

NANNY STATE INDEX 2018

Nicotine Supplement

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Welcome...

to this special supplement to the Epicenter Nanny State Index. The Index tracks over-bearing, paternalistic lifestyle regulation across the EU in four categories: alcohol, e-cigarettes, food/soft drinks and tobacco. Nanny state interventions in these areas are invariably promoted on grounds of health and yet it is difficult to see how clamping down on vaping benefits public health. Paternalistic arguments can be made for interventions designed to deter people from drinking, smoking and eating too much, but laws which deter the use of e-cigarettes do not just restrict liberty, they are also likely to harm health.

There is a growing consensus that vaping is at least 95 per cent safer than cigarette smoking (Royal College of Physicians 2016) and the overwhelming majority of people who use e-cigarettes regularly are current or former smokers. E-cigarettes are rarely used by young people who have not previously smoked (Bauld et al. 2017) and claims about vaping acting as a 'gateway' to smoking appear to be unfounded. In the EU, fewer than 0.5 per cent of those who have never smoked use e-cigarettes (Eurobarometer 2017: 105), but many smokers have used them as a permanent substitute for combustible cigarettes. In Britain, the smoking rate has fallen at an unusually fast pace since 2012 when e-cigarettes became mainstream consumer products after several years of stasis (Snowdon 2017).

There is significant variation in the regulation and taxation of e-cigarettes and vaping across Europe. In some respects, trends are going in a positive direction. Until 2016, several countries banned the sale of nicotine e-cigarette fluid, but all EU countries now allow the sale of e-cigarettes and vaping fluids as consumer products. Norway is expected to complete its legalisation of the products in mid-2018, leaving Switzerland as the only European country with a ban in place.

On the other hand, all EU countries are now obliged to enforce the Tobacco Products Directive which limits the range of products that can be sold and prohibits most e-cigarette advertising. And although prohibition is losing its appeal, indoor vaping bans and taxation are on the rise. When the first edition of the Nanny State Index was published in 2016, Italy and Portugal were the only EU countries with an excise tax on e-cigarette fluids. By 2017, a further six countries had introduced a tax. As this report shows, the number of countries that have vaping taxes has now risen to twelve. In 2016, nine countries prohibited vaping wherever smoking was banned. That number has also risen to twelve.

In this report, we extend the Index to two non-EU countries (Norway and Switzerland) and extend the vaping category to include two other safer nicotine products that have demonstrated their potential for harm reduction and smoking cessation.

The first is the Scandinavian smokeless tobacco product 'snus'. Consisting of finely cut tobacco in a teabag-like pouch, snus is placed under the top lip to allow nicotine to absorb through the gum. It is a very low risk alternative to cigarettes and has had a dramatic effect on smoking rates in some countries. In Sweden, per capita snus consumption more than doubled between 1970 and 2000 while per capita cigarette consumption nearly halved. Sweden's smoking rate is now just seven per cent, much lower than the EU average of 26 per cent and the lowest in the developed world (Eurobarometer 2017: 8). More recently, Norway has also seen a mass switchover from cigarettes to snus, with the smoking rate halving to 11 per cent since 2009 while snus use has doubled.

The second product included in this supplement is heated tobacco. Perhaps it would be more accurate to describe it as a *range* of products since this fast-growing category includes *iQOS*, *Glo*, *Ploom* and other offerings which do not use combustion. Instead they heat the tobacco to produce smoke, hence the category is often referred to as 'heat-not-burn'. The lower temperature and lack of combustion result in greatly reduced levels of toxicants being produced. Philip Morris, the maker of *iQOS*, cites evidence that their product reduces the intake of harmful chemicals by 90 to 95 per cent compared to conventional cigarettes. The UK's Committee of Toxicology and the USA's Tobacco Products Scientific Advisory Committee both agree that *iQOS* emits significantly fewer toxicants.

Taken together, these reduced-risk nicotine products offer smokers a pleasurable alternative to cigarettes, but only if governments allow access to them. This report looks at the obstacles consumers face, from advertising bans and sin taxes to outright prohibition. All of the criteria in the index obstruct consumers

and stifle the market to a greater or lesser extent. This is bad for consumer choice, but it can also be bad for consumer's health. As Clive Bates, the former director of Action on Smoking and Health, explains, 'if you over-regulate a new, disruptive, low-risk alternative to the dominant and deadly cigarette, you simply protect the worst products from competition' (Bates 2013). The technology in this area is improving rapidly. Governments need to keep up.

The criteria

Our index for reduced-harm nicotine products consists of seven categories. Five of them are related to e-cigarettes: taxation, indoor use, cross-border sales, advertising and product bans. The others relate to snus and heat-not-burn products.

Points are scored for each criteria and are combined to reach a final score out of 100. The higher the score, the worse the regulatory regime. In this report, as in the Nanny State Index, we are only concerned with policies that have an adverse impact on consumers. These policies are given different weights to reflect the extent to which consumers are negatively affected.

Paternalistic policies typically reduce the individual's quality of life in one or more of the following ways:

- raising prices (e.g. through taxation or retail monopolies)
- stigmatising consumers
- restricting choice
- inconveniencing consumers
- limiting information (e.g. with advertising bans)
- reducing product quality (e.g. by banning flavours)

Since May 2016, there has been a certain degree of uniformity in the regulation of e-cigarettes in the EU-28 as a result of the EU's Tobacco Products Directive. This directive bans e-cigarette advertising in all media that can cross national borders, including print, television, radio and online. It also limits what can be sold, with bottles of vape fluid limited to 10ml, e-cigarette tank sizes limited to 2ml and the strength of vape juice limited to no more than 20 per cent nicotine (2mg/ml). Moreover, there is an EU-wide ban on the sale of snus which only exempts Sweden. As a result, it is impossible for EU member states to score a perfect zero for several criteria.

Points are awarded in each category as follows:

Product bans: Up to 20 points are available for bans on certain types of e-cigarettes and/or fluids. Compliance with the EU Tobacco Products Directive earns five points. Bans on certain flavours or devices earns up to ten points. Full prohibition earns twenty points.

Advertising: Up to ten points are awarded according to the size and scope of advertising restrictions, with a total ban earning ten points. All EU member states score six points if they comply with the Tobacco Products Directive. Further points are awarded for bans on purely domestic e-cigarette advertising.

Tax: Countries which place a specific tax on e-cigarette fluid (in addition to a standard sales tax) score up to 20 points. The country with the highest tax rate scores 20. Countries which ban the sale of vape juice also score 20 points. Other countries' scores are based on the size of their tax as a proportion of the highest tax (adjusted for purchasing power). For example, if a country taxes at €3 per bottle and the highest tax rate is €4, the country receives 15 points (75 per cent). Countries with no excise tax on e-cigarette fluid score zero.

Vaping ban: Up to 20 points are awarded for bans and restrictions on e-cigarette use (vaping) in public places. In countries where vaping is classed as smoking for the purpose of smoking bans, the score is based on the smoking ban subcategory in the Nanny State Index (updated for 2018).

Cross-border sales: Countries which ban the sale of e-cigarettes and/or e-cigarette fluid by mail order from other countries are awarded ten points.

Heat-not-burn: Up to five points are awarded for excise tax on heated tobacco, using the same methodology as the e-cigarette tax score (see above). A full ten points are awarded to countries which ban heat-not-burn products outright. Heated tobacco products have not yet been launched or regulated in several countries. These countries are marked N/A (not applicable) and their final score out of 100 is based on adjusting their score out of 90, e.g. 10 out of 90 = 11 out of 100.

Snus availability: Countries which ban the sale of snus score ten points. Those which allow it score zero.

All data reflect the legal status in March 2018 to the best of our knowledge. We do not make adjustments for how the law is enforced. Some countries may not police their regulations effectively, but this is unquantifiable. We are interested only in what the law says, not whether it is easy to flout the law in practice.

In some instances we have included commentary about laws that have been proposed or rejected. These are included to provide additional information - they do not affect the scores.

Note on methodology

Statistics for smoking and vaping prevalence are taken from the 2017 Eurobarometer survey. Most countries tax heat-not-burn tobacco by the kilogram but for those which tax it per 1,000 heat sticks, we divided the tax per 1,000 by 0.305 (the weight of an individual iQOS Heet stick in grammes) to estimate the tax per kilogram.

Estimates of the cost of ad valorem taxes are based on a pack of Heets costing €5. Cost per kilogram of an ad valorem tax is calculated on the basis of €5 cost per pack x 50 divided by .305 = cost per kilogram. The cost per kilogram is divided by 100 multiplied by the % of tax.

Thanks

The Nanny State Index could not have been compiled without the valuable assistance of our network of friends throughout Europe and the think tanks listed below. While every effort has been made to verify the data from multiple sources, mistakes can happen so please notify us if you believe the Index contains any errors.



Nanny State Index: Nicotine supplement 2018



		Indoor use	Advertising	Tax	Product ban	Snus	Cross-border sales	Heated tobacco	Total	Adjusted total
1	Sweden	0	7	0	5	0	0	3	15	15
2=	Czech Republic	2	6	0	5	10	0	0	23	23
2=	Germany	0	6	0	5	10	0	2	23	23
2=	Netherlands	0	6	0	5	10	0	2	23	23
2=	UK	0	6	0	5	10	0	2	23	23
6	Ireland	1	6	0	5	10	0	N/A	22	24
7	Denmark	1	10	0	5	10	0	2	28	28
8=	France	4	9	0	5	10	0	5	33	33
8=	Slovakia	6	10	0	5	10	0	2	33	33
10=	Bulgaria	0	6	0	5	10	10	3	34	34
10=	Austria	0	6	0	5	10	10	N/A	31	34
12	Malta	0	10	0	5	10	0	10	35	35
13	Spain	2	6	0	5	10	10	4	37	37
14	Croatia	8	10	0	5	10	10	2	45	45
15	Lithuania	10	9	0	5	10	10	2	46	46
16=	Romania	1	9	9	5	10	10	3	47	47
16=	Luxembourg	8	9	0	5	10	10	N/A	45	47
18=	Latvia	12	6	4	5	10	10	2	49	49
18=	Belgium	10	9	0	5	10	10	N/A	44	49
20	Slovenia	7	9	10	5	10	10	2	53	53
21	Italy	0	6	20	5	10	10	4	55	55
22=	Cyprus	12	10	7	5	10	10	3	57	57
22=	Poland	10	9	8	5	10	10	5	57	57
24	Greece	12	10	7	5	10	10	4	58	58
25	Estonia	1	9	14	5	10	10	10	59	59
26	Portugal	6	7	19	5	10	10	4	61	61
27	Switzerland	1	10	20	20	10	0	1	62	62
28	Norway	13	10	20	20	0	0	N/A	63	69
29	Hungary	13	10	12	15	10	10	3	73	73
30	Finland	11	10	13	15	10	10	N/A	69	76



Austria

Overall ranking 10=



Public use	0/20	Tax	0/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	N/A	Advertising	6/10
Snus	10/10	Adjusted total	34

Population: 8,592,400 (2017)

GDP per capita: US\$ 43,775.0

Current government: Federal Chancellor Christian Kurz
(Austrian People's Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 30 out of 180 (72.3)

Smoking rate	28%	Vaping rate	3%
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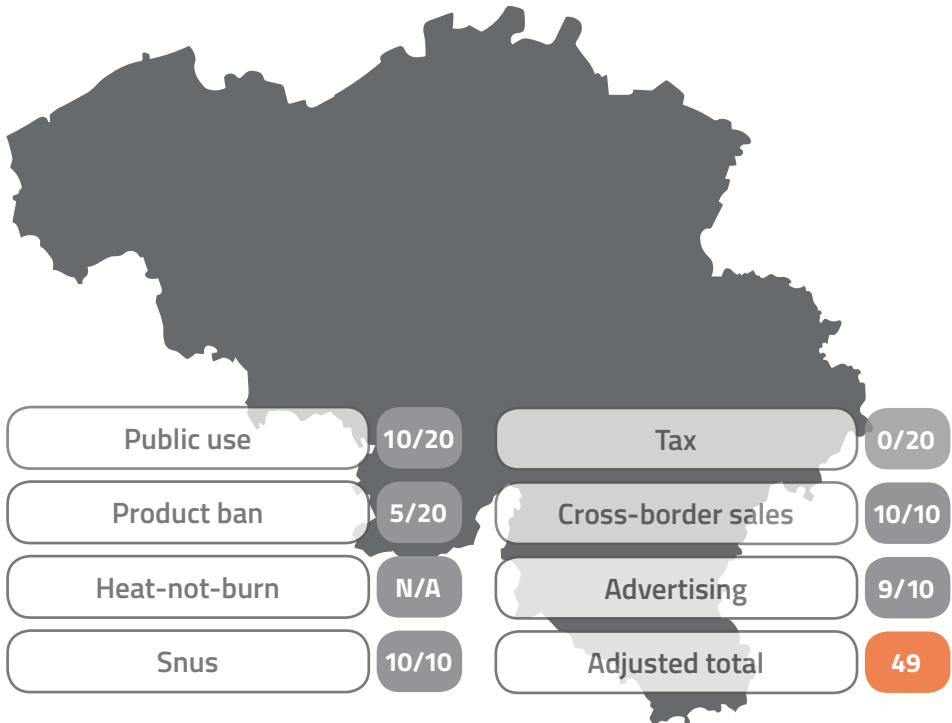
Austria was due to introduce a smoking ban in 2018 which would have included vaping. However, this has been dropped by the new government and there are no major restrictions on where people can vape in Austria.

E-cigarettes were once classified as medicinal products and effectively banned. That is no longer the case. E-cigarettes and vape juice are available as consumer products. There is no specific tax on e-cigarettes but cross-border sales are banned.

At the time of writing, heat-not-burn products have not been put on the market in Austria and no specific regulations or taxes apply to them.

Belgium

Overall ranking 18=



Population: 11,443,830 (2017)

GDP per capita: US\$ 40,324.0

Current government: Prime Minister Charles Michel (Reformist Movement)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 49 out of 180 (67.8)

Smoking rate

19%

Vaping rate

4%

E-cigarettes were legalised as consumer products in 2016, but internet sales and e-cigarette advertising are still banned. Vaping is banned wherever smoking is banned with possible fines ranging from €208 to €8,000. It is even illegal to vape in an e-cigarette shop. A new law banning vaping (and smoking) in vehicles carrying children is expected in late 2018.

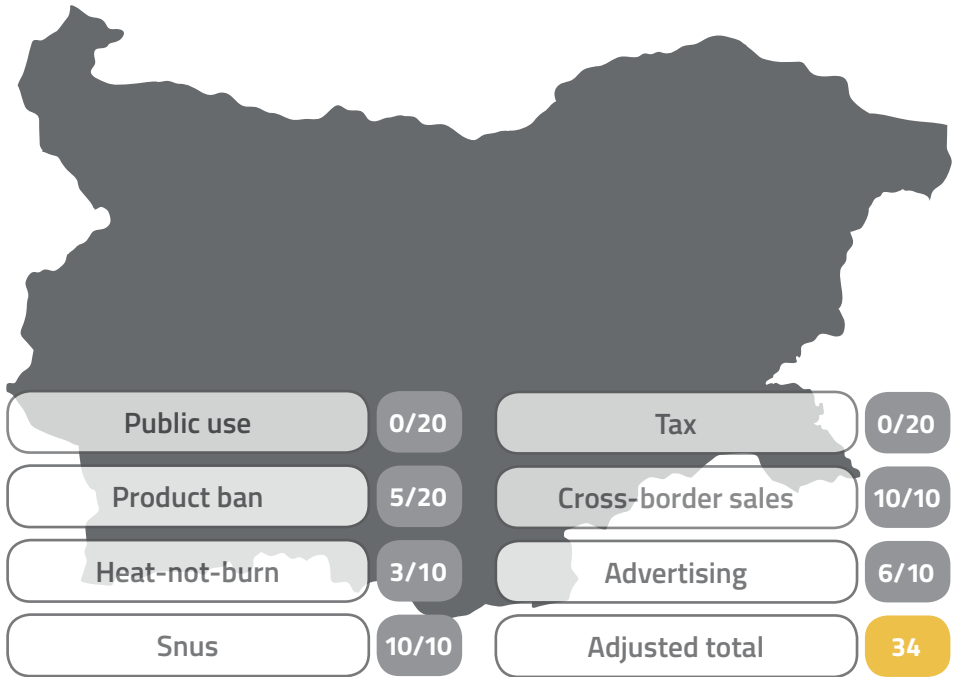
All advertising and promotion of e-cigarettes is banned except in bookstores and specialised selling outlets.

There is no tax on e-cigarettes.

Although heat-not-burn products are legal in Belgium, they are not yet on the market and the government has not created a bespoke tax band for them.

Bulgaria

Overall ranking 10=



Population: 7,045,259 (2017)

GDP per capita: US\$ 6,993.5

Current government: Prime Minister Boyko Borissov
(European Development of Bulgaria)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 47 out of 180 (67.9)

Smoking rate

36%

Vaping rate

0%

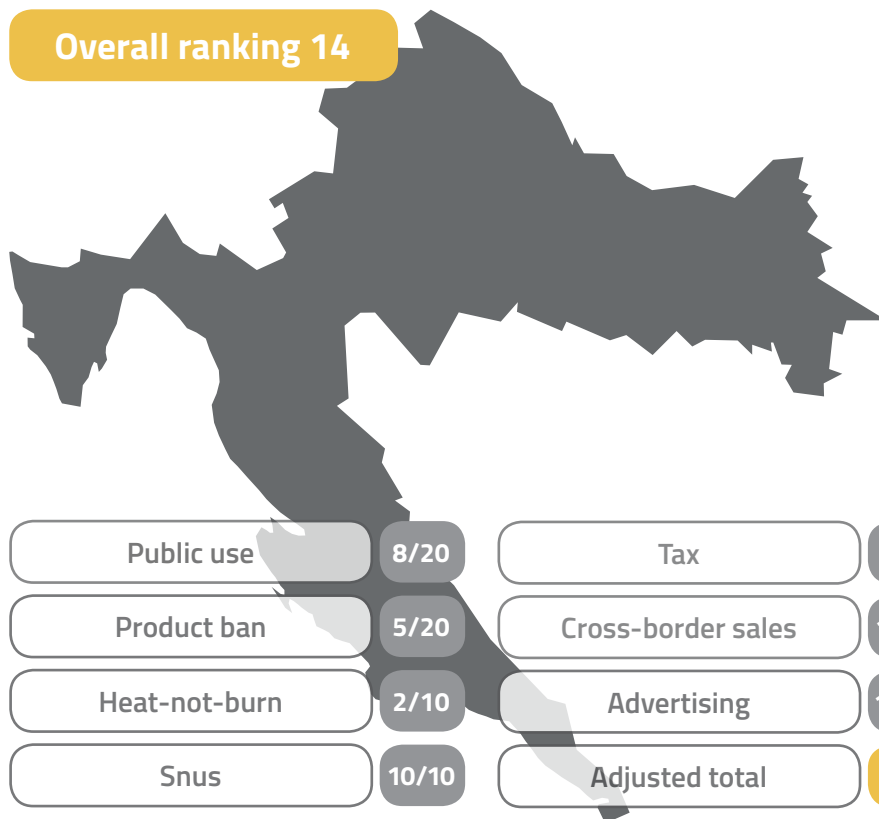
Bulgaria has no restrictions on vaping indoors and has not gold-plated the EU Tobacco Products Directive. E-cigarettes and vape juice can be freely bought and sold domestically, although cross-border sales are now banned. As in all EU countries, print, broadcast and online advertising is banned.

Bulgaria introduced a far-reaching smoking ban in 2012 but vaping is not included in it.

In 2017, Bulgaria adapted a new tax regulation for heat-not-burn products. Decree No. 163 adds heated, smokeless tobacco products to the Excise Duties and Tax Warehouse Act; thus, products such as *iQOS* will be taxed according to the weight of tobacco at 152 Levs per kilogram (€77). This has been in force since 1st January 2018.

Croatia

Overall ranking 14



Population: 4,209,815 (2017)

GDP per capita: US\$ 11,535.8

Current government: Prime Minister Andrej Plenkovic
(Croatian Democratic Union)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 95 out of 180 (59.4)

Smoking rate

35%

Vaping rate

0%

In Croatia, e-cigarettes, like tobacco, wine and spirits, cannot be advertised in any media. The government believes that e-cigarette adverts are an indirect way of promoting conventional tobacco products. Cross-border sales are also banned.

A comprehensive smoking ban was repealed in 2009 after damaging the hospitality industry and the current law is relatively liberal by European standards but it has since been extended to include vaping.

A tax on e-cigarette fluid has been discussed but has not been passed yet. For heat-not-burn products, Croatia has created a Novel Tobacco Product category which taxes the tobacco at HRK 600 (€79.30).

Cyprus

Overall ranking 22=



Public use	12/20	Tax	7/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	3/10	Advertising	10/10
Snus	10/10	Adjusted total	57

Population: 1,187,575 (2017)

GDP per capita: US\$ 23,242.8

Current government: President Nicos Anastasiades (Democratic Rally)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 48 out of 180 (67.9)

Smoking rate	28%	Vaping rate	3%
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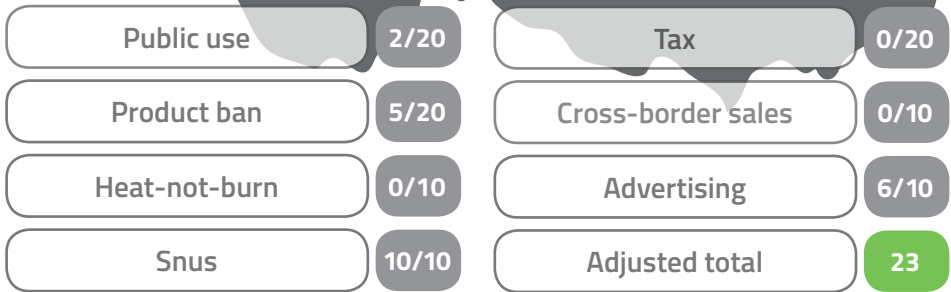
An extension to Cyprus's smoking ban which includes many outdoor places was passed by a narrow majority in February 2017. These rules also apply to vaping. An amendment relaxed restrictions in 'open areas' - defined as spaces which have one open side. Nevertheless, the smoking/vaping ban remains harsh. Businesses and individuals who breach it risk a fine of up to €850. Only vape shops are exempt.

In September 2017, Cyprus passed an excise tax on e-cigarette fluid of €0.12 per millilitre (€1.20 per standard bottle), even if it does not contain nicotine. It also created a new category for heat-not-burn products with a tax of €150 per kilogram.

E-cigarette advertising is banned, including the promotion of vape products on items such as ashtrays, lighters or umbrellas. Free giveaways are also prohibited. The sale of e-cigarettes from vending machines is banned. Cross-border sales are also banned.

Czech Republic

Overall ranking 2



Population: 10,555,130 (2017)

GDP per capita: US\$ 17,548.3

Current government: Prime Minister Andrej Babiš
(Action of Dissatisfied Citizens)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 28 out of 180 (73.3)



E-cigarettes can be advertised, purchased and used nearly anywhere. An extensive smoking ban came into effect on May 31st 2017 but is being reviewed at the time of writing. E-cigarettes are not included in the ban and are only prohibited in a limited number of public places such as airports, public transport, hospitals and educational institutions.

So far, there is no tax on electronic cigarettes and cross-border sales are legal.

At the time of writing, a law is being drafted to regulate and tax heated tobacco.

Denmark

Overall ranking 7



Public use	1/20	Tax	0/20
Product ban	5/20	Cross-border sales	0/10
Heat-not-burn	2/10	Advertising	10/10
Snus	10/10	Adjusted total	28

Population: 5,711,837 (2017)

GDP per capita: US\$ 51,989.3

Current government: Prime Minister Lars Lokke Rasmussen (Venstre, Denmark's Liberal Party)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 18 out of 180 (75.1)

Smoking rate	19%	Vaping rate	2%
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Until 2016, Denmark had an unenlightened attitude to vaping. E-cigarettes were classified as medical products and effectively banned from sale. However, when the EU's Tobacco Products Directive came into force in May 2016, the Danes legalised the sale of e-cigarettes and vaping fluids as consumer products. Vaping has always been permitted in public places (except on public transport) and cross-border sales are legal if the seller is registered with the government.

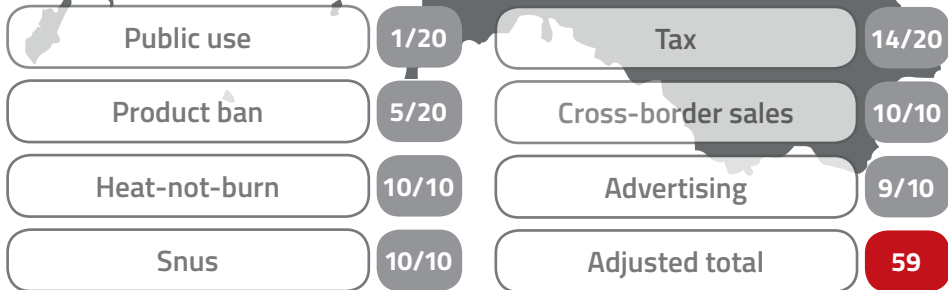
Advertising, promotion and sponsorship of e-cigarettes is prohibited regardless of whether they contain nicotine or not.

So far, there is no tax on electronic cigarettes. Heat-not-burn is taxed at 738.50 DKK/kg, equivalent to €100 per kg.

Loose snus, which escaped earlier EU laws, was banned in January 2016.

Estonia

Overall ranking 25



Population: 1,305,755 (2017)

GDP per capita: US\$ 17,118.5

Current government: Prime Minister Jüri Ratas
(Centre Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 6 out of 180 (79.1)

Smoking rate

23%

Vaping rate

1%

A law that effectively prohibited the sale of e-cigarettes was overturned in 2013 and they can now be sold as consumer products. For the next few years, there were few restrictions on vapers and the e-cigarette industry but that is no longer the case.

To comply with the Tobacco Products Directive, the government introduced the Tobacco Act Amendment Act and applied most anti-tobacco legislation to 'related products', including e-cigarettes. This means that e-cigarette advertising is almost completely banned. Cross-border sales are also banned.

Use of e-cigarettes is mostly legal but vaping is prohibited in a few public places, such as schools and youth clubs.

In 2017, an excise tax on e-cigarette fluid was introduced at the rate of €0.20 per millilitre (€2.00 per standard bottle).

Although there is a tax on 'solid tobacco substitute' set at €76.84 per kg, heat-not-burn products are banned under Estonia's smokeless tobacco ban.

Finland

Overall ranking 30

Public use	11/20	Tax	13/20
Product ban	15/20	Cross-border sales	10/10
Heat-not-burn	N/A	Advertising	9/10
Snus	10/10	Adjusted total	76

Population:

5,541,274 (2017)

GDP per capita:

US\$ 42,311.0

Current government:

Prime Minister Juha Sipilä
(Centre Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

24 out of 180 (74.0)

Smoking rate	20%	Vaping rate	1%
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Finland sat at the top of the 2017 Nanny State Index as the worst country in the EU for lifestyle freedom and its regulation of vaping illustrates why. E-cigarettes were legalised in May 2016 but are subject to the same regulation as tobacco products, including a full advertising ban. The advertising ban even applies to e-cigarette fluids that do not contain nicotine.

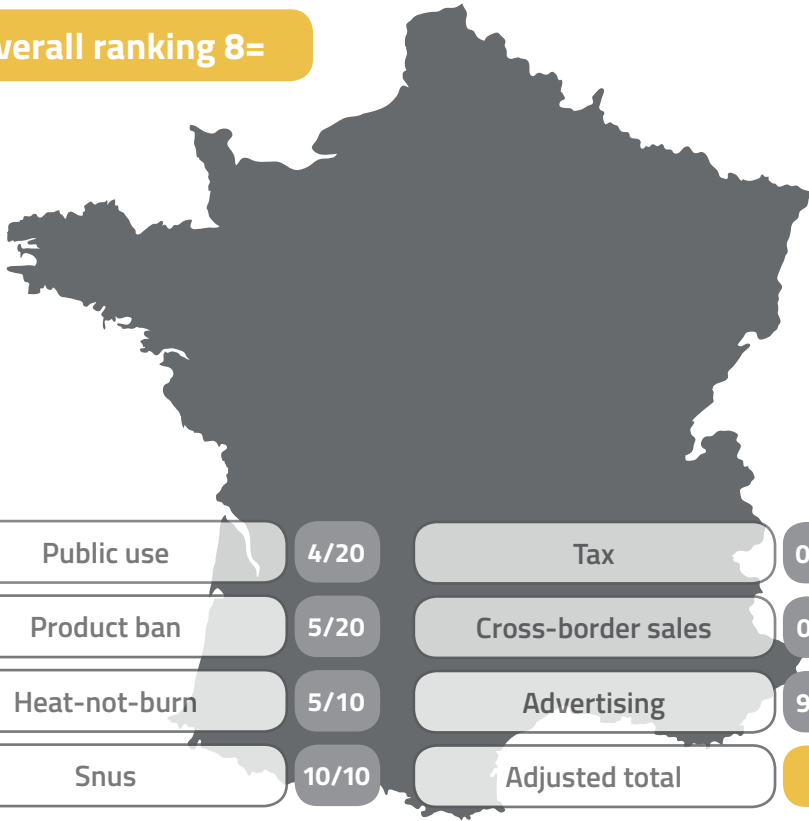
The smoking ban in Finland is somewhat less draconian than the smoke-free laws of Ireland and the UK, but vaping is banned wherever smoking is banned and some outdoor areas are included.

A tax on e-cigarette fluid of €0.30 per ml (€3.00 per standard bottle) was introduced on 1st January 2017 and applies to 'nicotine free liquids intended for vapourisation' as well as nicotine-containing fluids. Internet and cross-border sales of e-cigarettes have been illegal since June 2017.

Finland is one of the few European countries to have major restrictions on flavours. Only tobacco flavoured and unflavoured fluid is allowed to be sold.

France

Overall ranking 8=



Population: 64,938,716 (2017)

GDP per capita: US\$ 36,205.6

Current government: President of France Emmanuel Macron (The Republic on the Move)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 72 out of 180 (63.3)

Smoking rate

36%

Vaping rate

4%

France has a near-total ban on e-cigarette advertising. Advertising is only authorised in vape shops, and vaping devices can only be shown in shop windows if they are not accompanied by posters, signs and marketing messages.

The French government considered a ban on vaping in public places in 2013 but decided against it. Vaping is currently legal in bars and restaurants but since October 2017 vaping has been prohibited in educational institutions, public transport and open plan offices. People who flout the ban can be fined between €35 and €150.

Vaping is allowed in resting areas, catering, corridors, toilets and cloakrooms (dependent on venue rules); open-air/non-covered workspaces; working spaces open to the general public; individual workspaces; hospitals; shopping malls (except if a sign says otherwise). In places where vaping is permitted, legislation obliges the owner to put up a sign telling customers what their vaping policy is.

E-cigarettes are not included in the General Tax Code and there is no excise tax on vape juice. Cross-border sales of tobacco are prohibited but cross-border sales of e-cigarettes are legal.

Heat-not-burn tobacco is taxed at a very high rate in France: €17/kg plus €70/kg minimum excise plus 45% of retail sales price ad valorem.

Germany

Overall ranking 2=



Public use	0/20	Tax	0/20
Product ban	5/20	Cross-border sales	0/10
Heat-not-burn	2/10	Advertising	6/10
Snus	10/10	Adjusted total	23

Population: 80,636,124 (2017)

GDP per capita: US\$ 41,313.3

Current government: Chancellor Angela Merkel
(Christian Democratic Union)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 26 out of 180 (73.8)

Smoking rate	25%	Vaping rate	2%
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Germany takes a liberal approach to the regulation of alcohol, food and tobacco and, despite some resistance from the German 'public health' lobby, it also takes a liberal approach to vaping. E-cigarettes can be sold and advertised within the confines of EU legislation. A ban on outdoor and cinema advertisements for e-cigarettes has been proposed but not passed.

There is currently no excise tax on e-cigarette fluid and vaping is legal nearly everywhere. As several federal courts have ruled, e-cigarettes are neither tobacco products nor medicinal products and therefore do not have to comply with Germany's (limited) smoking bans. Consumers must comply with rules provided by public transport, such as at train stations and on buses and trains.

Heat-not-burn tobacco is taxed at a rate of €15.66/kg plus €22/kg minimum excise plus an ad valorem tax of 13.13%.

Greece

Overall ranking 24



Public use	12/20	Tax	7/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	4/10	Advertising	10/10
Snus	10/10	Adjusted total	58

Population: 10,892,931 (2017)

GDP per capita: US\$ 18,002.2

Current government: Prime Minister Alexis Tsipras (Syriza)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 127 out of 180 (55.0)

Smoking rate

37%

Vaping rate

3%

E-cigarettes are legal in Greece, but vaping is banned wherever smoking is banned. In theory, this includes all workplaces, bars, restaurants, taxis and public transport, as well as private vehicles if there is a passenger under 12 years old in them. It is well known that the smoking ban is poorly enforced.*

A tax on e-cigarettes came into effect in January 2017 (at €0.10 per ml) and covers all fluid regardless of whether it contains nicotine. There is also a tax on 'electronically heated tobacco products' of €156.70 per kilogram.

E-cigarette advertising is banned everywhere except at point of sale, and Greeks cannot buy e-cigarettes or vaping fluids from other countries by mail order.

* <https://www.euractiv.com/section/health-consumers/news/greek-government-under-fire-for-not-implementing-smoking-ban-law/>

Hungary

Overall ranking 29



Public use	13/20	Tax	12/20
Product ban	15/20	Cross-border sales	10/10
Heat-not-burn	3/10	Advertising	10/10
Snus	10/10	Adjusted total	73

Population: 9,787,905 (2017)

GDP per capita: US\$ 12,363.5

Current government: Prime Minister Viktor Orbán
(Fidesz – Hungarian Civic Alliance)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 56 out of 180 (65.8)

Smoking rate

27%

Vaping rate

1%

The authoritarianism of the current Hungarian government is reflected in its approach to lifestyle regulation. It is one of the least vape-friendly countries in Europe.

Until 2016, the sale of e-cigarette fluid was effectively prohibited if it contained nicotine. Like several other EU states, it took the opportunity presented by the Tobacco Products Directive to legalise e-cigarettes as a consumer product, but under harsh regulation.

Tobacco retailing in Hungary is a state monopoly, with licences allegedly handed out to party loyalists.* Since May 2016, these shops have been the only places to legally buy e-cigarettes and vape juice. A tax of 65 Hungarian Forints (€0.21) per ml was introduced on January 1st 2017 and was due to rise to 70 Forints in July 2017. However, the government changed its mind, allowing nicotine-free fluids to be tax-free and capping the tax on nicotine-containing fluid at 55 Forints (€0.18).

E-cigarette advertising is banned and vaping is prohibited wherever smoking is prohibited, unless the vaping device is prescribed by a doctor. Cross-border sales are banned and all e-cigarette flavours apart from 'tobacco flavour' are prohibited.

Heat-not-burn tobacco is taxed at the rate of 10 Forints per stick, equivalent to €32 per 1,000 or €105 per kilogram.

* <http://www.bbc.co.uk/news/world-europe-23146659>

Ireland

Overall ranking 6



Public use	1/20	Tax	0/20
Product ban	5/20	Cross-border sales	0/10
Heat-not-burn	N/A	Advertising	6/10
Snus	10/10	Adjusted total	24

Population: 4,749,153 (2017)

GDP per capita: US\$ 61,133.7

Current government: Prime Minister of Ireland
Leo Varadkar (Fine Gael)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 9 out of 180 (76.7)

Smoking rate

19%

Vaping rate

2%

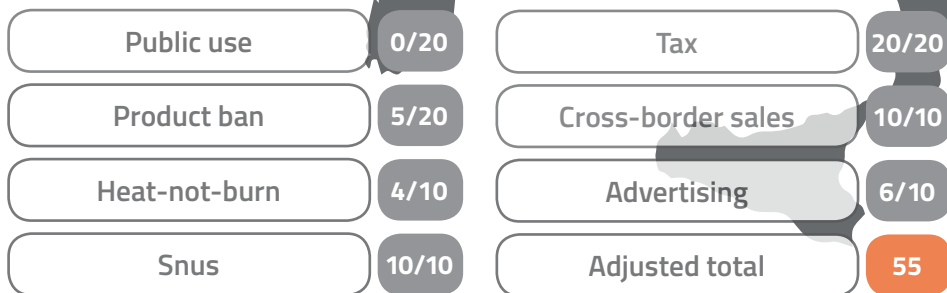
Since becoming the first country to introduce a full smoking ban in 2004, Ireland has prided itself on being tough on smoking and, more recently, drinking. Only vapers have so far escaped the fire of Ireland's nanny statist. As in the UK, e-cigarettes can be bought and used without restriction and there has been no gold-plating of the Tobacco Products Directive. Domestic advertising is permitted within the confines of EU law and cross-border sales remain legal so long as the retailer is registered with the government.

E-liquids are not covered by the Irish smoking ban, although vaping has been banned on all public transport.

The Department of Finance has encouraged the government to introduce a tax on e-cigarette liquids of €0.05 per ml, but there are officially no plans to do so. There is also talk of tightening up marketing regulations for vape products but, again, this has not happened yet.

Italy

Overall ranking 21



Population:

59,797,978 (2017)

GDP per capita:

US\$ 29,957.8

Current government:

Prime Minister Paolo Gentiloni
(Democratic Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

79 out of 180 (62.5)

Smoking rate

24%

Vaping rate

0%

Vaping has been under attack in Italy for years. Italy was the first EU country to tax e-cigarette fluid in 2014, after Italian MPs complained about losing tobacco revenue. Initially set at a punitive rate of €0.38 per ml (€3.80 per standard bottle), the tax has since been raised to €0.393 and is linked to the Weighted Average Price (WAP) of cigarettes. High taxes have been a significant constraint on Italy's vaping scene and there are relatively few vapers in the country as a result.

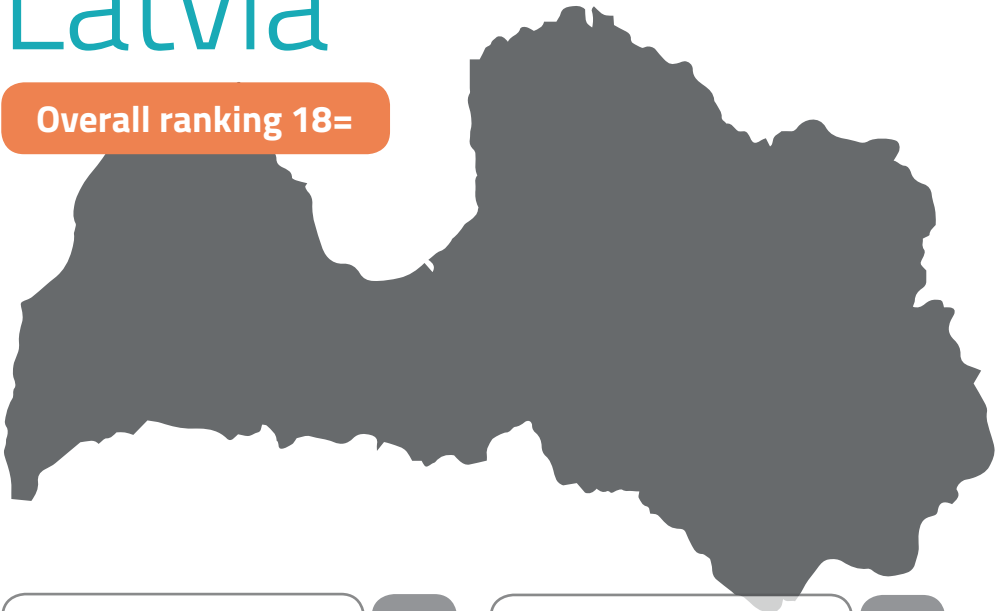
In January 2018, it passed a law to create an effective state monopoly for e-cigarette retailing. Not only are cross-border sales banned but, since the start of 2018, all internet sales are prohibited.

The government's only interest in safer nicotine products is financial. E-cigarettes can be used indoors with few restrictions and the government has not gold-plated the Tobacco Products Directive with regards to advertising.

Italy taxes the heated tobacco product iQOS at a rate of €1.27 per pack (€63.32 per 1000 heat sticks).

Latvia

Overall ranking 18=



Public use	12/20	Tax	4/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	2/10	Advertising	6/10
Snus	10/10	Adjusted total	49

Population:

1,944,565 (2017)

GDP per capita:

US\$ 13,648.5

Current government:

Prime Minister Maris Kucinskis
(Union of Greens and Farmers)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

20 out of 180 (74.8)

Smoking rate

32%

Vaping rate

1%

E-cigarettes are classified as consumer products in Latvia and can be sold to anyone over the age of 18, but their use is prohibited wherever smoking is banned. This covers most indoor venues, with the exception of separate smoking rooms. It also includes within 10 metres of government buildings, public transport stops, apartment stairwells/corridors, balconies, and around children. If someone asks you to stop smoking near them, you must do so by law. The same rule applies to vaping.

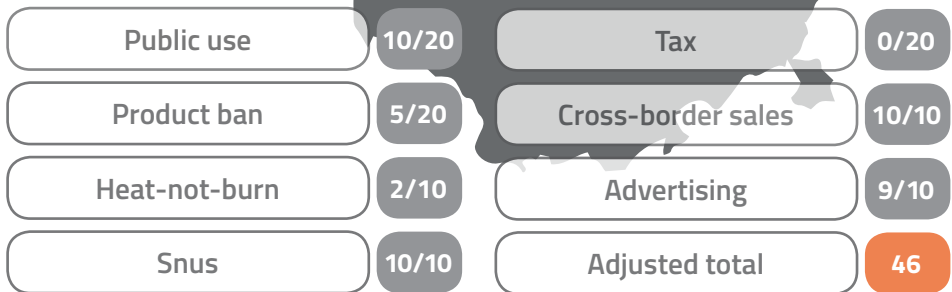
The sale of e-cigarettes is forbidden in government and educational institutions, shops where children's goods are sold, sports arenas and from vending machines.

In 2016, the government introduced a €0.01 per ml tax on e-cigarette fluid, plus €0.005 per mg of nicotine, and banned cross-border sales.

Heated tobacco is taxed at €66 per kilogram.

Lithuania

Overall ranking 15



Population: 2,830,582 (2017)

GDP per capita: US\$ 14,147.0

Current government: Prime Minister Saulius Skvernelis (Lithuanian Farmers and Greens Union)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 16 out of 180 (75.8)

Smoking rate

29%

Vaping rate

1%

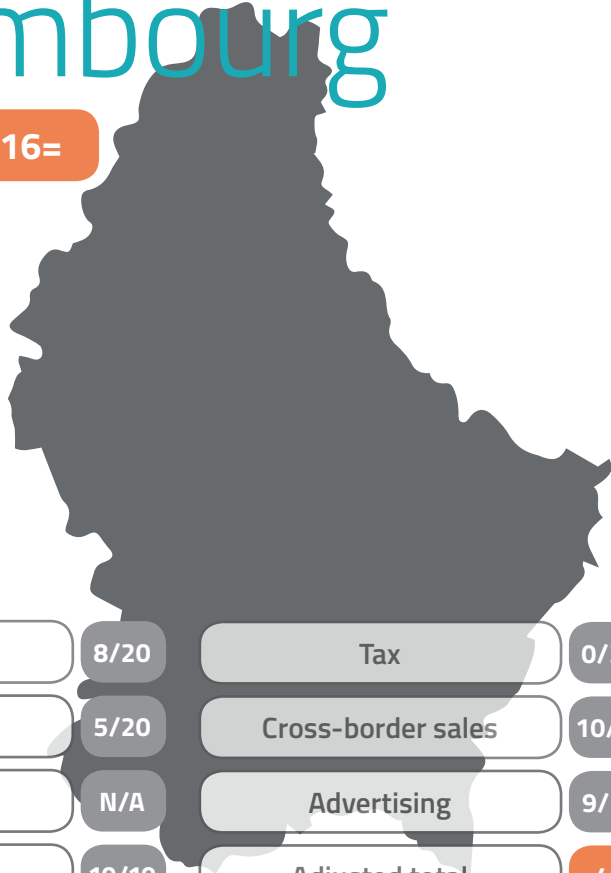
E-cigarettes are subject to the same restrictions as tobacco products in Lithuania under the Tobacco, Tobacco Products and Related Products Control Law of 2016. Vaping is banned in places where smoking is banned, and cross-border sales of e-cigarettes and nicotine fluids are prohibited.

Advertising, promotion and sponsorship of e-cigarettes is banned in nearly all venues and media.

Heat-not-burn tobacco is taxed at a rate of €54.16/kg

Luxembourg

Overall ranking 16=



Public use	8/20	Tax	0/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	N/A	Advertising	9/10
Snus	10/10	Adjusted total	47

Population: 584,103 (2017)

GDP per capita: US\$ 101,450.0

Current government: Prime Minister Xavier Bettel (Democratic Party)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 14 out of 180 (75.9)

Smoking rate

21%

Vaping rate

2%

Luxembourg's health minister, Lydia Mutsch, takes a dim view of vaping, believing it to be a gateway to smoking.* E-cigarette advertising is banned everywhere except at point of sale and cross-border sales are illegal.

As part of its process of implementing the EU's Tobacco Products Directive, the Luxembourg government applied the same rules to vaping indoors and e-cigarette advertising as it applies to tobacco (ie. a partial ban and a near-total ban, respectively). Vaping is therefore permitted in designated smoking rooms and licensed cigar bars. Since the smoking ban was extended in August 2017, vaping is no longer permitted in playgrounds, sports arenas and vehicles carrying children.

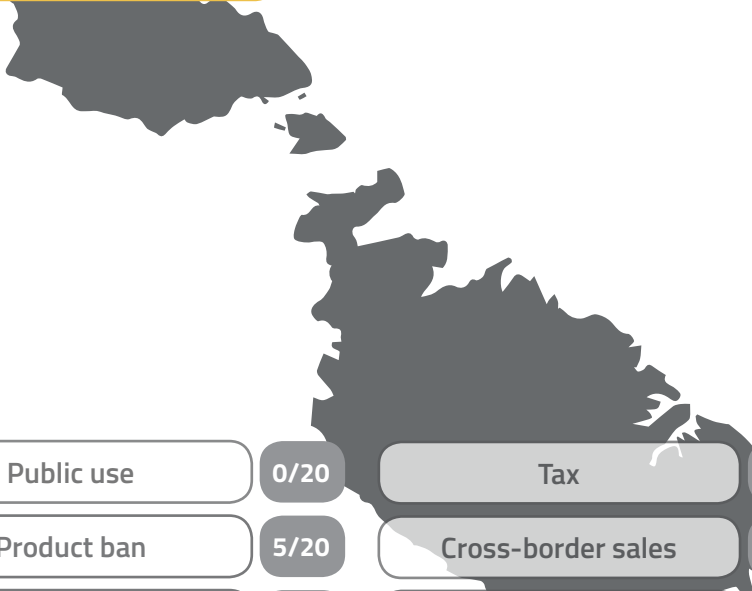
E-cigarette companies have to pay a tax of €5,000 for every new product they bring to market, but there is no excise tax on vape juice.

At the time of writing there were no specific taxes or regulations on heated tobacco as heat-not-burn products had not yet been put on the market.

* <https://blog-vape.com/en/2017/07/11/new-taxes-on-vaping-products-in-luxembourg/>

Malta

Overall ranking 12



Public use	0/20	Tax	0/20
Product ban	5/20	Cross-border sales	0/10
Heat-not-burn	10/10	Advertising	10/10
Snus	10/10	Adjusted total	35

Population: 420,521 (2017)

GDP per capita: US\$ 22,596.2

Current government: Prime Minister Joseph Muscat (Labour Party)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 50 out of 180 (67.7)

Smoking rate

24%

Vaping rate

2%

Malta was one of the first countries to ban smoking indoors (in 2004) and its ban is more draconian than most, although there are exemptions in practice. There has been confusion about whether e-cigarettes, which are regulated as tobacco products on the island, are banned in public places. Some health groups have claimed that they are but, in 2015, a woman who had been fined €233 for vaping in an enclosed place had her conviction overturned on appeal. The court confirmed that the smoking ban only applies to tobacco products, not e-cigarettes.

Malta has a total ban on e-cigarette advertising, but there is no excise tax on vape juice. Cross-border sales are legal.

Malta is one of two EU countries to have a prohibition on heat-not-burn products.

Netherlands

Overall ranking 2=



Public use	0/20	Tax	0/20
Product ban	5/20	Cross-border sales	0/10
Heat-not-burn	2/10	Advertising	6/10
Snus	10/10	Adjusted total	23

Population:

17,032,845 (2017)

GDP per capita:

US\$ 44,299.8

Current government:

Prime Minister Mark Rutte
(People's Party for Freedom and
Democracy)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

15 out of 180 (75.8)

Smoking rate

19%

Vaping rate

2%

In the tolerant Netherlands there has been no gold-plating of the Tobacco Products Directive. E-cigarettes are legal to buy, sell and use. The Dutch smoking ban in public places, which has recently been expanded, specifically applies to tobacco and so does not affect vapers.

A ban on e-cigarette advertising was overturned in 2012 and cross-border sales of vaping products are legal. There is no excise tax on e-cigarette fluid.

Heat-not-burn tobacco is taxed at €99.25/kg.

Norway

Overall ranking 28



Public use	13/20	Tax	20/20
Product ban	20/20	Cross-border sales	0/10
Heat-not-burn	N/A	Advertising	10/10
Snus	0/10	Adjusted total	69

Population: 5,305,383

GDP per capita: US\$ 63810.8

Current government: Prime Minister Erna Solberg
(Conservative Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 25 out of 180 (74.3)

Smoking rate	11%	Vaping rate	0%
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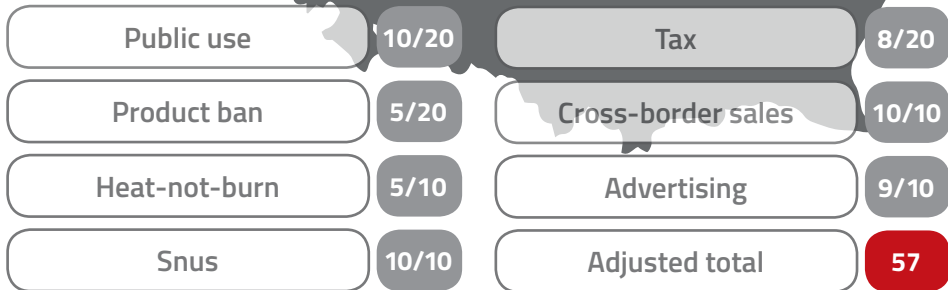
Norway is not a member of the EU and has not banned snus. Like Sweden, it has seen a mass switchover from cigarettes to snus in recent years. Since 2009, the smoking rate has halved, from 21 per cent to 11 per cent while snus use has doubled, from six per cent to 12 per cent. Cigarette smoking is increasingly the preserve of the older generation. Among people under the age of 25, the smoking rate is just three per cent while snus use is at 19 per cent.

The successful transition from cigarettes to snus has made vaping less of a priority in Norway. The sale of nicotine fluid for e-cigarettes is banned and until recently it was illegal to bring vape juice into the country for personal use without a doctor's note. These laws were introduced because the government believed that vaping could encourage smoking, but in December 2016 it acknowledged that this was misguided and announced that vaping products would be legalised. The ban on cross-border sales has been lifted and the domestic e-cigarette market is in the process of being regulated, although this has not happened at the time of writing.

Unfortunately, under the 2017 Smoking Act, vaping is banned in all places covered by Norway's extensive smoking ban and all e-cigarette advertising is prohibited under the Tobacco Injury Act.

Poland

Overall ranking 22=



Population: 38,563,573 (2017)

GDP per capita: US\$ 44,299.8

Current government: Prime Minister Mateusz Morawiecki (Law and Justice)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 45 out of 180 (68.3)

Smoking rate

30%

Vaping rate

1%

Until recently, e-cigarettes could be used and advertised anywhere in Poland, but in September 2016, e-cigarette advertising, cross-border sales and vaping indoors were all banned. E-cigarette use is now prohibited wherever smoking is prohibited, including at bus stops. Vapers who break the laws are liable to a fine of up to 500 złoty (€118). There is currently no excise tax on vape fluid, but the parliament has passed a law to introduce one starting from 2019.

According to Mirosław Dworniczak, a scientist at Adam Mickiewicz University, the former Health Minister, Dr. Konstanty Radziwiłł, 'is well known for his hatred of e-cigarettes and used to say frequently that e-cigarettes are as bad as conventional ones – possibly even worse.*' Importers and producers who want to introduce new products (e-cigarettes or liquids) are obliged to register them with the Inspector of Chemical Substances (for a fee). In December 2017, the government passed a tax of 0.5 złoty (€0.12) per ml of e-cigarette fluid and a hefty tax on heated tobacco of 141.29 złoty (€34) per kilogram plus a 31.41 per cent ad valorem tax.

Portugal

Overall ranking 26



Public use	6/20	Tax	19/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	4/10	Advertising	7/10
Snus	10/10	Adjusted total	61

Population:

10,264,797 (2017)

GDP per capita:

US\$ 19,222.2

Current government:

Prime Minister António Costa
(Socialist Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

77 out of 180 (62.6)

Smoking rate

26%

Vaping rate

1%

Since January 2017, vaping has been banned wherever smoking is banned in Portugal. By EU standards, the smoking ban is mild but it is expected to get tougher by 2020.

Portugal was among the first countries to tax e-cigarette fluid in 2014, at the punitive rate of €0.60 per millilitre, adding €6 to a 10ml bottle of fluid. In January 2017, this was halved to €0.30/ml, which is still one of the highest in Europe. Heat-not-burn tobacco is also heavily taxed at €80 per kilogram plus a 16% ad valorem tax on the retail sales price, with a minimum excise tax of €169 per kilogram.

Some e-cigarette advertising is permitted and there are no restrictions of flavours. Cross-border sales are illegal.

Romania

Overall ranking 16=



Public use	1/20	Tax	9/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	3/10	Advertising	9/10
Snus	10/10	Adjusted total	47

Population: 19,237,513 (2017)

GDP per capita: US\$ 8,972.9

Current government: Prime Minister Viorica Dăncilă
(Social Democratic Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 39 out of 180 (69.7)

Smoking rate

28%

Vaping rate

0%

Smoking was banned in enclosed places in Romania in March 2016. Although vaping is not covered by the ban, e-cigarettes cannot be used on public transport. E-cigarettes are legal to buy, but fluid is taxed at a rate of €0.11 per ml of fluid (€1.10 per standard bottle). This is a high rate when adjusted for the country's relatively low GDP and it is set to increase in line with inflation in the future.

E-cigarettes are regulated as tobacco products in Romania with an almost total ban on advertising. Cross-border sales of e-cigarette fluid are banned.

Heat-not-burn tobacco is taxed at 383.78 RON/kg, equating to €87 per kilogram.

Slovakia

Overall ranking 8=



Public use	6/20	Tax	0/20
Product ban	5/20	Cross-border sales	0/10
Heat-not-burn	2/10	Advertising	10/10
Snus	10/10	Adjusted total	33

Population:

5,432,157 (2017)

GDP per capita:

US\$ 16,088.3

Current government:

Prime Minister Peter Pellegrini
(Direction - Social Democracy)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

57 out of 180 (65.7)

Smoking rate	26%	Vaping rate	0%
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E-cigarette advertising and sponsorship are completely prohibited in Slovakia. Vaping is banned wherever smoking is banned. Fortunately, Slovakia's smoking ban is less extreme than that of most EU countries and cross border sales are legal for registered vendors.

In May 2017, Slovakia introduced a specific tax of €73.90 per kg on 'smokeless tobacco' to cover new heat-not-burn products. There is currently no excise tax on e-cigarette fluid.

Slovenia

Overall ranking 20



Public use	7/20	Tax	10/20
Product ban	5/20	Cross-border sales	10/10
Heat-not-burn	2/10	Advertising	9/10
Snus	10/10	Adjusted total	53

Population:

2,071,252 (2017)

GDP per capita:

US\$ 20,726.5

Current government:

Miro Cerar resigned in March 2018, but there seems to be no record of who has replaced him.

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

97 out of 180 (59.2)

Smoking rate

28%

Vaping rate

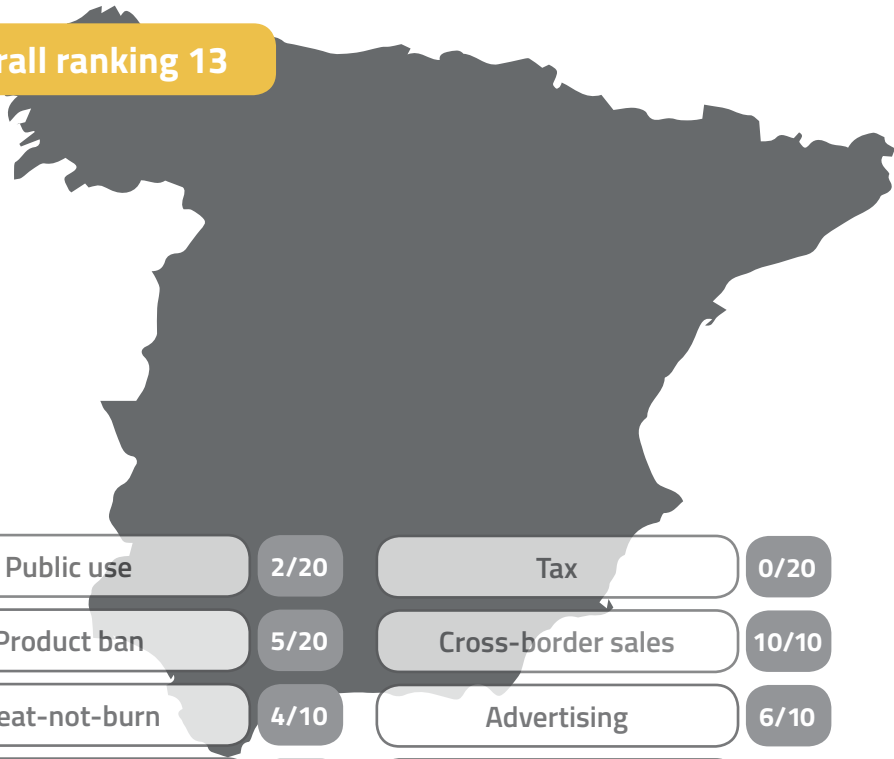
1%

Since March 2017, e-cigarettes have been regulated as tobacco products under the new Restriction on the Use of Tobacco and Related Products Act. This bans the cross-border and internet sale of vaping products and bans e-cigarette use wherever smoking is banned. E-cigarette advertising is also subject to a tobacco-style ban. Heat-not-burn tobacco is taxed at €88 per kilogram.

An €0.18 per ml tax on e-cigarette fluid was introduced in April 2016 with the explicit aim of discouraging smokers from switching to them. This adds €1.80 to a standard bottle of vape juice. Fluids which do not contain nicotine are exempt.

Spain

Overall ranking 13



Population: 46,070,146 (2017)

GDP per capita: US\$ 25,831.6

Current government: Prime Minister Mariano Rajoy (People's Party)

Heritage Foundation, 2017 Index of Economic Freedom (Ranking): 69 out of 180 (63.6)



More than most countries, Spain has seen a campaign of scaremongering about e-cigarettes that has held tobacco harm reduction back. The e-cigarette market crashed in 2014 after false reports about the health risks of vaping made headlines. The Spanish National Vaping Association reported a 70 per cent decline in e-cigarette sales.

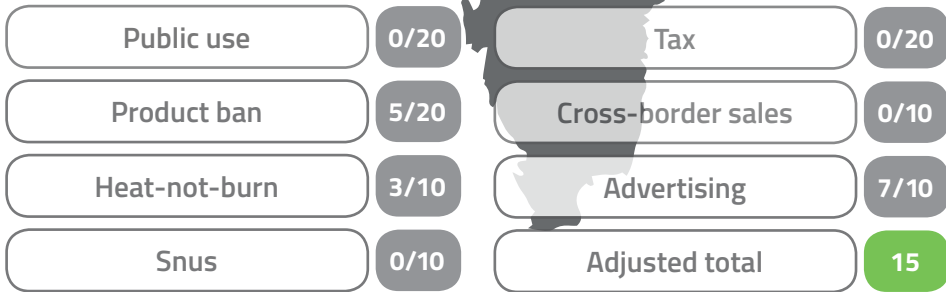
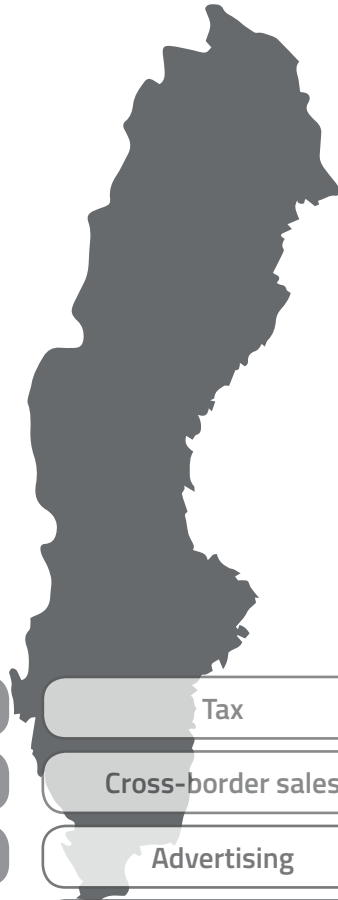
The market has rallied and stabilised in the years since and the regulatory regime in Spain is not too bad. Vaping is banned in some state-owned premises and on public transport, but is legal in bars, restaurants and private workplaces.

Cross-border sales are banned but there is no excise tax on vape fluid.

Heat-not-burn tobacco is taxed at the relatively high rate of €22/kg plus an 28.4% ad valorem tax.

Sweden

Overall ranking 1



Population: 9,920,624 (2017)

GDP per capita: US\$ 50,579.7

Current government: Prime Minister Stefan Löfvén
(Sweden's Social Democratic Workers' Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking): 19 out of 180 (74.9)

Smoking rate

7%

Vaping rate

0%

Sweden is the only country in the EU where snus is legal to buy. It negotiated an opt-out from the EU ban before joining the union in 1995 and now has the lowest smoking rate in Europe (seven per cent). Snus cannot be exported commercially from Sweden to other EU states, but visitors are free to buy it and bring it home for their personal use.

Sweden belatedly transposed the Tobacco Products Directive into law with the Act on Electronic Cigarettes and Refill Containers (2017/425), effective from 1 July 2017. This ended a period of accidental laissez-faire that began in February 2016 when the Supreme Administrative Court ruled that e-cigarettes were not medical products and therefore could not be regulated - and effectively banned - by the Medical Product Agency.

The new law includes very little gold-plating. It bans all e-cigarette sponsorship, but permits cross-border sales and indoor vaping. The tax-free allowance for anybody entering the country is 20ml of fluid and 200g of heat-not-burn tobacco.

However, in January 2018, a tax on e-cigarette fluid of two krona (€0.2) per ml was announced and could take effect from July 2018. An indoor vaping ban has also been seriously discussed, but has not been passed at the time of writing. Sweden is currently top of our league table but it will quickly slide down if it goes ahead with these policies.

Heat not burn products are not yet on the market, but are expected to be taxed as 'smoking tobacco' with a tax rate of 1,884 SEK (€190) per kilogram.

Switzerland

Overall ranking 27



Public use	1/20	Tax	20/20
Product ban	20/20	Cross-border sales	0/10
Heat-not-burn	1/10	Advertising	10/10
Snus	10/10	Adjusted total	62

Population:

8,476,005

GDP per capita:

US\$ 56625.1

Current government:

President Alain Berset
(Social Democratic Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

4 out of 180 (81.7)

Smoking rate

25%

Vaping rate

1%

As a result of a Federal Council ban on nicotine (which does not apply to tobacco products), only e-cigarette hardware and nicotine-free fluids can be sold in Switzerland. Once Norway legalises the e-cigarette market, Switzerland will be the only country in Europe to maintain a ban on nicotine-containing vape products. Up to 150ml of nicotine vape juice can be imported for personal use every 60 days.

The Federal Council has also banned e-cigarette advertising. Vaping has been banned on public transport since December 2013, but it is allowed in bars, restaurants and private workplaces.

Switzerland's Federal Office of Public Health has been charged with drafting legislation to regulate e-cigarettes as tobacco products. This would legalise nicotine fluids but is likely to be accompanied by severe restrictions.

Switzerland is not an EU member and is therefore not obliged to ban the sale of snus. It has nevertheless decided to do so. The sale of oral tobacco 'in the form of powder or fine particles' is illegal. Some forms of chewing tobacco are legal, however. As in other European countries, snus can be imported for personal use. Swiss law sets a limit of 1.2 kg every 60 days.

There is no specific sales tax on heat-not-burn tobacco but there is an ad valorem tax of 12%.

United Kingdom



Overall ranking 2=



Population:

65,511,098 (2017)

GDP per capita:

US\$ 43,876.0

Current government:

Prime Minister Theresa May
(Conservative Party)

Heritage Foundation,
2017 Index of Economic
Freedom (Ranking):

12 out of 180 (76.4)

Smoking rate

17%

Vaping rate

5%

The UK has an ever-growing pile of legislation to control what people eat, drink and smoke, but it is unusually liberal in its treatment of e-cigarettes. Public Health England and the Royal College of Physicians are openly supportive of vaping and make efforts to debunk the misinformation that deters so many smokers from switching to e-cigarettes. It is no coincidence that the UK, which has the highest vaping rate in the EU, has seen a sharp drop in smoking prevalence since 2012.

Although the Welsh Assembly has proposed banning vaping in many indoor public places, no legislation forbids e-cigarette use in the UK. Domestic e-cigarette advertising is legal and there has been no gold-plating of the Tobacco Products Directive. Cross-border sales are legal, there is no tax on e-cigarette fluid and there is no ban on domestic e-cigarette advertising.

Heat-not-burn is taxed at a rate of £114.06/kg, equating to €128.

References

Bates, C. (2013) The road to hell is paved with good intentions ... and amendment 1250. *The Counterfactual* (blog): <https://www.clivebates.com/the-road-to-hell-is-paved-with-good-intentions-and-poor-amendments/>

Bauld, L., McKintosh, A., Eastwood, B., Ford, A., Moore, G., Dockrell, M., Arnott, D., Cheeseman, H. and McNeill, A. (2017) Young People's Use of E-Cigarettes across the United Kingdom: Findings from Five Surveys 2015–2017. *International Journal of Environmental Research and Public Health* 14: 973

Eurobarometer (2017) Special Barometer 458: Attitudes of Europeans towards tobacco and electronic cigarettes. European Commission

Royal College of Physicians (2016) Nicotine without the smoke: Tobacco Harm Reduction. April: https://www.rcplondon.ac.uk/file/3563/download?token=MuoK_ZR0

Snowdon, C. (2017) Vaping Solutions. London: Institute of Economic Affairs

