

NECA

National Electronic Cigarette Association
Code 305728418, address Merkinės st. 16-1, Vilnius, Lithuania

To the European Committee

E-mail address: grow-dir2015-1535-central@ec.europa.eu

Notification number 2021/0434/LT - X00M

2021-10-01, Vilnius, Lithuania

Concerning: Law of the Republic of Lithuania on the Control of Tobacco, Tobacco Products and Related Products No. I - 1143 Article 9 (2) of the draft law amending XIIIIP-3849 (3)

The National Electronic Cigarette Association (NECA) unites business entities engaged in wholesale and retail trade in electronic cigarettes in Lithuania, which trade in more than 20 cities and form more than 80 % market share.

NECA was informed about the notification notice submitted by the Republic of Lithuania (hereinafter - the **Notification Notice**) regarding the Law of the Republic of Lithuania on the Control of Tobacco, Tobacco Products and Related Products No. I - 1143 Article 9 (2) of the draft law amending XIIIIP-3849 (3) (hereinafter referred to as the **Draft Law**).

The Association, taking into account the submitted notice on the notification procedure, provides the following comments and essential insights, which the European Commission (hereinafter - the **Commission**) requests to be taken into account when considering the notification of the Draft Law.

I. Concerning the objectives of the draft law, which differ from the objectives set out in the notice

Legislative procedures in Lithuania are regulated by the Law¹ on the Legislative Framework of the Republic of Lithuania, which provides for the main requirements for a draft legal act. According to Article 5 Part 2 Item 3 and Article 15 Part 2 of the said law, the explanatory note to the draft law is a document accompanying the draft law, which indicates the effect of the proposed legal regulation, the aims and objectives of the draft law.

On 17/09/2019, the Draft Law and the accompanying documents, including the explanatory note² were registered. The explanatory note to the Draft Law explicitly states that the purpose of the Draft Law is to reduce the demand for e-cigarettes specifically among minors, although both tobacco products and e-cigarettes may be sold only to persons over 18 years of age at the time of registration.³ As stated in the explanatory note to the draft Law: *"Appropriate measures must be taken to limit the attractiveness of e-cigarettes not only for traditional tobacco use but also for e-cigarettes, which also have negative effects and can be addictive.<...>, Such a ban is expected to make e-cigarettes in less demand, especially among minors, for whom various flavored smoking products are particularly attractive."*

¹ Access online: [XI-2220 Lietuvos Respublikos teisėkūros pagrindų įstatymas \(lrs.lt\)](#)

² Access online: [XIIIIP-3849 AIŠKINAMASIS RAŠTAS dėl Tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo Nr... \(lrs.lt\)](#)

³ Paragraphs 5 and 6 of Article 14 of the Law on the Control of Tobacco, Tobacco Products and Related Products of the Republic of Lithuania provide that: *"In addition, the following is forbidden to be sold in the Republic of Lithuania: 1) cigarettes, cigarillos, cigarillos in units; 2) cigarettes, if they are less than 20 units in one unit packet; 3) tobacco products, products related to tobacco products for persons under 18 years of age. When there is doubt that a person is under the age of 18, sellers of tobacco products and tobacco-related products must require the person to provide proof of age from the person purchasing the tobacco products. If such a person does not provide proof of age, sellers of tobacco products, tobacco-related products must refuse to sell him tobacco products or tobacco-related products. 6. It is prohibited to purchase or otherwise transfer tobacco products, tobacco-related products to persons under 18 years of age."*

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Thus, the main objectives of the Draft Law, stated in the accompanying material of the draft law, are to limit the attractiveness and availability of electronic cigarettes to minors, although the current legislation prohibits the sale of electronic cigarettes and tobacco products to persons under 18 years of age.

Meanwhile, the objectives of the adoption of the Draft Law specified in the Notification Notice differ from the objectives specified in the explanatory note to the Draft Law.

The notification notice states the aim to reduce the prevalence of e-cigarettes and their use among young people in general, although the explanatory note to the Draft Law does not mention the use of e-cigarettes by young people (adults) and does not indicate that the adoption of the Draft Law is related.

Thus, the objectives of the Draft Law, as set out in its explanatory note, and in the Notification Notice differ. Against this background, we ask the Commission to base its assessment of the Draft Law and its compliance with EU legislation and principles specifically on the objectives of the Draft Law set out in the explanatory note to the Draft Law.

II. Regarding the regulation of trade in electronic cigarettes valid in Lithuania relevant to the Draft Law

After the registration of the Draft Law on 17/09/2019 in the Seimas of the Republic of Lithuania, another Draft Law was registered on 07-10-2019 – the amendment of the Law on the Control of Tobacco, Tobacco Products and Related Products article No. I-1143 articles 10, 11, 12, 14, 15, 16(1), 17(1) and 26 and draft law on repeal of article 16(2) No. XIII P-3903⁴, which was adopted by the Seimas of the Republic of Lithuania on 05-11-2020 and entered into force on 01-05-2020 (hereinafter – **Law on Licensing**)⁵.

The Law on Licensing, the draft of which was registered less than a month after the registration of the Draft Law, has the same objectives as the Draft Law, i.e. to solve the issue of electronic cigarette use by minors..

The only and main difference between the Law on Licensing and the Draft Law is the choice of the proposed legal regulation – The Licensing Law establishes the licensing of electronic cigarettes and their liquids as a means to achieve the objectives of the law, including the objective of reducing the availability of electronic cigarettes to minors, and the Draft Law chooses the prohibition of electronic cigarette liquid tastes as a means.

As stated in the explanatory note to the Licensing Law: *“According to the drafters of the law, in order to solve the problem of minors' use of e-cigarettes, substantial changes are needed, such as licensing, retail restrictions, higher fines that can deter violations, rather than minimal ones, such as a ban on tastes. The latter, in the opinion of the drafters, may be necessary **when the main prohibitions are ineffective.**”*⁶

The fact that the Law on Licensing, which has already been adopted and entered into force, pursued the same objectives as the draft Law, is directly confirmed by the fact that the Government of the Republic of Lithuania by Resolution No. 64⁷ proposed that these bills be considered together, but this was not done.

⁴ Access online: [Tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo Nr. I-1143 10, 11, 12, 14,... \(lrs.lt\)](#)

⁵ Access online: [XIII-3378 Lietuvos Respublikos tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo Nr. I... \(lrs.lt\)](#)

⁶ Access online: [XIII P-3903 AIŠKINAMASIS RAŠTAS dėl Tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo Nr... \(lrs.lt\)](#)

⁷ Access online: [64 Dėl Lietuvos Respublikos tabako, tabako gaminių ir su jais susijusių gaminių kontrolės įstatymo N... \(lrs.lt\)](#)

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Thus, as of the date of submission of this position, the Law on Licensing has been adopted and is in force, which has solved all the objectives of the change in legal regulation specified in the Draft

Law, therefore, the adoption of the Draft Law should be considered as a disproportionate and unnecessary measure that will unreasonably restrict the free movement of goods.

III. On the market situation and the consequences of the adoption of the Draft Law

According to the data⁸ of KPMG research, in 2020, the smuggled market share of cigarettes was the highest in five years. According to the survey of empty packages and sales data, in 2020 the illegal market share in Lithuania reached 20.2% - 2.5 points more than a year ago. In 2020, Lithuania ranked third among the European Union countries in terms of the size of the shadow cigarette market. Our country was overtaken only by France and Greece, where in 2020 counterfeit and smuggled cigarettes accounted for 23.1 percent and 22.4 percent of the market respectively.

According to the data of the study "Possibilities of assessment of the problem of unaccounted for tobacco products in Lithuania" prepared by the Lithuanian University of Health Sciences and published by the Government of the Republic of Lithuania in 2020⁹:

Tobacco products consumed	Men (percent)	Women (percent)	Total (percent)
Ordinary cigarettes only	75,8	68,0	73,7
Electronic cigarettes only	4,2	7,2	5,0
Heated tobacco products only	8,7	16,2	10,7
Electronic cigarettes or heated tobacco products and cigarettes with other tobacco products	20,7	30,9	23,4

Proportion (%) of tobacco products consumed, according to age group

Tobacco products consumed	Age 18–31 (percent)	Age 32–44 (percent)	Age ≥45 (percent)
Cigarettes only	43,9 *#	69,1 *	91,6
Electronic cigarettes only	12,6 *	5,5 *	0,3
Heated tobacco products only	26,0 *#	12,1 *	2,0
Electronic cigarettes or heated tobacco products and cigarettes with other tobacco products	55,2 *#	27,3 *	4,0

* statistically significant difference compared to the age group ≥45 (Z criterion with Bonferroni correction)

statistically significant difference compared to the age group 32–44 (Z criterion with Bonferroni correction)

The data provided directly confirm that the number of people who use e-cigarettes alone is twice as low as the number of people who use smoking tobacco products and almost 25 times less than the number of people who use regular cigarettes. Electronic cigarettes are also the least common product among young people (18-31).

Thus, the adoption of the Draft Law will not ensure the achievement of the objectives of the Draft Law, as the main tobacco products used among young people are cigarettes and heated tobacco products.

Accordingly, the adoption of the draft law will inevitably encourage the illegal trade in electronic cigarettes, while the shadow (illegal) trade in already regular cigarettes is one of the largest (3rd place) in Europe.

⁸ Access online: [Slipsheet title here \(stopillegal.com\)](https://stopillegal.com/)

⁹ Access online: [NAKD nepakaitytotabakogaminiproblemos.pdf \(lrv.lt\)](#)

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In accordance with the data of paid taxes related to e-cigarettes, number of e-cigarettes users, illegal part of e-cigarettes market share is more than 65,55 % of total e-cigarettes sales.

IV. Concerning the granting of a different competitive advantage to individual tobacco products after the adoption of the Draft

The above studies confirm that heated tobacco products (26.0%) are more than twice as common as e-cigarettes among young people (Age 18–31) (12.6). This trend is also maintained in the total consumption of e-cigarettes (5%) and heated tobacco (10.7%).

Pursuant to the Law of the Republic of Lithuania on the Control of Tobacco, Tobacco Products and Related Products, heated tobacco products that have a taste other than tobacco, in particular, mint, are permitted in Lithuania.

Thus, the adoption of the Draft Law would give a heated tobacco product, which is twice as popular among young people as e-cigarettes, an unjustified competitive advantage due to their potential taste other than tobacco.

V. Concerning the significant violations of legislative procedures committed during the consideration of the Draft Law

Paragraph 2 of Article 145 of the Statute of the Seimas of the Republic of Lithuania, which was in force during the consideration of the Draft Law in the Seimas, provides that: "If the draft law proposes to substantially change the legal regulation (to establish, change or abolish the rights or obligations of legal entities, to formulate reform directions or development strategy in certain areas) and the main committee or at least 1/5 of the Seimas members (but not later than 72 hours after the end of the discussion in the main committee) supports such an initiative by deciding to initiate an independent expert evaluation of the draft legal act in accordance with the procedure established by the Seimas Board."

Thus, according to Paragraph 2 of Article 145 of the Statute of the Seimas, if the specified conditions for ordering an independent expert assessment are met, an independent expert assessment must be ordered. Accordingly, the expert opinion obtained must be considered by the main committee responsible for examining the draft legislation, and consideration in plenary session is possible only after the expert opinion has been considered.

In accordance with the procedure established by Paragraph 2 of Article 145 of the Statute, a group of members of the Seimas submitted a request for an independent expert assessment of the Draft Law. The specified request of the members of the Seimas regarding the Expert Assessment was accepted and the Board of the Seimas on 21-05-2020 by protocol No. SV-P-279¹⁰ decided to request the Seimas Committee on Health Affairs until 04-06-2020 to submit proposals to the Seimas Board regarding the person (persons) who will perform the control of the Law of the Republic of Lithuania on Tobacco, Tobacco Products and Related Products No. I-1143 Draft Law amending Article 92 no. XIII P-3849 expert assessment (hereinafter referred to as the expert), qualification requirements, questions (assignments) to the expert, terms and procedures for submission of the expert assessment and submission of the technical specification.

However, although the order for an expert assessment was accepted, the expert assessment of the draft Law was not carried out. Moreover, in addition to the expert assessment, the procedure for consideration of the Draft Law was carried out.

¹⁰ Access online: [SV-P-279 Seimo valdybos 2020 m. gegužės 21 d. posėdžio protokolas Nr. SV-P-279 \(Irs.lt\)](#)

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After the procedure of consideration of the draft Law, 29 members of the Seimas additionally applied for an expert assessment, but in the protocol of 23-06-2021, the Health Affairs Committee refused to perform an independent expert assessment of the draft.¹¹

Thus, the Draft Law in Lithuania is intended to be adopted in principle without following the mandatory legislative procedures and in order to avoid conducting an independent expert assessment.

Regarding the aforementioned, we request the European Commission to take into account the comments set out in this letter when considering the notification of the Draft Law.

Yours faithfully,
Authorized person Justinas Poderis



¹¹ Access online: [XIIIP-3849\(3\) KOMITETO POSĖDŽIO PROTOKOLO IŠARAŠAS dėl Tabako, tabako gaminių ir su jais susijusių gaminių kont... \(Irs.lt\)](#)