



BfTG contribution to Slovenia's TRIS notification 2023/0636/SI

The German association BfTG (Bündnis für Tabakfreien Genuss) would like to express its concern regarding the Slovenian government's decision to submit the *Draft Act amending the Act on Restriction of the Use of Tobacco and Related Products*, notified to the European Commission on the 10th of November 2023, under the reference [2023/0636/SI](#).

Some of our members in Germany maintain close business relationships with Slovenian vape shops. Therefore, the planned regulation of e-cigarette affects us directly and we would like to comment on it.

Article 10 of the bill (amending Article 26 of the law on the use of tobacco) foresees the **prohibition to place, on the Slovenian market, liquids intended for vaping (both with nicotine and nicotine-free) containing any flavour other than tobacco or menthol**. This would in practice mean the end of the sale and availability of most vaping products on the Slovenian market.

According to the notification statement submitted by the Slovenian Ministry of Health, the Draft Act aims to "*protect everyone, especially children and adolescents, from accessing electronic cigarettes, thus also protecting their health*". The BfTG 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. choosing the means which least restrict the free movement of goods.

Moreover,

- The ban will lead to a rise in black market activities.
- The current [law on the restriction of the use of tobacco products](#) already fully regulates the market and prevents adolescents under 18 years old from buying such products (Article 14).

- It will hinder job growth and the economic benefits brought by the vaping sector, which represents more than **8 million euros in tax monthly** and more than **300 jobs** in Slovenia.

1. Introduction of a flavour ban on e-liquids

Proposed measure: *To reduce the attractiveness and demand for e-cigarettes and e-liquids towards young people, the Slovenian Ministry of Health intends to prohibit the placing on the national market of liquids for e-cigarettes (both with nicotine and nicotine-free) containing any flavour other than tobacco or menthol.*

The BfTG considers that the foreseen flavour ban does not adequately serve the policy objectives targeted by the Slovenian government.

- A [recent Eurobarometer](#) highlights the **low attractiveness of e-cigarettes among the Slovenian population**: 86% do not find e-cigarettes appealing, while 90% never used them. Only 1% of Slovenians are currently vaping which corresponds to the EU threshold. At EU level, the flavour argument is ranked only 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.
- When it comes to the **role of flavoured e-liquids on youth uptake, publicly-financed scientific studies demonstrate there is no significant correlation**. According to a [study](#) 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”*.
- The foreseen flavour ban appears to be **unjustified as it is not an appropriate measure to reduce attractiveness of vaping products and youth uptake**. The BfTG calls on the Slovenian authorities to reassess the dominant negative perception of flavour in the amendment and consider current scientific evidence on the matter. Moreover, the foreseen ban is not supported by any concrete evidence that vaping products are actually more attractive to youngsters.

Young people access vaping products (primarily disposables) **through other sources than vape shops or general stores, i.e. the black market**. The growing illicit market is heavily focused on younger consumers, selling non-conforming products via social media (one of the main mediums where Slovenians see vaping advertisements). Black markets will grow and thrive with the adoption of the flavour ban, as most of the products sold there do not comply with EU rules to begin with and are therefore not allowed to be sold. Undue restrictions on vaping products lead to a reinforcement of illicit markets, as it was the case in various countries such as Hungary.

In its TRIS notification [statement](#), the Slovenian ministry of Health mentions the flavour ban that is currently effective in Estonia. It is relevant to point out that the Estonian

Parliament actually introduced a [bill](#) to **roll back its ban on e-liquid flavours**. The statement of grounds of the amendment bill states that **due to the use of black market products, “the health risk of consumers has increased significantly, which was until then mitigated by the mandatory laboratory control of electronic cigarette liquid established in the EU Tobacco Product Directive”**.

A flavour ban will hamper legal markets, denying adults legal access to the tools they use (including flavoured e-liquids) to reduce their tobacco consumption. Tobacco products policy should focus instead on **better enforcement, more efficient age controls, licences for selling vaping products and marketing restrictions**, in order to keep the variation of flavours while making sure youth access remains persistently low.

2. Harm reduction benefits of vaping

Claim: *“Flavourings make electronic cigarettes wrongly perceived as less harmful than traditional cigarettes [...]. Flavourings can have severe adverse health effects, in particular on respiratory health.”*

Beyond the choice of introducing a flavour ban, the **BfTG regrets that the Slovenian authorities deny the harm reduction potential of vaping products**. Many independent and publicly funded studies have in fact highlighted their harm reduction potential:

- A [report](#) commissioned by Public Health England found that using vaping products is 95% less harmful than smoking combustible cigarettes.
- Another [report](#) by the British Royal College of Physicians confirmed that the “hazard to health arising from long-term vapour inhalation is unlikely to exceed 5% of the harm from tobacco smoke.”
- A [study](#) financed by the prestigious Institut Pasteur of France stated that vaping is significantly less carcinogenic than smoking, thus drastically reducing the risk of cancer for smokers.

Rather than equalising the effects of vaping products and tobacco cigarettes, the BfTG recommends the Slovenian authorities to **take into account the significant differences in risk profile** between smoking and vaping.

3. Smoking cessation potential of vaping products

Claim: *“More and more research shows that among adolescents who otherwise do not smoke, the use of an electronic cigarette significantly increases the probability (up to four times) that they will also start smoking regular cigarettes.”*

The Slovenian authorities do not provide any source to back this assertion. Contrary to that claim, vaping represents an **effective tobacco cessation method** for many smokers and can play a positive role in helping users to switch from harmful traditional smoking, preventing or significantly reducing the risk of cancer.

- Peer reviewed studies by the [American Journal of Public Health](#) and research led by the [University of Oxford](#) show the effectiveness of vaping products in quitting traditional tobacco.
- A [Cochrane review](#) of 88 studies, updated in January 2024, found that nicotine-containing vaping products are one of the most effective methods to quit smoking among various recognised prescription medications for smoking cessation and that people using nicotine-containing vaping products were more than twice as likely to quit smoking than those who did not use any method.
- A [study](#) by Queen Mary University of London in 2023 came to this conclusion: *"The most comprehensive study to date investigating whether e-cigarettes are a gateway into or out of smoking finds that, at the population level, there is no sign that e-cigarettes and other alternative nicotine delivery products promote smoking."*

This smoking cessation potential was recognized by the European Parliament's 2022 [resolution](#) on Strengthening Europe in the Fight against Cancer (point 12), and more recently in the 2023 Non-Communicable Diseases [report](#) (point 17).

4. Legal justification of the measure

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

a. The BfTG believes the ban on vaping products with particular flavour profiles will amount to a **quantitative restriction in the sense of article 34 of the [Treaty on the Functioning of the European Union \(TFEU\)](#)**, as the banned products can legally be marketed in other Member States. This would therefore create a difference of treatment and access for vaping and associated products shops.

b. 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 vaping, 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;
- 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.

The BfTG notes that the Slovenian Ministry of Health **provides no source** when asserting that vaping significantly increases the likelihood that young people will also start smoking conventional cigarettes, or that attractive flavours in vaping products are associated with an increase in their attractiveness and a decrease in the perception of their harmfulness.

The Slovenian Ministry of Health does not thoroughly demonstrate that the products in question pose a genuine threat to public health, which should therefore prevent Slovenia from introducing such a flavour ban under article 36 of the TFEU.

Conclusion and propositions of appropriate measures

Against this background, the BfTG respectfully calls on the European Commission to reexamine the proportionality of the flavour ban bill and encourage national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence.

As the BfTG is committed to preventing young people from taking up vaping, we believe that the best measure is not to introduce any flavour ban, but rather to strictly enforce the law on the restriction of the use of tobacco products (*Zakon o omejevanju uporabe tobačnih izdelkov*, ZOUTI). We therefore call the government to enforce ZOUTI with a view to:

1. **Restrict the sales of vaping products to stores authorised to sell tobacco and tobacco-related products and crack down on illegal sellers**
2. **Strengthen the authorities' capacities to fight the black market of vaping devices and e-liquids, and to address the issue of unregulated, dangerous products**

About the BfTG

The BfTG has been representing small and medium-sized companies in the German e-cigarette industry since 2015. It represents around three quarters of the market and operates absolutely independently of the tobacco industry. In doing so, it advocates a factual dialogue on necessary regulations as well as the health and economic policy potential of the e-cigarette. Its members include well-known liquid and hardware manufacturers as well as wholesalers and retailers from all over Germany.

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

● info@bftg.org

● +49 (0)30 209 240 80