

IEVA Contribution to TRIS notifications 2022/158/S and 2022/159/S

IEVA would like to express its concerns regarding the Draft Act on Tobacco-free Nicotine-containing Products and the Draft Act amending the Act (2018:2088) on Tobacco and Similar Products, both notified by the Kingdom of Sweden to the European Commission on the 17th of March 2022, under the references [2022/158/S](#) and [2022/159/S](#) respectively.

According to the statement of grounds submitted by the Swedish authorities, both draft acts intend to “*reduce the attractiveness of the product to children, young people and non-smokers*” by proposing a ban on flavoured e-liquids, and more generally to “*reduce the availability of tobacco, e-cigarettes, refill containers and tobacco-free nicotine-containing products and to limit the health risks and nuisance associated with the use of the said products, in particular to protect children and young people*”.

IEVA is particularly concerned by Chapter 2, article 6a of the Draft Act amending the Act (2018:2088) on Tobacco and Similar Products that foresees the **prohibition to place, on the Swedish market, liquids intended for e-cigarette use (both with nicotine and nicotine-free) containing flavours other than tobacco smell and/or taste.**

IEVA 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. Member States should choose the means which least restrict the free movement of goods

Moreover,

- The ban will lead to a rise in black market activity.
- The Act on Tobacco and Similar Products already fully regulates the market and prevents adolescents under 18 years old from buying such products (Chapter 5, article 18).
- It will put at risk tens of thousands of jobs and would lead to a reduction in government revenues by reducing tax collection.

Overall, IEVA respectfully calls on the European Commission to examine the proportionality of the flavour ban proposed by Sweden, and encourages the national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence.

1. Smoking prevalence in Sweden

Smoking prevalence: According to a recent Eurobarometer¹, only 7% of the Swedish population smoke, which is the lowest rate of all EU countries + the UK². Whereas 33% of Swedes used to smoke (and successfully quit)³, 60% of the Swedish population have never smoked⁴.

The appeal of e-cigarettes: Among Swedish citizens who have no or little experience with vaping products, 97% do not find e-cigarettes appealing⁵, which is the highest percentage in the EU. Moreover, 69% of Swedes declared their first smoking experience was boxed cigarettes, while only 1% had a first experience with e-cigarettes⁶.

Only 1% of Swedish students between 15 and 17 use e-cigarette regularly⁷. To put it into perspective, 53% of regular smokers in Sweden started smoking before turning 18⁸.

Use of e-cigarettes: Only 1% of Swedes are currently vaping⁹. 88% of the Swedish population has never tried e-cigarettes, 9% have only tried once or twice, and 1% used to vape but stopped¹⁰.

Reasons for using e-cigarettes: Eurobarometer reports that 57% of e-cigarette users in the EU started vaping to stop or reduce tobacco consumption¹¹ and 37% believe that vaping is less harmful than using tobacco¹². In Sweden, 31% of current smokers tried to quit smoking in the last 12 months¹³, and 47% tried more than a year ago¹⁴. 2% of

¹ Special Eurobarometer 506 "Attitudes of Europeans towards tobacco and electronic cigarettes", February 2021, [URL](#)

² Op. cit, Special Eurobarometer 506, page 14

³ Op. cit, Special Eurobarometer 506, page 17

⁴ Op. cit, Special Eurobarometer 506, page 19

⁵ Op. cit, Special Eurobarometer 506, page 83

⁶ Op. cit, Special Eurobarometer 506, page 98

⁷ Centralförbundet för alkohol- och narkotikaupplysning, CAN

⁸ Op. cit, Special Eurobarometer 506, table 2

⁹ Op. cit, Special Eurobarometer 506, page 63

¹⁰ Op. cit, Special Eurobarometer 506, page 63

¹¹ Op. cit, Special Eurobarometer 506, page 122

¹² Op. cit, Special Eurobarometer 506, page 122

¹³ Op. cit, Special Eurobarometer 506, page 108

¹⁴ Op. cit, Special Eurobarometer 506, page 106

Swedish smokers who tried quitting used e-cigarettes, an increase of 4% in comparison to 2017¹⁵ and below the EU threshold (11%)¹⁶.

Efficiency of e-cigarettes for smoking cessation: At EU level, 31% of smokers stopped smoking completely while using e-cigarettes while 27% reduced their tobacco consumption¹⁷. A recent study has shown that e-cigarettes can be 6 times more successful in quitting tobacco than nicotine replacement products¹⁸.

Advertisement of e-cigarettes: In Sweden, only 2% of respondents¹⁹ declared having seen “often” advertisements or promotion of e-cigarettes, liquids or cartridges (EU threshold: 7%²⁰). 12% answered “from time to time” (EU average: 16%) and 57% “never” (EU threshold: 57%). 32% of Swedes stated that online social networks or blogs were the most common places where they saw, read or heard about e-cigarettes or e-liquids, followed by sales points (31%) and other websites (28%)²¹.

2. Introduction of a flavour ban (taste and smell) on e-liquids

Proposed measure: *To reduce the attractiveness and demand for e-cigarettes and e-liquids towards young people, the Swedish authorities intend to prohibit the placing on the national market of liquids for e-cigarettes (both with nicotine and nicotine-free) containing flavours other than tobacco smell and/or taste.*

IEVA considers that the foreseen flavour ban does not adequately serve the policy objectives targeted by the Swedish authorities.

1- The figures presented above (“Smoking prevalence”, “Appealing character of e-cigarettes” & “Use of e-cigarettes”) demonstrate a **very low attractiveness of e-cigarettes among the Swedish population**: 97% do not find e-cigarettes appealing²², the lowest rate in the EU, while 88% never used it²³. Only 1% of Swedes are currently vaping²⁴ which is below the EU threshold (2%²⁵). At EU level, the flavour argument is

¹⁵ Op. cit, Special Eurobarometer 506, page 114

¹⁶ Op. cit, Special Eurobarometer 506, page 111

¹⁷ Op. cit, Special Eurobarometer 506, page 129

¹⁸ Katye Myers Smith & Al “E-cigarette vs. nicotine replacement treatment as harm reduction interventions for smokers who find quitting difficult: randomised controlled trial”, 29/06/2021, [URL](#)

¹⁹ Op. cit, Special Eurobarometer 506, page 177

²⁰ Op. cit, Special Eurobarometer 506, page 172

²¹ Op. cit, Special Eurobarometer 506, page 208

²² Op. cit, Special Eurobarometer 506, page 83

²³ Op. cit, Special Eurobarometer 506, page 63

²⁴ Op. cit, Special Eurobarometer 506, page 63

²⁵ Op. cit, Special Eurobarometer 506, page 62

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.

2- When it comes to the **role of flavoured e-liquids on youth uptake, scientific studies demonstrate there is no significant correlation.** According to a study from the Oxford Academy²⁶: *“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”*.

Another recent study carried out by the Yale School of Public Health based on more than 17,000 respondents aged from 12 to 54 year olds concluded that *“vaping non-tobacco-flavoured e-cigarettes was not associated with increased youth smoking initiation but was associated with an increase in the odds of adult smoking cessation”*²⁷. When it comes to the relationship between vaping and smoking initiation, the study concludes that *“adults who began vaping non-tobacco flavoured e-cigarette were more likely to quit smoking than those who vaped tobacco flavours”*²⁸.

On the contrary, flavours are in fact more important for adult ex-smokers than as stated by Professor Riccardo Polosa: *“Removing flavours will not affect the rates of youth cigarette use. But it will certainly reduce the number of options available for those adults who seek to quit smoking for good and find flavoured e-cigarettes effective”*²⁹.

3- The foreseen flavour ban appears to be **unjustified as it is not an appropriate measure to reduce attractiveness of vaping products and youth uptake.** IEVA calls on the Swedish authorities to reassess the dominant negative perception of flavour in the amendment and consider current scientific evidence on the matter.

4- Moreover, the foreseen ban is not supported by any evidence that e-cigarettes are actually more attractive to youngsters.

²⁶ *“The Impact of Flavor Descriptors on Nonsmoking Teens’ and Adult Smokers’ Interest in Electronic Cigarettes”*, Nicotine & Tobacco Research, Oxford Academic, 07/01/2015, page 1255, [URL](#)

²⁷ *“Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation”*, Yale School of Public Health, 05/06/2020, page 1, [URL](#)

²⁸ Ibid, page 9

²⁹ Riccardo Polosa, *“Harm reduction is a flavoured journey in global tobacco control”*, Catania Conservation, 11/09/2020, [URL](#)

According to the Swedish authorities, young people access e-cigarettes (primarily disposables) through other sources than vape shops or general stores, i.e. the black market. The growing illicit market for e-cigarettes is heavily focused on younger consumers, selling non-conforming products via social media (the primary medium where Swedes see e-cigarette advertisements)³⁰. 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 e-cigarettes lead to a reinforcement of illicit markets, as it was the case in various countries such as Hungary³¹. A flavor 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, licenses for selling e-cigarettes and marketing restrictions, in order to keep the variation of flavors while making sure youth access remains persistently low.

3. Harm reduction benefits of vaping

Beyond the choice of introducing a flavour ban, **IEVA regrets that the Swedish authorities neglect the positive effects of e-cigarettes with particular flavour profiles** and only take into account their possible negative health effects.

1- As shown by the figures presented above (“Uptake reasons for using e-cigarettes” & “efficiency of e-cigarettes for smoking cessation”) **vaping products are key harm reduction tools to support smokers’ efforts to quit combustible tobacco.**

2- Scientific evidence demonstrates that e-cigarettes help smokers to switch to a less harmful alternative: for instance, **vaping has been found 95% safer than traditional cigarettes**³². Several well known and publicly funded research institutes also concluded that vaping is significantly less harmful than traditional tobacco products such as the

³⁰ Op. cit, Special Eurobarometer 506, page 208

³¹ ECigIntelligence, April 2019, Hungarian National Tax and Customs Administration;

³² Public Health England, “*E-cigarettes: an evidence update*”, 2015, Page 5, [URL](#) - Additionally, the report, from the UK Committee on Toxicity of Chemicals in Food, Consumer Products and the Environment (COT (September 2020, [URL](#)), concluded that most people who vape are either smokers trying to quit or ex-smokers and that smokers who switch completely to vaping will get a substantial health benefit. There is a considerable reduction in the risk of lung cancer due to lower exposure to harmful compounds (page 28)

Institut Pasteur of Lille³³, the Royal College of Physicians³⁴, or the German federal office for drugs³⁵. Overall, e-cigarette reduced the risk of cancer for smokers³⁶.

3- Rather than equalizing the effects of e-cigarettes and tobacco products, IEVA recommends the Swedish authorities to **take into account the significant differences in risk profile** between tobacco and e-cigarettes.

4. Legal justification of the measure

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

1- IEVA believes the ban on e-cigarette products with particular flavour profiles will amount to a **quantitative restriction in the sense of article 34 TFEU**, as the banned products can legally be marketed in other Member States. This would therefore create a difference of treatment and access for e-cigarette and associated products shops.

2- 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 the e-cigarette, 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.

³³ "Comparison of the chemical composition of aerosols from heated tobacco products, electronic cigarettes and tobacco cigarettes and their toxic impacts on the human bronchial epithelial BEAS-2B cells", Institut Pasteur de Lille, 05/01/2021, [URL](#)

³⁴ "Nicotine without smoke: tobacco harm reduction", UK Royal College of Physicians, 28/04/2016, [URL](#)

³⁵ "Drogen und Suchtbericht", German federal office for drugs, 2019, [URL](#)

³⁶ William E-Stephens, "Comparing the cancer potencies of emissions from vapourised nicotine products including e-cigarette with those of tobacco smoke", BMJ, 04/08/2017, [URL](#)

Against this background, IEVA first believes the scientific basis on which the Swedish flavour ban is based is not taking into account the full picture, but is instead selective in choosing the scientific studies that support the authorities' position. **Sweden does not thoroughly demonstrate that the products in question pose a genuine threat to public health**, which should therefore prevent them from introducing such a flavour ban under article 36 TFEU

Conclusion

Against this background, IEVA respectfully calls on the European Commission to examine the proportional character of the flavour ban proposed by Sweden, and encourage the national authorities to adopt measures adapted to the pursued aim and based on thorough scientific evidence.

About IEVA

The Independent European Vape Alliance (IEVA) is a trade body that brings together Europe's small and medium sized producers and retailers of vaping products. The vast majority of vaping companies are run by self-funded entrepreneurs who saw a problem in society, cigarette smoking; and created vaping products as part of the solution. We are independent and not influenced by tobacco companies. We remain available anytime for any further questions or comments you may have:

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