flavours, and take a look at the scientific evidence in order to come up with measures more suited to the objective of a smoke free society.

1. Introducing an e-liquids flavours ban

Current provisions: *To make e-cigarettes less attractive, this draft Ministerial Order now bans additives that create flavours other than tobacco flavours in liquids containing nicotine, nicotine-free liquids and other e-cigarette components. This will ban the production and sale of e-cigarette flavours other than tobacco. This helps reduce the temptation for young people and former smokers to purchase these e-cigarettes.*

Here are the reasons for which these provisions will not work.

1- Vaping products are less harmful than smoking

Current provisions: *“Mounting scientific evidence indicates that e-cigarettes are harmful, addictive and attractive. [...] Due to the harmful effects of inhaling chemicals in liquids for e-cigarettes and the addictiveness of nicotine e-cigarettes, reducing the attractiveness of e-cigarettes offers health benefits. For this reason, regulating flavourings for e-cigarettes is justified by the need to protect public health.”*

The authors of this amendment only provide a 2015 study to justify the harmful effects of e-cigarettes, despite the claim of “mounting scientific evidence”. Yet reports such as the one commissioned by Public Health England clearly shows that using e-cigarettes is 95% less harmful than smoking combustible cigarettes¹, or the study financed by Institut Pasteur, confirmed that vaping is significantly less carcinogenic than smoking and constitutes an acceptable replacement for traditional tobacco². Similar conclusions regarding the harm reduction potential of vaping can be found in studies by the Royal College of Physicians³ or the German federal office for drugs⁴.

The harm reduction potential of vaping has been proven over and over, and these studies should be taken into account when it comes to the Government of Netherlands’ policies.

2- E-liquid flavours can help adult smokers to quit smoking

Current provisions: *“Helping current smokers quit are more likely to be achieved if e-cigarettes are less attractive.”*

Publicly-funded studies showed that, in fact, e-liquids flavours do play a critical role in helping adult smokers to switch to vaping from classic cigarettes. A 2020 study from the Yale School of Public Health, with more than 17,000 respondents aged from 12 to 54 concluded that *“vaping non-tobacco-flavoured e-cigarettes was not associated with increased youth smoking initiation but was associated with an increase in the odds of adult smoking cessation”*⁵. That same study concludes that *“adults who began vaping non-tobacco flavoured e-cigarette were more likely to quit smoking than those who vaped tobacco flavours”*⁶. However, a study published in the Harm Reduction Journal concludes that *“restricting access to non-tobacco e-cigarette flavours may discourage smokers from attempting to switch to e-cigarettes.”*⁷. This is especially problematic since the European Parliament shows, in its 2022 [report on strengthening Europe in the fight against cancer](#) that *“electronic cigarettes could allow some smokers to progressively quit smoking”*.

Moreover, a flavour ban might suggest that traditional tobacco and vaping products should be treated the same as they present similar health risks and, since legislation for these products is equalized, discourage smokers from switching to vaping.

Finally, it is important to note that the European Parliament considered, in its [report on strengthening Europe in the fight against cancer](#) adopted in February 2022, that *“electronic cigarettes could allow some smokers to progressively quit smoking”*.

3- Vaping products do not lead individuals to smoking combustible tobacco

Current provisions: *“E-cigarette use also appears to make young people more likely to start smoking tobacco compared to young people who do not use these products. [...] [The proposed flavour ban] helps reduce the temptation for young people and former smokers to purchase these e-cigarettes.”*

But scientific research from the most authoritative sources, such as forementioned Yale School of Public Health study, concluded that *"vaping non-tobacco-flavoured e-cigarettes was not associated with increased youth smoking initiation but was associated with an increase in the odds of adult smoking cessation"*⁸. As stated by Professor Riccardo Polosa: *“Removing flavours will not affect the rates of youth cigarette use. But it will certainly reduce the number of options available for those adults who seek to quit smoking for good and find flavoured e-cigarettes effective”*⁹.

4- Vaping is helping the European Union to meet its public health policy objectives

The European Commission's [Beating Cancer Plan](#) is a very ambitious strategy for cancer prevention, looking to create a “Tobacco-Free Generation”, and reducing the smoking prevalence in the EU to 5% by 2040. In order for that to happen, 90 million Europeans would need to quit smoking.

Vaping has been proven to be 95% less harmful than combustible tobacco and significantly less carcinogenic and could help meet the Beating Cancer Plan's goals - bearing in mind that 85% of smokers can't or don't want to quit smoking¹⁰. Public health policy should exploit the harm reduction potential offered by e-cigarettes

2. Legal justification of the measure

AIV also believes that there are various problems with the legal justification of the measure.

AIV thinks that the ban on e-cigarette flavours will amount to a quantitative restriction in the sense of article 34 of the TFEU (Treaty on the Functioning of the EU), as the banned products can legally be marketed in other Member States. This would therefore create a difference of treatment and access for e-cigarette and associated products shops.

As it is stated by the authors of the proposal in the explanatory memorandum, such restrictions can only be allowed when a number of conditions is met. The proposal must:

- be justified by imperative requirements in the general interest;
- be suitable for securing the attainment of the objective which they pursue;
- not go beyond what is necessary;
- be accessible and foreseeable; and
- be applied in a non-discriminatory manner.

We consider that these conditions are not met, for the following reasons:

The measure does not seem to be justified under article 36 of the TFEU that allows for restrictions in imports or exports of goods on grounds of protection of health and life of humans.

The scientific basis of this flavour ban is selective in choosing the scientific studies that support the authorities' position. The authors of this proposal do not thoroughly demonstrate that e-liquid flavours pose a substantial threat to public health, which should therefore prevent them from introducing such a flavour ban under article 36 of the TFEU.

Many of the cited above studies prove that vaping is significantly less harmful than smoking and that a flavour ban is likely to discourage smokers from abandoning combustible tobacco, the Draft Amendment cannot be deemed suitable for the objective of protecting public health.

Furthermore, the Draft amendment is not justified by any imperative situation as the Ministry admits that the rate of young people in the Netherlands having tried vaping products has decreased between 2015 and 2019. Finally, the government's proposal cannot be deemed proportional: the consequences it would have on smokers trying to quit are extreme compared to the claimed public health benefits, as explained below.

Conclusion

Against this background, AIV respectfully calls on the European Commission to examine the flavour ban proposed by the Netherlands, and to encourage national institutions to adopt measures adapted to the claimed objectives and based on thorough scientific evidence.

About AIV

The Vaping Industry Association (AIV) brings together some of the most relevant Romanian vaping companies – producers, distributors, specialists – in order to represent them in relation to state authorities and Romanian public opinion. The vision of AIV is to offer a voice to our industry in its dialogue with other stakeholders and responsibly promote vaping as a tool for harm reduction and public health improvement in Romania. The Vaping Industry Association's mission is focused on representing and promoting the vaping industry, as well as on protecting the consumer.

¹ McNeil et al., "Evidence review of e-cigarettes and heated tobacco products 2018", URL

² Dusautoir et al., "Comparison of the chemical composition of aerosols from heated tobacco products, electronic cigarettes and tobacco cigarettes and their toxic impacts on the human bronchial epithelial BEAS-2B cells", Journal of Hazardous Material, Vol. 401, 2021, [URL](#)

³ "Nicotine without smoke: tobacco harm reduction", UK Royal College of Physicians, 28/04/2016, [URL](#)

⁴ "Drogen und Suchtbericht", German federal office for drugs, 2019, [URL](#)

⁵ "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation", Yale School of Public Health, 05/06/2020, [URL](#)

⁶ "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation", Yale School of Public Health, 05/06/2020, [URL](#)

⁷ Russell, C., McKeganey, N., Dickson, T. et al. "Changing patterns of first e-cigarette flavor used and current flavors used by 20,836 adult frequent e-cigarette users in the USA". Harm Reduction Journal 15, 33 (2018), [URL](#)

⁸ "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation", Yale School of Public Health, 05/06/2020, [URL](#)

⁹ Riccardo Polosa, "Harm reduction is a flavoured journey in global tobacco control", Catania Conservation, 11/09/2020, [URL](#)

¹⁰ No Tobacco Day: la via possibile della riduzione del rischio, Eurispes. [URL](#)