

## **ETHRA submission - Amendment of the Tobacco and Smoking Products Order for regulation of e-cigarette flavours**

### **1. Introductory remarks**

Thank you for the opportunity to comment on the proposed amendment to the Tobacco and Related Products Order, which would limit the number of approved substances allowed to make tobacco e-liquids only to 16, as specified in Article 2.12. We shall also submit these comments to TRIS.

European Tobacco Harm Reduction Advocates is the voice of 27 million<sup>1</sup> EU consumers of safer nicotine products. ETHRA is a consortium of 25 grassroots consumer associations in 17 European countries, supported by experts in tobacco control and nicotine research. We are mostly ex-smokers who have used safer nicotine products, such as vapes, nicotine pouches, heated tobacco products, and snus, to quit smoking and to remain smoke free. ETHRA is a voluntary operation with no industry funding or conflicts of interest. Our EU Transparency Register number is 354946837243-73.

The objective of the proposed amendment, as set out in the Integrated Assessment Framework for Policy and Regulations (IAK), is to protect public health by reducing the attractiveness of electronic cigarettes to the general population, but particularly to young people. This raises serious concerns as the amendment would amount to a de facto ban on vaping products. The consequences of removing adult access to the most popular and effective smoking cessation tool will be negative to public health. Smoking will increase, especially amongst the middle aged and elderly - those people most at risk from the health harms associated with smoking. It would destroy the legal vaping industry in the Netherlands, and we predict that the black market would flourish.

ETHRA has regularly engaged with NL ministers and parliamentarians to raise concerns<sup>2</sup>

<sup>3</sup>and we also urge you to heed the warnings in '*Regulation of e-cigarette flavours – a response*', a submission to the 2020 consultation signed by twenty-four scientific and policy experts.<sup>4</sup>

### **2. Amendment amounts to a de facto ban on e-liquids for vaping**

This final amendment will see all flavoured e-liquids banned. "Tobacco" is the only permitted flavour, but the exhaustive list of just 16 permitted substances would not permit any of the currently available tobacco flavours to be produced. RIVM notes that manufacturers currently use a total of 503 different flavours in tobacco-flavoured liquids.<sup>5</sup>

Tobacco flavour is just one of thousands of e-liquid flavours. It bears little resemblance to the taste of cigarette smoke itself. It is unclear why this flavour has been chosen to be the one that would be permitted while all other flavours are banned.

### **3. The rationale for this policy decision is deeply flawed**

The Integrated Assessment Framework for Policy and Regulations (IAK) makes a number of claims that are not backed up by science, hugely overstating the potential harms from vaping. It makes no comparison with the effects of inhaling tobacco smoke, yet we know that the vast majority of vapers are former or current smokers. In the Netherlands in 2021 the percentage of adult vapers who never smoked was a minuscule 0.3%.<sup>6</sup> Given this fact it is imperative that any assessment of the health risks from using vaping products includes comparisons with the risks from continued smoking.

The document also states that there is an increased risk of harms including cancer from using vaping products. Again, this must be compared to smoking. We know beyond any reasonable doubt that vaping products are orders of magnitude safer than combustible tobacco.

The most robust evidence comes from the UK, a global leader in tobacco control policy. A 2020 review by the UK's Committee on Toxicity of Chemicals in Food, Consumer Products, and the Environment (COT)<sup>7</sup> concluded that smokers who switch completely to vaping will get a substantial health benefit and that there is a considerable reduction in the risk of lung cancer due to lower exposure to harmful compounds.

In 2018, Public Health England<sup>8</sup> conducted a comprehensive independent evidence review on e-cigarettes which found:

*“Vaping poses only a small fraction of the risks of smoking and switching completely from smoking to vaping conveys substantial health benefits over continued smoking. Based on current knowledge, stating that vaping is at least 95% less harmful than smoking”*

The UK's Royal College of Physicians landmark paper, Nicotine without smoke<sup>9</sup>, concluded:

*“Although it is not possible to precisely quantify the long-term health risks associated with e-cigarettes, the available data suggest that they are unlikely to exceed 5% of those associated with smoked tobacco products, and may well be substantially lower than this figure.”* (Section 5.5 page 87)

A study by Stephen WE<sup>10</sup>, published in the British Medical Journal, estimated that vaping had a cancer potency of 0.4% compared to smoking. The French Cancer Institute<sup>11</sup> also recognises the huge harm reduction potential of vaping in their latest campaign, stating:

*“Without tobacco, without smoke and without combustion, the electronic cigarette represents an opportunity to reduce cancer mortality related to tobacco. It should be used with a view to quitting smoking for good”*

The IAK claim that nicotine exposure during adolescence can be harmful to the developing brain is very weak. The claim is based on a small number of rodent studies which have no relevance to humans. This is just one area which was addressed in a comprehensive paper<sup>12</sup> by 15 past presidents of the Society for Research on Nicotine and Tobacco, the preeminent scientific professional society focused on nicotine and tobacco.

#### **4. Vaping is a successful tool for smoking cessation**

There is strong evidence that vaping displaces smoking through product substitution. As ex-smokers we know this, and our experiences are supported by evidence from randomised control trials, observational studies, population surveys and user testimonies. Vaping can be an effective smoking cessation tool even for those that have no intention of quitting - informally termed “accidental quitting”. A recent longitudinal study<sup>13</sup> of four countries found that *“Uptake of nicotine vaping appears to be strongly associated with cigarette smoking cessation among smokers with no initial plans to quit smoking”*

#### **5. A wide variety of flavours is essential to the success of vaping products**

Data from the Netherlands Expertise Centre for Tobacco Control<sup>14</sup> shows that vaping products are used almost exclusively by smokers and ex-smokers (99.7%) as a means to quit or reduce their use of smoked tobacco. Product appeal, including through the availability of a wide range of flavours, is a crucial element in attracting smokers to vaping in the first instance, and to avoid relapse to smoking. There is robust evidence that vaping non-tobacco flavours significantly increases the chances of successful smoking cessation.<sup>15 16</sup>

Evidence from the Netherlands also points to the important role flavours play in quitting smoking. Havermans et al<sup>17</sup> concludes that *“adults who completely substituted the use of conventional cigarettes by e-cigarettes have often initiated e-cigarette use with fruity flavours rather than tobacco flavours, or switched from tobacco to non-tobacco e-liquid flavours over time.”* A study of Dutch consumers of vaping products concluded that vape flavours are a contributing factor in smokers completely switching to vaping and recommended that they should remain available to adult smokers.<sup>18</sup>

Some smokers do initiate vaping with a tobacco flavour, but migration to fruit and sweet flavours over time is very common.<sup>19 20</sup>

The Netherlands has performed relatively well in regard to smoking cessation: smoking prevalence has fallen from 25.7% in 2014 to 20.6% in 2021. However, there is scope to improve, and every available cessation method should be utilised. Of the 2.9 million smokers in the Netherlands, only 30% made a serious quit attempt in the past year.

Flavoured vaping products could offer millions of Dutch smokers an exit ramp from smoking, at vast benefit to their health.

#### **6. A flavour ban could trigger a wide range of behavioural responses.**

Policymakers should consider the full range of likely behavioural responses to a flavour ban, given that the ban would not in itself lessen the drive to use nicotine. Such responses might

include the following, all with higher risk than using regulated products:

- Switch from vaping to smoking
- Initiate smoking, instead of vaping
- Access flavoured products from outside the EU
- Access flavoured products from the black or grey market
- “DIY” their flavours (home mixing)

In our ETHRA 2020 survey of nicotine consumers in Europe, which was the largest survey of its kind in the EU and received over 35,000 responses, we asked how vapers would react to a flavour ban. 28% of respondents said there was a high possibility that they would relapse to smoking, and 71% would consider using the black market or other alternative sources to access flavours.<sup>21</sup>

Responses to a predicted flavour ban, highlighted in the 2020 ITC Smoking and Vaping Survey in Canada, England and the United States, suggested that 28.3% of vapers would find a way to get the flavours they wanted and 17.1% would stop vaping and smoke instead.<sup>22</sup>

Real world evidence of consumer response to a flavour ban can be found in Estonia. In 2020 Estonia banned all flavours apart from tobacco. In 2022 almost 60% of vapers continue to use fruit, sweet and dessert flavours. Products are being sourced through the black market and by DIY mixing.<sup>23</sup> In response to this, the Estonia parliament voted to permit some e-liquid flavours.<sup>24</sup> Denmark too has seen a huge rise in the use of black-market products. Health spokesperson Lars Boje Mathiesen believes the strict legislation [flavour ban] has created a large illegal market, because the demand for flavours is still there.<sup>25</sup>

### **7. Bans on vaping stimulate increases in teenage smoking.**

A study of a ban on flavoured vaping products in San Francisco<sup>26</sup> saw a sharp rise in teen smoking compared to districts without a ban. We should not be surprised by more smoking in response to restrictions on vaping because the products are substitutes. But because the health risks of smoking are far greater than the risks from vaping, only a small diversion of teenage vapers into smoking would overwhelm any benefits of reducing teenage vaping. This is important because the public health outcome of a flavour ban is extremely sensitive to any adverse changes in smoking behaviour. These potential negative consequences should be the dominant concern of policymakers.

### **8. No evidence that vaping products act as “a gateway”**

As part of the rationale for the proposed flavour ban, the consultation explanatory note claims that there is growing evidence that vaping products are a gateway to smoking. However, there is no evidence for this claim. The correlations between smoking and vaping that are commonly reported in studies are likely caused by ‘common liabilities.’ Meaning that young people who are predisposed to engage in risk taking behaviours such as smoking are also likely to try other things like vaping.

If there was a gateway effect then we would expect to see an increase in smoking. However,

that is not happening. Instead we see a decline in smoking. In the Netherlands daily youth smoking has steadily declined, albeit slowly, from 3.1% in 2015 to 2.5% in 2021. Youth ever smoking declined from 22.8% in 2015 to 17.2% in 2021.<sup>27</sup> At the same time youth ever vaping fell dramatically from a high of 34.3% in 2014 to 14.4%, and regular use has remained less than 1%.

Further evidence that use of vaping products do not act as a gateway to smoking can be found in population trends. Youth vaping peaked in the USA in 2019 at 27.5%, it has since fallen to 11.3%, during this time regular smoking among high school students fell to the lowest levels ever at <0.4%.<sup>28</sup> The UK's Action on Smoking and Health<sup>29</sup> monitors trends in youth use of vaping products and combustible tobacco. It finds a slight increase in youth vaping in the last two years, while experimental and regular smoking continues to fall.

A Penn State College of Medicine study finds that vaping decreases dependence on cigarettes without increasing overall nicotine dependence.<sup>30</sup>

## 9. Conclusion

The Netherlands has set ambitious goals to reduce smoking rates and as tobacco harm reduction advocates, we share these goals. However, we must stress that banning flavours for e-cigarettes is likely to have the opposite effect. Policymakers must be aware that flavoured vaping products are a direct competitor to smoking. Banning or severely restricting a rival product protects the cigarette trade and keeps people smoking.

### A note on ETHRA's preferred terms for products

As people with lived experience of using Safer Nicotine Products (SNPs), we generally choose to use these terms:

- 'vapes', 'vaping products' and 'vaping', rather than 'e-cigarettes' or 'ENDS'.
- 'HTPs' to refer to Heated Tobacco Products.
- 'nicotine pouches' for non-tobacco containing oral sachets.
- 'snus' to refer to the pasteurised Scandinavian oral tobacco product, either in loose or pouch form.

### References:

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<sup>1</sup> Estimate of 27 million consumers provided by ECigIntelligence/TobaccoIntelligence. The actual figure is likely to be far higher because the data for smokeless tobacco is taken from research (Leon et al 2016) using data gathered in 2010 in only 17 countries

<sup>2</sup> European Tobacco Harm Reduction Advocates. 2020. ETHRA letter to Dutch Health Minister Mr Blokhuis. [\[access\]](#)

<sup>3</sup> European Tobacco Harm Reduction Advocates. 2021. ETHRA letter to Dutch members of parliament. [\[access\]](#)

<sup>4</sup> Clive Bates. 2021. Regulation of e-cigarette flavours - a response. The Counterfactual. [\[access\]](#)

<sup>5</sup> National Institute for Public Health and the Environment. 2021. RIVM advice: limit flavorings for e-cigarettes to 23 with only tobacco flavor. [\[access\]](#)

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