

IEVA Contribution to Danish TRIS notifications

In the context of the implementation of a national action plan against youth uptake of smoking, the Danish Parliament is currently examining L61 proposing a flavour ban for electronic cigarettes. Further restrictive measures on standardisation, labelling, packaging and display of e-cigarette and refill containers have been notified to the European Commission on 30th September ([2020/604/DK](#), [2020/605/DK](#), [2020/609/DK](#)).

The Independent European Vape Alliance (IEVA) is a trade body that brings together Europe's small and medium sized producers and retailers of vaping products. The vast majority of vaping companies are run by self-funded entrepreneurs who saw a problem in society, cigarette smoking; and created vaping products as part of the solution. We are **independent and not influenced by tobacco companies**.

IEVA fully supports the harm reduction objective of Denmark. However, we would like to stress the **possible negative and unintended consequences of the proposed measures that may - ultimately - run counter to the public health objectives**. We are concerned that the foreseen measures and proposed restrictions on standardisation, labelling, packaging, display of e-cigarette and refill containers:

- (1) Are not substantiated by evidence as the Danish government has failed to demonstrate "a specific Danish situation";
- (2) Are not proportionate to the public health objectives;
- (3) Are unlikely to be effective and could drive former smokers into resuming smoking;
- (4) Will distort the internal market and could lead to an increase in the black market due to the lack of control on cross border sales

This paper points to public health, legal and economic arguments.

We remain available anytime for any further questions or comments you may have:

- ar@eurovape.eu
- sp@eurovape.eu
- +32 485 95 46 46

I- Danish data fails to confirm a “specific situation”

Recent analysis, statistics and reports published by [Danish authorities](#) provide an overview of **the Danish situation**:

- **97%** of all users of e-cigarettes come from smoking¹;
- The proportion of the 15-29 year olds using e-cigarettes is as low as **2%**², whereas the smoking prevalence among this age group (which mixes people of legal smoking age with those who are not) is 13%.
- The number of 15-29 year olds using e-cigarettes has decreased over the past 5 years³;
- A high proportion of young people who have tried e-cigarettes does not end up in daily or occasional use⁴;
- Flavour other than tobacco taste is a significant factor of success for smokers in their attempts to quit smoking⁵.

Against this background, we conclude that there is no evidence pointing to a specific situation in Denmark. Quite the opposite. The above-mentioned statistics confirm that:

- Vaping products are designed for smokers trying to stop smoking. They are key tool to support smokers' efforts to quit combustible tobacco smoking providing a significant harm reduction potential;
- Vaping (incl. Flavoured e-liquids) is not a gateway to youth uptake of smoking. No evidence substantiates the association between vaping flavours and subsequent smoking initiation.
- Non-tobacco flavours help disassociate former or transitioning smokers from the taste of tobacco and is a key driver of smoking cessation. According to a [study](#) by Nicotine & Tobacco Research from the Oxford Academy *"Past-30-day adult e-cigarette users had the greatest interest in e-cigarettes, and their interest was most affected by flavour. Adults who never tried e-cigarettes had the lowest interest, yet still higher than non-smoking teens' interest. The e-cigarette flavours tested appealed more to adult smokers than to non-smoking teens"*.
- A [recent study](#) carried out by the Yale School of Public health based on more than 17,000 respondents aged from 12 to 54 year olds 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"*.

¹ Report published by the Danish Health Agency October 2019 "[E-cigarette og helbred](#)" and "[Danish smoking habits in 2018](#)" also published by the Danish Health Agency in October 2019.

² [Report](#) published by the Danish Health Authority May 2020 - page 18

³ [Report](#) published by National Institute of Public Health, page 20 and [Report](#) published by the National Institute of Public Health, page 19

⁴ [Report](#) published by the National Institute of Public Health in 2019, page 8

⁵ "[The Danes' smoking habits in 2019](#)", page 20 and WHO "[Electronic nicotine and non-nicotine delivery systems: a brief \(2020\)](#)"

II- Standardisation of e-cigarettes and refill containers (notifications 2020/604/DK & 2020/605/DK)

IEVA believes that the introduction of detailed requirements for the standardisation of e-cigarettes and refill containers and labelling and packaging requirements for tobacco substitutes do not serve adequately the health policy objectives presented by the Danish authorities.

(1) PUBLIC HEALTH

- IEVA deeply regrets that the **impact assessment of the draft order does not make a reference to relevant data for Denmark** and rather focus on handpicked studies about the use of e-cigarette in **foreign markets** with very different conditions. In addition, the Danish authorities have not provided any substantial evidence to support the claim that e-cigarettes serve as a gateway to smoking.
- We restate that there is no specific situation to be addressed in this country regarding youth and vaping: the proportion of the 15-29 year olds using e-cigarettes is as low as **2%**⁶ and the use of e-cigarettes by this age category has decreased over the past 5 years⁷.
- Scientific evidence shows that e-cigarette help smokers to quit smoking, and **vaping is 95% safer than traditional cigarettes**⁸.
- In this regard, applying a plain packaging regulation without addressing the differences between e-cigarettes and tobacco products would be a missed opportunity for harm reduction and smoking cessation.
- If **the differences are not seen by consumers when buying vaping products, they may believe the health risks are equal to smoking**, leading to a reduced rate of switching, or worse, reverting consumers back to traditional, and vastly more harmful, cigarettes.
- Overall, the lack of differentiated treatment between e-cigarettes and combustible tobacco products may run counter to the overall objective of facilitating smoking cessation, and therefore protecting public health.

(2) CONSUMER INFORMATION

- The manufacturing, production and distribution of vaping products is strictly regulated by the Tobacco Product Directive (Article 20). IEVA supports this approach as it allows for safe and quality products to be made available to smokers keen to quit on the EU market.

⁶ [Report](#) published by the Danish Health Authority May 2020 - page 18

⁷ [Report](#) published by National Institute of Public Health, page 20 and [Report](#) published by the National Institute of Public Health, page 19

⁸ Public Health England, "E-cigarettes: an evidence update", 2015, [URL](#) - Additionally, a report, published by the Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT), in September 2020, concluded that most people who vape are either smokers trying to quit or ex-smokers and that smokers who switch completely to vaping will get a substantial health benefit. There is a considerable reduction in the risk of lung cancer due to lower exposure to harmful compounds.

- While **commercial communications about vaping products are highly restricted and most forms of advertising are prohibited for vaping products** (see Recitals 43 & 48 and Article 20(5) of TPD), consumers need to be able to differentiate between vaping products and combustible cigarettes. As a result, it is critical that information on e-cigarettes and refill containers appear on packaging for the purpose of consumer information.
- The restrictions that Denmark proposes to introduce will put vaping in a straitjacket and prevent any kind of differentiation between vaping and smoking.

(3) **HEIGHTENED COUNTERFEITING RISKS**

- Neutral or plain packing can have other severe unintended consequences for consumers, such as **an increase in counterfeit products**. Plain and neutral packaging fails to show the consumer protection aspect of trademarks. Brands are an important indicator of quality. If branding is undermined, consumers may opt for counterfeit products, which do not comply with safety requirements, significantly contributing to public health harm. The **real beneficiaries of the plain packaging policy could end up being counterfeiters**. Plain packs are easier to copy, thus increasing trade of illicit smoking products, while **their first victims are low-income consumers**.
- **The “black market” threat is real.** While vaping is not smoking, it is worth mentioning that in 2018 in France, one year after the introduction of plain packaging, [one third](#) of cigarettes were sold on the black market.

(4) **LACK OF PROPORTIONALITY**

We fear that the restrictions on vaping products notified by Denmark may not comply with EU law:

- The Tobacco Product Directive (TPD - 2014/40/EU) makes a clear distinction between e-cigarette on one hand and combustion tobacco products on the other hand by dedicating a specific title to electronic cigarettes (Article 20).
- While the impact assessment by Denmark of the draft order regarding standardized packages for e-cigarettes concludes under the “International perspectives” (p. 5) that the requirement of standardised design of electronic cigarettes and refill containers is necessary, proportionate and reasonable and in accordance with Article 24(2) of the TPD, we strongly believe that this is **not** the case and that the conditions of Article 24 (3) are not met (see “lack of specific Danish situation” section).
- **Article 24(2) only applies to “tobacco products”** (“in relation to the standardisation of the packaging of tobacco products”) and it remains to be seen whether this provision can be a relevant legal basis to introduce standardized packaging for e-cigarettes. In the event that Article 24(2) were to be considered relevant, the

notified measures **appear to be neither justified on grounds of public health nor proportionate.**

- As a result, requiring standardized packages for e-cigarettes appear to go beyond the spirit and text of TPD in the absence of a clearly established “specific situation” in Denmark.
- From experience, a most effective way of preventing youth consumption is by enforcing legal age controls and advertising rules.

Against this background, IEVA urged the European Commission to request and obtain information and evidence from Denmark substantiating that the proposed measures are necessary, proportionate and reasonable, specifically:

1. The extent of the use of e-cigarettes among minors in Denmark;
2. The Danish assessment leading to its conclusion that there is no option for less intrusive regulation to achieve the same objectives (page 5 of the impact assessment to the draft order regarding standardized packages).
3. The ratio of smokers and non-smokers from where users of e-cigarettes are recruited.

III- Advertising, visible location and display of electronic cigarettes and refill containers (notification 2020/609/DK)

IEVA is of the view that the restrictive measures on advertising, visible location and display of e-cigarettes and refill containers do not serve adequately the health policy objectives targeted by the Danish authorities.

(1) Firstly, current advertising rules are already very clear and strict regarding e-cigarettes and refill containers and do not need to be strengthened further.

- Recital 43 of TPD requires Member States to adopt “a restrictive approach to advertising electronic cigarettes and refill containers”. Recital 48 adds that “the presentation and advertising of those products should not lead to the promotion of tobacco consumption or give rise to confusion with tobacco products”.
- Article 20(5) of TPD is exclusively dedicated to commercial communication rules for e-cigarettes. It clearly prohibits related communication on information society services, on audio-visual platforms, in the press or other printed publications, on the radio, and in any public event or activity.
- **We believe that the above-mentioned provisions of the draft order could open the door to discrimination against online outlets and could potentially favour domestic suppliers.** The impact assessment of the draft order bill indeed (page 3) states that e-cigarettes shall be concealed at all points of sales (with the exception of physical shops which have specialised in the sale of electronic cigarettes and refill containers) until consumers specifically ask for them.
- Customers will not be in a position to make an informed choice when shopping online. They will only be allowed access to a neutral list that indicates the product name, quantity and price and as such the product is only visible to customers after purchase and upon delivery at home or from a pick-up box. In accordance with §5, the presentation of products for sale online is restricted to the neutral list and

illustration or pictures of the products is not allowed at any time during the purchase process.

- Even in the situation where it could be considered that vapers know which products and brands they prefer, and therefore would have no need for visuals or product information, **the ban on visible display goes against the fair competition principle and gives ground to market distortion**. It is particularly true (and penalising) for new innovative vaping products entering the market.

(2) Second, the restrictive measures on display of e-cigarettes and refill containers runs counter to consumer protection.

- IEVA stresses that **responsible and adequate communication** by companies in the vaping industry is important to:
 - Disseminate proper information about the harm reduction of vaping products to smokers willing to quit;
 - Prevent under-age individuals from using vaping products.
- IEVA has a clear stance on appeal to minors: "*e-cigarette advertising abstains from using cartoon characters and other fictional characters that could trigger the interest of minors*" as explained in its [Guidelines for responsible e-cigarette advertising](#).
- IEVA members' communication **exclusively targets adult smokers and e-cigarettes users of legal age**. Nobody younger than 30 years old is featured in e-cigarettes communication. Communication aims to help consumers make **an informed choice** and provide them with information about their products, but also harm reduction potential.
- A possible negative side-effect of a ban on display for vaping products could be that vaping would be seen as a hidden activity, thus encouraging its practice as one of the "cool kids" or "rebel kids".
- Refusing to operate a distinction in advertisement between traditional and electronic cigarettes would also send the wrong messages to all smokers: it would disregard the significant differences between vaping and smoking (no combustion) and **undermine the harm reduction benefits of vaping products**. As a result, consumers would be **less exposed and aware of the existence of safer alternatives**.

(3) Third, the introduction of restrictive measures on e-cigarette advertising is not adapted to its objective:

- IEVA urges the Danish authorities to differentiate between smoking susceptibility and the act of smoking.
- The decision to start smoking is often, if not always, related to other factors such as education and life experience.
- Against this background, IEVA believes that adequate information and communication about vaping products can also be used as the triggering and reversing event for smokers to quit traditional cigarettes.

While IEVA agrees that the right to advertising must go hand in hand with rules for responsible advertising and against misleading designs or implementations, the proposed Danish measures do not constitute an effective way to protect children and young people from taking up smoking and supporting those who wish to quit.

IV- Final remarks – Smoking and Covid-19

The pandemic has brought into sharp focus the need to stop people smoking. Smokers are more likely to suffer acute COVID-related pneumonia, and vaping is a far less harmful alternative.

The pandemic has seen smokers keen to quit in greater numbers across Europe – not surprising since smokers and those suffering smoking related diseases are more likely to suffer complications from COVID.

Large numbers of smokers are now using vaping products to help them quit. Randomized control data shows vaping to be around **twice as effective** as patches or gum for quitting smoking⁹.

Vaping instead of smoking is a positive life choice, given that there is little doubt about which is worse for your health. As mentioned, the UK Government regards vaping as 95% less harmful than smoking, a figure backed by a large body of science spanning since e-cigarettes have been widely available.

Conclusion

For all these reasons and the specific conditions regarding the use of e-cigarettes in Denmark as stated by the Danish authorities and institutions, IEVA respectfully calls on the European Commission to **carefully assess the proportionality of the measures** proposed by the Danish Government.

Overall, and to conclude:

- Our association believes that the measures are **neither proportionate, nor substantiated by evidence** that there would be a specific Danish problem.
- The proposed restrictions also fail to differentiate between vaping and smoking and **disregard the harm reduction potential of vaping** (compared to smoking).
- We are concerned that they would make smokers attempting to quit smoking **worse-off** and could even lead to former smokers resuming smoking if the above-mentioned restrictions, but also a ban on flavoured e-liquids, are introduced.
- Ultimately, the **internal market distortion** that the proposed measures would cause does not appear justified by a specific Danish situation.

⁹ "A randomized trial of e-cigarettes vs. nicotine replacement therapy", The New England Journal of Medicine, February 2019, [URL](#)