

IEVA Contribution to TRIS notification 2021/434/LT

IEVA would like to express its concerns regarding the draft law N° XIIIIP-3849(3) amending article 9(2) of Law n° I-1143 on the control of tobacco, tobacco products and related products notified by the Republic of Lithuania to the European Commission on the 8th of July 2021, under the reference [2021/434/LT](#).

According to the statement of grounds submitted by the Lithuanian authorities, the amending draft law intends to reduce the attractiveness and demand for e-cigarettes and e-liquids *“especially for young people who are particularly attracted to flavored smoking products”*. Such a ban is described as *“particularly relevant due to the worrying trend towards the increase of the use of e-cigarettes (especially among young people) in Lithuania”*.

IEVA is particularly concerned by article 1 of the draft law that foresees the **prohibition to place, on the lithuanian market, electronic cigarettes and refill containers filled with liquids (both with nicotine and nicotine-free) containing flavours other than tobacco smell and/or taste.**

IEVA believes the **proposed flavour ban is not proportionate to the objective** pursued as the measure strongly fails to be:

- Appropriate i.e. a suitable mean to attain the objective with a reasonable connection between the aim and the measure;
- Necessary i.e. Member States should choose the means which least restrict the free movement of goods
- It also has to be mentioned that the ban will highly increase black market.
- Apart from that, Lithuania already has a licencing law that fully regulates the market and prevents youngsters under 18 years old from buying such products.
- It will eliminate more than 10 k job places and will reduce tax paid by this business.

Overall, IEVA respectfully calls on the European Commission to examine the proportional character of the flavour ban proposed by Lithuania, and encourages the national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence. For example, if licencing is already in place, the ban is no longer needed.

1. Smoking prevalence in Lithuania

Smoking prevalence: According to a recent Eurobarometer¹ 28% of the Lithuanian population smoke, which is slightly above the EU threshold (23%)². Whereas 17% of Lithuanians used to smoke (and successfully quit)³, 55% of the Lithuanian population have never smoked⁴.

The appeal of e-cigarettes: Among Lithuanian citizens who have no or little experience with vaping products, 85% do not find e-cigarettes appealing⁵. Moreover, 87% of Lithuanians declared their first smoking experience was boxed cigarettes, while only 2% had a first experience with e-cigarettes⁶.

Use of e-cigarettes: Only 3% of Lithuanians are currently vaping⁷. 84% of the Lithuanian population has never tried e-cigarettes, 11% have only tried once or twice, and 2% used to vape but stopped⁸.

Reasons for using e-cigarettes: Eurobarometer reports that 57% of e-cigarette users in the EU started vaping to stop or reduce tobacco consumption⁹ and 37% believe that vaping is less harmful than using tobacco¹⁰. In Lithuania, 13% of current smokers tried to quit smoking in the last 12 months¹¹, and 39% tried more than a year ago¹². 6% of Lithuanian smokers who tried quitting used e-cigarette, an increase of 1% in comparison to 2017¹³ and below the EU threshold (11%)¹⁴.

Efficiency of e-cigarettes for smoking cessation: At EU level, 31% of smokers stopped smoking completely while using e-cigarettes while 27% reduced their tobacco

¹ Special Eurobarometer 506 "Attitudes of Europeans towards tobacco and electronic cigarettes", February 2021, [URL](#)

² Op. cit, Special Eurobarometer 506, page 14

³ Op. cit, Special Eurobarometer 506, page 17

⁴ Op. cit, Special Eurobarometer 506, page 19

⁵ Op. cit, Special Eurobarometer 506, page 83

⁶ Op. cit, Special Eurobarometer 506, page 98

⁷ Op. cit, Special Eurobarometer 506, page 63

⁸ Op. cit, Special Eurobarometer 506, page 63

⁹ Op. cit, Special Eurobarometer 506, page 122

¹⁰ Op. cit, Special Eurobarometer 506, page 122

¹¹ Op. cit, Special Eurobarometer 506, page 108

¹² Op. cit, Special Eurobarometer 506, page 106

¹³ Op. cit, Special Eurobarometer 506, page 114

¹⁴ Op. cit, Special Eurobarometer 506, page 111

consumption¹⁵. A recent study has shown that e-cigarettes can be 6 times more successful in quitting tobacco than nicotine replacement products¹⁶.

Advertisement of e-cigarettes: In Lithuania, 1% of respondents¹⁷ declared having seen “often” advertisements or promotion of e-cigarettes, liquids or cartridges (EU threshold: 7%¹⁸). 5% answered “from time to time” (EU average: 16%) and 83% “never” (EU threshold: 57%). 38% of Lithuanian national stated that sales point were the most common places where they saw, read or heard about e-cigarettes or e-liquids, followed by online social networks or blogs (35%) and other websites (33%)¹⁹.

2. Introduction of a flavour ban (taste and smell) on e-liquids

Proposed measure: *To reduce the attractiveness and demand for e-cigarettes and e-liquids towards young people, the lithuanian authorities intend to prohibit the placing on the national market of electronic cigarettes and refill containers filled with liquids (both with nicotine and nicotine-free) containing flavours other than tobacco smell and/or taste.*

IEVA is of the view that the foreseen flavour ban does not adequately serve the policy objectives targeted by the Lithuanian authorities.

1- The figures presented above (“Smoking prevalence”, “Appealing character of e-cigarette” & “Use of e-cigarette”) demonstrate a **very limited attractiveness of e-cigarette within the Lithuanian population**: 85% do not find e-cigarette appealing²⁰ while 84% never used it²¹. Among Lithuanian smokers, only 3% are currently vaping²² which is just above the EU threshold (2%²³). At EU level, the flavour argument is ranked number 4 among the reasons to take up e-cigarette, behind (1) stopping or reducing smoking, (2) belief that e-cigarette is less harmful and (3) cheaper price of e-cigarette in comparison to traditional tobacco products. Flavours do not appear as a determining factor to start vaping.

2- When it comes to the **role of flavoured e-liquids on youth uptake, scientific studies demonstrate there is no significant correlation**. According to a study from the Oxford

¹⁵ Op. cit, Special Eurobarometer 506, page 129

¹⁶ Katye Myers Smith & Al “E-cigarette vs. nicotine replacement treatment as harm reduction interventions for smokers who find quitting difficult: randomised controlled trial”, 29/06/2021, [URL](#)

¹⁷ Op. cit, Special Eurobarometer 506, page 177

¹⁸ Op. cit, Special Eurobarometer 506, page 172

¹⁹ Op. cit, Special Eurobarometer 506, page 208

²⁰ Op. cit, Special Eurobarometer 506, page 83

²¹ Op. cit, Special Eurobarometer 506, page 63

²² Op. cit, Special Eurobarometer 506, page 63

²³ Op. cit, Special Eurobarometer 506, page 62

Academy²⁴: "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".

Another 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"²⁵. When it comes to the relationship between vaping and smoking initiation, the study concludes that "adults who began vaping non-tobacco flavoured e-cigarette were more likely to quit smoking than those who vaped tobacco flavours"²⁶.

On the contrary, flavours are in fact more important for adult ex-smokers than 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"²⁷.

3- The foreseen flavour ban appears to be **unjustified on the grounds of reducing attractiveness of vaping products and youth uptake**. IEVA calls on the Lithuanian authorities to reassess the dominant negative perception of flavour in the amendment and consider current scientific evidence on the matter.

4- Moreover, the foreseen ban is not supported by any evidence that e-cigarettes are truly more attractive to youngsters.

3. Harm reduction benefit of vaping

Beyond the choice of introducing a flavour ban, **IEVA regrets that the Lithuanian authorities neglect the positive effects of e-cigarettes with particular flavour profile** and only take into account their possible negative health effects.

1- As shown by the figures presented above ("Uptake reasons for using e-cigarette" & "efficiency of e-cigarette for smoking cessation") **vaping products are key harm reduction tools to support smokers' efforts to quit combustible tobacco**.

²⁴ "The Impact of Flavor Descriptors on Nonsmoking Teens' and Adult Smokers' Interest in Electronic Cigarettes", Nicotine & Tobacco Research, Oxford Academic, 07/01/2015, page 1255, [URL](#)

²⁵ "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation", Yale School of Public Health, 05/06/2020, page 1, [URL](#)

²⁶ Ibid, page 9

²⁷ Riccardo Polosa, "Harm reduction is a flavoured journey in global tobacco control", Catania Conservation, 11/09/2020, [URL](#)

2- Scientific evidence demonstrates that e-cigarettes help smokers to switch to a less harmful alternative: for instance, **vaping has been found 95% safer than traditional cigarettes**²⁸. Several well known and publicly funded research institutes also concluded that vaping is significantly less harmful than traditional tobacco products such as the Institut Pasteur of Lille²⁹, the Royal College of Physicians³⁰, or the German federal office for drugs³¹. Overall, e-cigarette reduced the risk of cancer for smokers³².

3- Rather than equalizing the effects of e-cigarettes and tobacco products, IEVA recommends the Lithuanian authorities to **take into account the significant differences in risk profile** between tobacco cigarette and e-cigarette.

4. Legal justification of the measure

IEVA would also like to express serious doubt regarding the legal justification of the measure:

1- IEVA believes the ban on e-cigarette products with particular flavour profile will amount to a **quantitative restriction in the sense of article 34 TFEU**, 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.

2- The measure seems moreover **unlikely to be justified under article 36 TFEU** that allows for restrictions in imports or exports of goods justified on grounds of protection of health and life of humans.

According to the article, Member States initially require that Member States demonstrate they have **genuine health concerns** regarding the products, i.e. scientific evidence for the harmful effects of the e-cigarette, and a seriously considered health policy. To introduce such exception, the measure needs to be proportionate, which entails that the national provision must be:

- Appropriate, i.e. a suitable mean to attain the end with a reasonable connection between the aim and the measure;

²⁸ Public Health England, "E-cigarettes: an evidence update", 2015, Page 5, [URL](#) - Additionally, the report, from the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT) (September 2020, [URL](#)), 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 (page 28)

²⁹ "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", Institut Pasteur de Lille, 05/01/2021, [URL](#)

³⁰ "Nicotine without smoke: tobacco harm reduction", UK Royal College of Physicians, 28/04/2016, [URL](#)

³¹ "Drogen und Suchtbericht", German federal office for drugs, 2019, [URL](#)

³² William E-Stephens, "Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarette with those of tobacco smoke", BMJ, 04/08/2017, [URL](#)

- Necessary, i.e. Member States should choose the means which least restrict the free movement of goods if it has a choice between various measures to attain the same objective.

Against this background, IEVA first believes the scientific basis on which the Lithuanian flavour ban is based is not taking into account the full picture but is instead selective in choosing the scientific studies that support the authorities' position. **Lithuania does not thoroughly demonstrate that the products in question pose a genuine threat to public health**, which should therefore prevent them from introducing such a flavour ban under article 36 TFEU

Conclusion

Against this background, IEVA respectfully calls on the European Commission to examine the proportional character of the flavour ban proposed by lithuanian, and encourage the national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence.

About IEVA

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

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