

IEVA CONTRIBUTION TO THE CALL FOR EVIDENCE

Evaluation of the legislation framework for tobacco control

The European e-cigarette market is one of the most regulated and safest worldwide. IEVA supports the tobacco product directive which has allowed for safe products to be made available to EU consumers. These rules have prevented irresponsible business - as we unfortunately have witnessed in the US, where the vaping market was not regulated - and whose behaviours we most vehemently condemn.

We would like to use this submission to present areas that merit further consideration through the [process of evaluating the Tobacco Products Directive](#) which we believe have not been addressed through the process thus far. We will focus on three core areas which we believe need to be further explored in any discussion about a legislative review: the impact on smokers, the impact on SMEs and employment, and the impact on illicit trade.

1. Impact on smokers

Restricting the ability of a smoker to access a reduced risk vaping product that satisfies them; and preventing companies from telling smokers about the reduced risk of smoking, harm smokers. Studies from the research institute Eurispes show that only 9% percent of smokers would like to quit smoking immediately, while an alarming 91% of smokers plan to continue smoking.¹

The process to date has so far not taken account of the principle that governments have a duty to protect the fundamental right of citizens to enable the highest standards of physical and mental health. It has been acknowledged in the tobacco control community that , *“The collective failure to offer and promote cessation support to tobacco users who need it is not only a public health failure, it is also a human rights failure.”*²

However, as part of the recent work packages undertaken, Eurobarometer found that 30% of e-cigarette users had quit smoking altogether and that only 4% of the 15 to 25 year-olds regularly use them at all.³ The [European Parliament's resolution](#) on Beating Cancer of February 2022 also *“considers that electronic cigarettes could allow some smokers to progressively quit smoking”* and that evaluations of their risks need to be compared with other nicotine-containing products including tobacco / cigarette smoking (paragraph 12).

Still, the Commission concluded that this – and the numerous randomized control trials that have been conducted in recent years – did not constitute evidence that e-cigarettes help smokers quit. It is worth repeating what other major scientific bodies in this space have found during their research:

¹<https://eurispes.eu/news/no-tobacco-day-la-via-possibile-della-riduzione-del-rischio/>

²<https://blogs.bmj.com/tc/2020/07/18/the-urgent-need-for-a-human-rights-approach-to-improving-smoking-cessation-treatment/>

³<https://europa.eu/eurobarometer/api/deliverable/download/file?deliverableId=73947>

- A systematic review from the internationally-renowned Cochrane Tobacco Addiction Group found evidence according to which “quit rates were higher in people randomized to nicotine [e-cigarettes] than in those randomized to nicotine replacement therapy (NRT)” which, in absolute terms, translated “to an additional three quitters per 100.”⁴
- A Public Health England (PHE) report of 2018 confirmed that vapour products are 95% safer than smoked tobacco products.⁵ A 2021 update from PHE further reported that “The extensive use of vaping products in quit attempts compared with licensed medication suggests vaping products may reach more people who smoke and so have more impact than NRT and varenicline.”⁶
- A study by the French National Institute of Health and Medical Research (INSERM) found that “E-cigarette use was associated with smoking reduction and cessation attempt for individuals who have used it for less than one year” noting that “additional benefits are expected to occur with a longer duration of use.”⁷
- A review of survey data undertaken by Public Health France (Santé Publique France), published in 2021, concluded that “among men who already tried to quit before, smoking cessation was associated with the use of an electronic cigarette (with or without NRT)”.⁸
- Evidence from the US shows that one third of adult vapers aged under 34 said that, if “vape product sales were restricted to tobacco flavours” they would switch to smoking. A ban on flavoured e-liquids could therefore undermine smoking prevalence reduction targets.⁹

2. Impact on employment and SMEs

For many of our SME members the TPD2 implementation still leaves unclarities, e.g. regarding the definition of leakproof or the EU-wide harmonization of standstill periods. IEVA is concerned that the preparatory work undertaken by the Commission might not have taken account of the various economic impacts any change in the current Directive might have. This is of particular concern in view of the various tools contained in the “Better Regulation Toolbox” that is designed to guide policymaking at the European level.¹⁰

⁴<https://www.cochranelibrary.com/cdsr/doi/10.1002/14651858.CD010216.pub6/full>

⁵https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/684963/Evidence_review_of_e-cigarettes_and_heated_tobacco_products_2018.pdf

⁶https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/962221/Vaping_in_England_evidence_update_February_2021.pdf

⁷ <https://www.sciencedirect.com/science/article/abs/pii/S0306460321000289?via%3Dihub#>

⁸<https://www.santepubliquefrance.fr/determinants-de-sante/tabac/documents/article/tentatives-d-arret-du-tabac-aides-utilisees-et-maintien-de-l-abstinence-tabagique-une-analyse-retrospective-des-donnees-du-barometre-de-sante-pu>

⁹<https://doi.org/10.1093/ntr/ntab154>

¹⁰https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en

IEVA believes that there are two particular tools that must be consulted ahead of any further proposals in relation to the Directive in question:

- **The SME test** – this test requires an impact assessment to “include the assessments of impacts on SMEs with reference to the result of the SME test”. An SME has been clearly defined and many IEVA members fall within this definition. There are three steps to performing this test:
 - **Identify affected SMEs** – many SMEs in the vaping sector have not been identified by the Commission.
 - **Assessment of the impact on SMEs** – no such assessment appears anywhere in the documentation published thus far.
 - **Minimizing negative impact on SMEs** – no proposals have been made to this effect.
- **The employment tool** – this tool covers, *inter alia*, the impact of a proposal on employment. IEVA is happy to provide research indicating that over 100.000 people are employed by the independent vaping sector in Europe throughout the value chain. Inappropriate changes to the current regulatory framework - which has proven its worth - would threaten these jobs.

In the Application Report, we find there is no discussion of the effects of the TPD on employment and SMEs even though the Commission itself defined the scope of the Terms of Reference for the report.

3. Impact on crime and illicit trade

The work performed to date has lacked investigation into the potential for a currently legal and well-regulated market to be replaced by illicit products sold by criminals. Examples throughout history, beginning with the short-lived prohibition of alcohol in the US, show that this is normally what happens where legitimate demand is criminalized.

A review by Public Health England noted that: “Vapers said that banning flavoured liquids would deter them from using vaping products to help them quit or reduce their smoking. It could also push current vapers towards illicit products”. The review continues to state that “[a] ban on flavoured liquids could have adverse effects and unintended consequences for smokers using vaping products to quit. It should only be considered with caution.”¹¹

However, no mention of this risk has been made in the work to date. The potential impact of such illicit trade should be fully explored in any further process.

IEVA respectfully calls on the European Commission to closely consider these three areas in its review. We would be honoured to discuss the matter with you further during the up-coming consultation process in Q4 2022.

¹¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/869401/Vaping_in_England_evidence_update_March_2020.pdf

About IEVA

The [Independent European Vape Alliance](#) (IEVA) is a trade body that brings Europe's small and medium sized producers together with 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 free from the control of major tobacco companies. Together, we advocate for vaping products to be considered as a stand-alone category from heated and combustion tobacco products with regards to the harm reduction effect of vaping on smokers.