

March 10th, 2017

Esigbond contribution in view of the EU Notification 2016/0648/EE regarding the Estonian draft Act amending the Tobacco Act.

Dear Madam, Sir,

The 'Esigbond' represent the interests of the Dutch e-cigarettes industry. Our members are small-scale importers and retailers of electronic cigarettes and e-liquids. The Esigbond advocates for a dedicated regulatory framework for e-cigarettes that recognizes the enormous public health potential of e-cigarettes as less harmful alternative for adult cigarette smokers who are unable or unwilling to stop. The members of the Esigbond acknowledge that e-cigarettes are not completely risk free and are strongly opposed to selling its products to minors.

We herewith take the opportunity to express our views on the Estonian draft Act, particularly as regards the proposed ban on e-liquid flavors (except those with a tobacco flavor), and the proposed display ban that would also be applicable to e-cigarettes.

Tobacco Products Directive 2014/40/EU does not provide the legal basis for banning e-liquids. The proposed ban thus seems a clear violation of EU internal market principles. The ban effectively serves as a barrier to trade depriving our members of the opportunity to sell e-liquid vapors in Estonia. Further, the unintended consequence of the ban would be that it severely undermines rather than advances public health objectives by

In this regard, the Esigbond calls on the Estonian Government to apply the principle of harm reduction as an additional pillar of its tobacco control policy. This de-facto means regulating e-cigarettes in such a way that it encourages adult smokers to switch to these products. However, imposing the same regulations on e-cigarettes as to those that apply to cigarettes effectively closes the door for the e-cigarettes category.

There are a number of pre-conditions for a harm reduction policy to be successful.

- First, the product must indeed present much lower level of risks compared to smoking, As regards e-cigarettes, there is overriding scientific evidence that this is indeed the case, e.g. leading health bodies in the United Kingdom (Public Health England¹, the Royal College of Physicians²) conclude that e-cigarettes are 95% less harmful than cigarettes.
- Second, the products must be acceptable to adult consumers. However, this precondition is severely undermined by banning e-liquid flavors (except those with a tobacco flavor) as providing e-cigarette users with a choice of a wide range of flavors is critical to satisfy their demand.
- Thirdly, Government should enable adequate consumer information about e-cigarettes so as to enable adult smokers to switch. However, imposing a display ban on e-cigarettes undermines consumer awareness of the products and only helps to secure the dominant position of the cigarette industry.

Therefore we strongly oppose the ban on e-liquid flavors and display ban proposed by the Estonian Government. We are of the opinion that such measure are jeopardizing the enormous benefits that

¹ <https://www.gov.uk/government/publications/e-cigarettes-a-developing-public-health-consensus>

² <https://www.rcplondon.ac.uk/projects/outputs/nicotine-without-smoke-tobacco-harm-reduction-0>

could be realized by the means of a harm reduction policy, which could facilitate the switch of smokers to significantly less harmful alternatives such as e-cigarettes.

Justifying such measures based on the so-called “Gateway” effect (e-cigarette use leading to smoking cigarettes), especially among the younger population, or the assumption that the use of e-cigarettes might re-normalize cigarette smoking is simply dismissing the findings of the majority of the available research around the world. For reference, in the United Kingdom, where the e-cigarette market is well established and growing, the regular use of e-cigarettes by those that have not smoked before is negligible, while smoking rates continue to fall. It is thus no surprise that the abovementioned reputable UK Health institutions are disputing the “gateway” and “re-normalization” theories³. The statements provided by the leading UK tobacco control organization Action on Smoking and Health (ASH) are also very relevant in this context⁴.

As a conclusion the Esigbond would like to urge the Estonian government to reconsider its disproportionate regulatory proposals and instead recognize the potential of a harm reduction policy in which e-cigarettes can play a crucial role. A legal framework that encourages current smokers to switch to these less harmful alternatives is a pre-requisite. This includes avoiding measures which would impede the acceptance of e-cigarettes by adult consumers, and that would undermine awareness of e-cigarettes by banning their display.

Yours sincerely,

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³ Idem.

⁴ <http://www.ash.org.uk/download/use-of-electronic-cigarettes-among-children-in-great-britain/>