

## **BfTG's Contribution to France's TRIS notification 2024/0164/FR**

The German association BfTG wishes to share its stance on the draft law prohibiting single-use electronic vaping devices, which France notified to the European Commission on March 21, 2024, under reference [2024/0164/FR](#).

Many BfTG members in Germany have strong business connections with French vape shops. Thus, the Draft Law directly impacts us, and we want to provide our perspective.

According to the French authorities' statement of grounds, the draft law aims to “*prohibit the manufacture, keeping for sale, sale, and distribution of prefilled, non-refillable, and non-rechargeable electronic vaping devices.*” This prohibition is justified by “*the need to ensure a high level of public health protection, especially among young people.*”

BfTG would like to address the arguments justifying this ban and highlight potential unintended consequences, such as the rise of dangerous and unregulated black market products.

### **1. Harm Reduction and Smoking Cessation Benefits of Vaping**

Independent studies indicate vaping products, including disposables, are 95% less harmful than traditional cigarettes. The harm reduction potential of vaping is well-documented by reputable sources ([Royal College of Physicians](#), [British Medical Journal](#), [Institut Pasteur](#) etc.). A 2024 [Cochrane review](#) of 88 studies confirmed that nicotine-containing vaping products are the most effective method for tobacco cessation among adults. This potential has been acknowledged by the European Parliament in [reports on cancer](#) and non-communicable diseases, stating that “electronic cigarettes could allow some smokers to

progressively quit smoking.”

Disposable e-cigarettes often introduce smokers to vaping. Rechargeable, refillable devices can sometimes deter smokers; disposables have helped many transition to sustainable refillable devices.

Banning disposables due to public health risks, particularly for young people, attacks vaping's image and is based on scientifically incorrect beliefs (e.g., the gateway effect between vaping and smoking).

## **2. Effective measures to prevent young people from vaping**

France, like all 27 EU Member States, prohibits the sale of vaping products to anyone younger than 18 years old. The issue with youth uptake stems from a lack of adequate enforcement of this prohibition. BfTG's position on the matter is clear: non-smokers should not start vaping, and underage people should not have access to vaping products. BfTG members must comply with a responsible marketing charter designed to ensure that young people do not access their products: for instance, packaging containing images that could catch the attention of children (candies, cartoons, superheroes, etc.) is prohibited.

Some measures can be implemented to properly enforce the law supposed to protect underage people, such as compulsory age verification systems and bans on the sale of vaping products in non-specialised shops. A licence system for vape shops can also be considered, with strict penalties for non-compliance.

All these measures can, and should, be implemented to address the youth uptake issue, rather than a disposable ban. Such bans penalise smokers trying to switch to less harmful alternatives, boost the sale of unsafe illegal products and do not hold any added value in the protection of young people from accessing vaping products.

## **3. EU Battery Regulation: An upcoming ban on disposables**

BfTG shares environmental concerns about disposables, particularly plastic pollution and improper battery disposal. The solution is not a ban but an effective disposal system to promote sustainable battery recycling.

The [EU's Battery Regulation](#) (2023) will ban the sale of electronic devices (including vaping products) with non-removable and non-replaceable batteries by February 2027. This

regulation effectively bans disposable products. The European vaping sector, including in France, is adapting to this legislation.

An earlier ban will not give the French vaping industry sufficient time to manage stocks and adjust business practices. It offers no real added value and should not be the focus of the Ministry of Health's policies.

#### 4. The Threat of a Growing Black Market

The vaping sector in France is strictly regulated and complies with European and national laws. The [EU Tobacco Products Directive](#) regulates the registration of new vaping products, e-liquid content, and nicotine concentration, ensuring safety.

EU Member States with strict vaping restrictions (Denmark, Hungary, the Netherlands) have seen a surge in illegal, unsafe e-cigarettes. In Estonia, restrictive measures on e-liquids [were rolled back](#) due to increased black market activity and reduced compliance, leading to greater health risks from unregulated products.

#### 5. Legal justification of the measure

BfTG questions the legal justification of the measure:

a) The ban on disposable vaping products may constitute a quantitative restriction under Article 34 of the [Treaty on the Functioning of the European Union](#) (TFEU) as the products can be legally marketed in other Member States, causing unequal treatment.

b) The measure is unlikely to be justified under Article 36 TFEU, which allows restrictions for health protection, as it lacks genuine health concerns and proportionality. Measures should be appropriate, necessary, and least restrictive to free movement of goods.

In conclusion, the proposed French law is disproportionate. It constitutes a quantitative restriction on trade between Member States and provides no real added value beyond existing sales bans to minors, which French authorities must enforce. The law undermines public trust in vaping as a smoking cessation tool and the industry's responsibility, even though vaping is a crucial harm-reduction tool in the fight against tobacco.

---

## About the BFTG

The BFTG has represented small and medium-sized companies in the German e-cigarette industry since 2015. Representing around three-quarters of the market, it operates independently of the tobacco industry, advocating for factual dialogue on necessary regulations and the health and economic potential of e-cigarettes. Members include well-known liquid and hardware manufacturers, wholesalers, and retailers across Germany.

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

- [info@bftg.org](mailto:info@bftg.org)
- +49 (0)30 209 240 80