

IEVA RESPONSE TO CONSULTATION

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EXCISE DIRECTIVE REVISION INCEPTION IMPACT ASSESSMENT

Revising the current Tobacco Excise Directive presents an opportunity to apply the right incentives for current smokers to improve their health; ideally by stopping the use of nicotine altogether, but also by switching to reduced risk alternatives where this is impossible or unlikely for the individual smoker.

The inception impact assessment rightly cites Europe's Beating Cancer Plan as a driver of the current policy. Smoking is the leading cause of cancer in Europe and mass smoking cessation is the most effective policy tool to curb the disease. Some smokers can quit cold turkey; others using nicotine replacement or other medications; but 95% - a significant majority - struggle ([Science Media Center, 2020](#)).

Vaping has been found to be significantly less carcinogenic than smoking ([Dusautoir et al, 2020](#)) and an acceptable replacement for cigarettes for many smokers. It follows that any policy designed to reduce cancer rates through prevention must focus on the needs of this particularly at-risk section of the population.

The harm reduction potential of vaping, in light of this scientific advice, can be enhanced or diminished by fiscal incentives across the nicotine category; we already see this with the decision of many countries to reduce Value-Added Tax on nicotine replacement therapies. The critical pathway to enhancing the benefits of tobacco harm reduction will thus be to ensure that any excise levied on any nicotine products is reflective of the harm that it causes to individual and public health. Any system should also ensure that commercial actors in the space are able to operate on a stable and sustainable footing.

ABOUT IEVA

The Independent European Vape Alliance (IEVA) represents vaping companies in Europe that are independent of tobacco companies. We unite manufacturers, wholesalers and trade bodies operating in Europe, with the objective of providing a credible voice for the sector.

According to the [European Commission](#), a quarter of European still smoke, and half of them will die from a smoking related disease. This is a public health challenge we can overcome. Alongside traditional tobacco control measures, encouraging smokers to use less harmful nicotine delivery mechanisms, like electronic cigarettes, has the potential to improve tens of millions of lives.

OBJECTIVES AND POLICY OPTIONS

We agree in part with the conclusions of the evaluation as they relate to the problem definition and make the following directional suggestions for further reflection as the impact assessment process moves forward:

1. Alignment with Europe's Beating Cancer Plan

The evidence to date suggests that measures to protect human health can be complemented by encouraging those smokers who cannot or will not quit to use reduced risk alternatives such as vaping products. [McNeil et al \(2018\)](#) on behalf of PHE found that e-cigarette use is likely to be around 95% safer than smoking cigarettes, and so vaping instead of smoking is likely to have a positive effect on public health. In view of the framing of this proposal by the Beating Cancer Plan, the latest evidence ([Stephens et al, 2018](#)) suggests that vaping product users are typically exposed to 0.4% of the lifetime cancer risk of smokers.

Two randomized controlled trials have been published comparing the efficacy of e-cigarette use and nicotine replacement therapies ([Hajek et al, 2019](#)). Both studies showed e-cigarettes to deliver significantly higher cessation rates than NRT, with only the latter approved for a quit indication.

Taken together, these two findings must weigh heavily on the scope and content of any impact assessment if an overall proposal is to fully take account of the beating cancer plan. Evidence from the US ([Pesko et al, 2019](#)) has demonstrated that increased taxation for electronic cigarettes leads to higher levels of smoking. While the vaping sector is keen to play its part in the post-COVID recovery, it is imperative that the little revenue raised by minima tax rates on the category will have significant adverse public health consequences for many smokers.

2. Common definitions for a taxable base

While as an association we believe vaping product taxes are counterproductive for public health, the reality is that many Member States have chosen to levy excise taxes in their territories,

as is their exclusive right. Given this, it seems logical for the evaluation to consider whether harmonised customs and excise language is appropriate at the EU level.

We would hope that, in considering such harmonisation, the Commission would seek to minimise the administrative burdens on both businesses and themselves. To this end, we hope that the review will consider best practices in this area that already exist in Member States. In this respect, it is noteworthy that the liquid used in e-cigarettes and not the electronics themselves serves as the taxable base in those Member States that choose to levy excise. On this basis, we believe that the assessment should focus on assessing the impact of specific taxes levied on e-liquids, rather than *ad valorem* instruments that are not used by the Member States. In so doing, the Commission will have a far richer source of relevant data.

We also hope that the Commission will consider efficiency savings that can be made to cross-border operators through the streamlining of customs and excise paperwork; and take into account the position of operators in those Member States that choose not to levy excise.

3. The risk of fraud

IEVA Members fully support strong co-ordination and effective policy measures to tackle fraudulent activity and counterfeiting. While this problem has historically been confined to combustible tobacco products, there are worrying signs that the phenomena is spreading to e-cigarettes.

Many of our Members have first hand experience of these issues and we offer their expertise and insight to the Commission during the process of evaluation and impact assessment foreseen. We hope that, during the impact assessment period, we will be able to facilitate both data collection and structured interviews with our members, who will be able to provide insights that we hope will frame action in this area.

It is also worth noting the potential risk that unregulated products - which might benefit from excessive taxation - are associated with undesirable health outcomes. In the US, the contamination of unregulated cannabis products for vaping led to a number of severe (and in some cases fatal) adverse events ([FDA, 2020](#)); and in Europe, the smuggling of unregulated nicotine products has already been noted in Romania ([Digi24, 2018](#)). These adverse events have never been observed in the regulated products found in the European market, as the European Commission has acknowledged.

ASSESSMENT OF EXPECTED IMPACTS

1. Economic impacts

We broadly agree with the description of the issues that the Commission proposes to review as part of the impact assessment.

We hope that the review will take a holistic view of what the inception document calls “the induced effects on possible product substitution” rather than simply reviewing the impact on Member State revenues from tobacco and related product excise. This includes, *inter alia*:

- Costs associated with treated smoking related disease.
- The costs to families of caring for relatives with smoking related diseases.
- Costs to employers for time missed at work due to smoking.

A useful model on how this analysis might be undertaken can be found in [Nutt \(2014\)](#). This study concludes that the harms from cigarette smoking are several orders of magnitude higher than those of e-cigarette use when accounting for a multitude of factors.

With respect to competition issues, we would ask that the Commission consider that the four major tobacco companies (Phillip Morris International, Japan Tobacco International, Imperial Tobacco and British American Tobacco) already have systems and processes in place to manage the holding and movement of excisable goods in the EU.

Smaller players either do not have this infrastructure, or have only recently built it. As such, consideration should be given to the competitive advantage this confers on the major tobacco companies, all of whom compete in the electronic cigarette market.

Moreover, the majority of vaping companies are SMEs that provide local jobs and growth across the EU, often in areas that have suffered from a decline in manufacturing revenues. As part of this assessment and with the cooperation of the Commission and its agents, we would be happy to undertake an assessment of the impact particular measures might have on jobs in the European Union at a time when unemployment is expected to rise significantly.

2. Social and environmental impacts

We agree with the Commission’s framing of the issues relation to social and environmental impacts. With respect to social issues, it is important to ensure that health inequalities are fully accounted for.

With respect to the environmental impact, we believe that policy would be best advanced through a comparison of the environmental harms from smoking with those from e-cigarette use. There exists some literature on this topic, indicating that e-cigarettes are responsible for significantly less environmental harm than smoking ([Hendlin, 2018](#)). Such a hypothesis is logical given differential usage patterns for the two product categories; and many of the component parts of e-cigarettes are regulated under WEEE and RoHS.

However, further investigation is needed in order to fully assess this aspect of the category; and we would be happy to assist in any way in which we are able. The analysis should bear in mind that the vast majority of e-cigarette users are former smokers, and take account of the environmental impact of their previous behaviours compared to their current behaviours. While the inception document rightly points out that EU harmonisation for cigarette litter did not lead to considerable regulatory costs or burdens for industry, that is unlikely to be the case for independent e-cigarette manufacturers.

EVIDENCE BASE, DATA COLLECTION AND BETTER REGULATION INSTRUMENTS

We are grateful for sight of the Commission's plans for the impact assessment and legislative revision moving forward, and are in broad agreement with the process set out. We look forward to a close co-operation with those undertaking the study. Our members offer the following expertise which can be of use during the process:

- An understanding of the implementation of excise taxes in relevant Member States from the perspective of affected business operators.
- Suggestions as to how EU action can simplify administrative burdens associated with excise where they have relevant experience.
- An understanding of the impact of unduly burdensome on local economies and employment across less developed regions.
- Feedback from smokers and vapers as to how excise might affect their smoking behaviours.
- Information and public health data on how the Directive can be aligned with the objectives of the Beating Cancer Plan.

We look forward to engaging with your team on these issues or others where you feel we might have relevant knowledge or expertise.