

## PUBLIC CONSULTATION ON THE SPANISH

### “ANTEPROYECTO DE LEY DEL MERCADO DE TABACOS Y OTROS PRODUCTOS RELACIONADOS”

#### Submission from Atmos Lab

#### About Atmos Lab

Atmos Lab is the oldest Greek manufacturer of vaping products, established in November 2011. We export these products to the majority of EU member-states, including Spain. Our company is totally independent from major tobacco companies and is owned by Greeks. We advocate for vaping products as in our 11 years of history, we are proud to have made dozens of thousands people quit smoking (become ex-smokers) and switch to the much less harmful vaping.

#### Context

The draft bill that Spanish Government launched, is a lethal measure for the independent vaping sector in Spain and a gigantic “gift” for tobacco industry as they will receive the entire vaping business in the tobacco shops. Is this really the policy of Spanish Government who claims that “We fight tobacco industry”? Surely, NOT.

As Spain is in EU, there is the EU legislation that must be respected. This specific draft bill disrespects all major principles of European Union such as good regulation, good administration, proportionality, fair and free competition, harmonization and much more... Spanish Government proposed in its “Anteproyecto de Ley del Mercado de Tabacos y otros Productos Relacionados” several anti-european actions such as the direct ban and lockdown of all vape shops (physical stores) and also the shutdown of every online shop (vape e-shop). These unacceptable measures, in a EU-member country, are proposed without with serious arguments and documentation and the same time they violate several EU principles such as freedom of movement of goods in the internal market (a) and free competition in EU (b). The results of these measures will be a great disaster because will generate severe unemployment in Spain as thousands of people are working for physical and electronic stores which sell vaping products.

The most shameless of the proposed regulations, however, is the equating of deadly tobacco products with vaporizing products, which is a heinous crime for Public Health, and in this is the saying of Aristotle, the teacher of Alexander the Great, to answer: "There is nothing more unjust than equal treatment of inequalities "

#### Comments to the Anteproyecto

Atmos Lab calls on the Spanish Government, Spanish medical societies, Spanish regions and Spanish consultative bodies that will provide comments on the draft bill to reconsider the cancellation of this draft bill, at least for the part concerning vaping products. It is an unfair group of measures, far away from common sense and the only effect this will produce is to increase tobacco prevalence rates in Spain.

Some comments regarding the analysis of violations and disproportions of this draft bill:

- 1) **The proposed Anteproyecto goes against the fundamental principle of freedom of movement of goods in the EU and will cause severe adverse impacts in Spain and in whole EU.**
  - a. Operators from other Member States such our company Atmos Lab sell our products to vape shops in Spain, which then sell directly to consumers either in physical store or via their e-shop. The proposed measure will drastically shutdown distribution supply chain and will practically terminate the exports form and to professional operators in Spain from other EU Member States for a very simple reason: Tobacco shops have as absolute priority the sales of tobacco (combustion) products and do not care at all to be educated and informed for the high-end vaping devices and vaping liquids, as we have done for several years in the specialized exclusive vape shops. In other word, they love the 30-second sale instead of consulting smokers to quit smoking via switching to vaping.
  - b. The Anteproyecto will affect not only Spanish market (both professionals and vapers) bu will also affect operators and vapers across whole EU.
  - c. The ban on online sales will dramatically eliminate the movement of goods across EU as all European retailers will no longer have the ability for sales of vaping products to Spanish customers. Although these products are regulated under the European Directive 2014/40 which gives the ability of sales across whole EU. This ban creates a “North-Korean” model for sales of vaping products inside the heart of EU, in the country of Spain which is one of the oldest members of EU.
  - d. This notification is in Spanish only (is this legal for a notification in TRIS where whole EU shareholders are submit their comments?) and we did not see any reports for the implications of the proposed measures in both economic and social level. You cannot propose such measures without any study before implementation which show you the effect of the measures in social and economic level.
- 2) **The proposed Anteproyecto is against the differentiation between combustion (traditional tobacco) products and non-combustion products established in the EU framework by the Tobacco Products Directive 2014/40 (TPD)**
  - a. Tobacco Products Directive differentiates between conventional tobacco products and electronic cigarettes and this is crystal clear in the level of presentation, placing on the market, labelling, notification, warning, hazard phrases. Vaping products are not the same to tobacco products and therefore TPD generates a totally different group of standards for these 2 product categories. No Member State can oppose this differentiation without giving well documented arguments and after having a change in TPD.
  - b. The Anteproyecto de Ley has been left in the framework before TPD and decides not only to treat exactly in the same way both combustion tobacco and vaping products, but also to prohibit the sale of vaping products outside tobacco shops. This is insane: The ex-smoker who quit tobacco smoking is forced to visit tobacco shops (estancos) in order to buy products which gave him the ability to be ex-smoker. It is like forcing an ex-alcoholic person to visit liquor shop which is full of alcoholic drinks, in order to buy orange juice which helped him quit alcohol. A great **Public Health Crime** which Spanish Ministry of Health would have stopped before any draft notification.....

**3) The proposed Anteproyecto is violating fundamental EU competition Law**

- a. This “Spanish patent” of bringing the category of vaping products to an obsolete system of state-owned monopoly of tobacco shops licenses and distribution is unacceptable for a European country in 2022. There is nowhere in EU monopoly like this, at least for vaping products and only for combustion tobacco there are five countries who preserve such system for historical reasons. It is really a return to many decades back where but not for tobacco products; for high-tech vaping products which eliminate tobacco smoking.
- b. The proposed measures for the shutdown of any established vaping physical and electronic stores and distribution channels are a crystal clear barrier to free competition, because at the same time whole vaping sector is transferred exclusively to a previously established monopoly (tobacco shops). EU Commission must take care of this violation immediately as monopolized products which are treated by Tobacco Products Directive are illegal. We are talking for a great failure of Spanish government which selectively strengthens the tobacco industry and tobacco smoking by destroying the entire vaping sector in Spain.
- c. These measures create a worrying precedent for the EU: One well developed sector for over one decade, with legally established companies (distributors, producers, wholesalers and retail shops) can be unilaterally closed in a EU Member State and handed over (offered as a “gift”) to a state-owned distribution of tobacco shops. Spanish Government proves that Anti-Tobacco policy in Spain is not serious.

**RESERVING OUR RIGHTS FOR SUBMISSION OF COMPLAINT AGAINST THIS NOTIFICATION**

Although we tried our best to submit our comments regarding the proposed Anteproyecto we have to announce you that it is sure that we will submit Complaint to Secretary General of European Commission because we have discovered a series of irregularities in this notification:

- a) Comisionado para el Mercados de Tabacos claims that this notification is a fiscal measure and not a Technical Regulation to follow the minimum standstill period of 3 months. This is not correct.
- b) Anteproyecto notification claims that the proposed measures “The project will not have a perceptible effect on international trade” which is absolutely false as we analyzed before.
- c) Anteproyecto notification claims that “The project is not a sanitary or phytosanitary measure” but this is false as the Public Health will be affected very strongly as we explained before.

Our complaint will be analytical and will have documented arguments regarding the irregularities in this Anteproyecto notification.

**For Atmos Lab**

**Panos Panayiotopoulos**