15 January 2021. No 65.

Order on a ban on advertising and visible location and display etc. of electronic cigarettes and refill containers with and without nicotine

Pursuant to § 18, § 18a(4) in the Act on a ban on electronic cigarettes, etc. cf. Act No 426 of 18 May 2016 on electronic cigarettes etc., as amended by Act No 2071 of 21 December 2020, the following is laid down:

Chapter 1

*Scope and definitions*

**§ 1.** This Order applies to:

1. electronic cigarettes and refill containers containing nicotine which are not authorised by a marketing authorisation under the Medicinal Products Act or in accordance with EU rules laying down Community procedures for the authorisation of medicinal products for human use or which are placed on the market as medical devices bearing the CE marking in accordance with the Medical Devices Order, and
2. electronic cigarettes and refill containers without nicotine.

*Paragraph 2.* The following definitions apply for the purposes of this Order:

1. Electronic cigarette: A product that can be used for consumption of nicotine-containing vapour via a mouth piece, or components of such a product, including a cartridge, a refillable tank and an arrangement without cartridge or refillable tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a refillable tank, or rechargeable with single-use cartridges.
2. Refill container: A receptacle that contains a nicotine-containing liquid or liquid not containing nicotine, which can be used to refill an electronic cigarette with or without nicotine.

Chapter 2

*Advertising*

**§ 2.** All forms of advertising for electronic cigarettes and refill containers are prohibited, see § 16(1) of the Act on electronic cigarettes etc.

*Paragraph 2.* The ban on advertising in subsection 1 includes a ban on:

1. The use of a name, brand, symbol or other symbol mainly familiar from electronic cigarettes and refill containers, in advertising for other products and services;
2. Marketing of electronic cigarettes and refill containers with the help of a name, brand, symbol or other feature which is known or in use as the brand for other goods and services.
3. Marketing of electronic cigarettes and refill containers with the help of names, brands, symbols, figures or the like that are mainly directed at children and young people under 18 years of age.
4. Use of layout, design or particular colour combinations associated with particular electronic cigarettes and refill containers.
5. Use of recognisable electronic cigarettes and refill containers in advertising for other products and services.

*Paragraph 3.* However, the ban in subsection 1 does not apply to the following:

1. Advertising in the press and other printed publications intended solely for professionals in the electronic cigarettes or refill container industry and in publications printed and published in third countries, provided that they are not primarily intended for the Union market.
2. Use of a name which before 7 June 2016 was used both for electronic cigarettes and refill containers and other goods or services, to advertise these other products, so long as the name appears in a form which is clearly distinct from how the name appears on the electronic cigarette and refill container.
3. Use of a name known from electronic cigarettes in advertising for other goods and services, if the other goods or services are only placed on the market in a limited geographical area.

Chapter 3

*Ban on visual placement and display for physical sales outlets*

**§ 3.** Visible placement and display of electronic cigarettes and refill containers at sales outlets are prohibited. However, the display of the assortment may be made at the prior request of the purchaser.

*Paragraph 2.* Products intended to be used in conjunction with the products covered by paragraph 1 are also included in the ban under paragraph 1.

*Paragraph 3*. The ban in paragraph 2 includes, but is not limited to, chargers, empty refill containers, packaging, batteries or flavourings. The ban in paragraph 2 does not include products that have a more general intended use, unless they are specifically designed or marketed with reference to electronic cigarettes and refill containers.

*Paragraph 4.* In compliance with the ban in paragraphs 1 and 2, it is forbidden to:

1. directly or indirectly advertise or announce that electronic cigarettes and refill containers are sold at the sales outlet,
2. use text, illustrations, images, colours, logos, symbols or other means to give the consumer the impression that a reference is being made to products or product categories covered by paragraphs 1 and 2 or give the impression that such products are beneficial to health, less damaging than other products, act as an aid to stopping smoking or have other beneficial effects or advantages or
3. give such products prominence by colour, special lighting or the like by comparison with the rest of the sales outlet.

Chapter 4

*Neutral information on products and prices for physical sales outlets*

**§ 4.** Physical sales outlets can give a purchaser a list containing neutral information on which electronic cigarettes and refill containers are sold at the sales outlet and the price of the products.

*Paragraph 2.* Information permitted under paragraph 1 includes:

1. brand and product name,
2. number, weight, size and volume, and
3. price.

*Paragraph 3.* The information on the list included in paragraph 2 must be displayed in black text on a white sheet of A4 paper or smaller, which may not have illustrations, pictures, colours, logos, symbols or other text, except as provided for in paragraph 4. No information on the list may be given greater prominence and the information shall:

1. appear in alphabetical order based on brand,
2. appear for each product in the sequence: Brand, product name, number, weight, size, volume and price, and
3. be shown with the same font and font size. The font size may not exceed 14 points.

*Paragraph 4.* The list in accordance with paragraph 3 shall contain a graph prepared by the Danish Health Authority on the age limit for the sale of electronic cigarettes and refill containers, see § 15(1) of the Act on electronic cigarettes etc.

*Paragraph 5.* Each product on the list under paragraph 3 can be assigned a number.

*Paragraph 6.* The list under paragraph 3 can be divided into one or more of the following categories: ‘Electronic cigarettes’, ‘Refill containers’, ‘Electronic cigarettes equipment’ and ‘Others’. The categories in the list may be subdivided into products with and without nicotine. The classification in the categories shall be in accordance with the definitions of electronic cigarettes and refill containers in the Act on electronic cigarettes etc.

*Paragraph 7.* The list under paragraph 3 may be shown on request by a purchaser or displayed at a manned sales till.

Chapter 5

*Sale online and by digital solutions*

**§ 5.** The ban on visible placement and display of electronic cigarettes and refill containers under § 3(1)–(3) also applies to sale online and using digital solutions, such as retailer home pages, internet shops, company home pages, company pages on social media and apps which sell to or are targeted at consumers.

*Paragraph 2.* Sales outlets included in paragraph 1 can give the purchaser neutral information on which electronic cigarettes and refill containers are sold at the sales outlet and the price of the products. In addition, information may be provided on the packaging of the products, as well as technical information enabling the customer to assess which other products the item is compatible with.

*Paragraph 3*. The information referred to in paragraph 2 may not give the impression that electronic cigarettes or liquids in refill containers have a health benefit, are less harmful than other products, or have other beneficial effects or benefits.

*Paragraph 4.* The information referred to in paragraph 2 may not appear on the front of the sales outlet, except that the categories ‘Electronic cigarettes’, ‘Refill containers’, ‘Electronic cigarettes equipment’ and ‘Other’ may be shown. The categories can be subdivided into products with and without nicotine.

*Paragraph 5.* Information included in paragraph 2 may not be displayed with or accompanied by illustrations, pictures, colours, logos, symbols or other text. No information may be given prominence or be conspicuous, and the information must be displayed with the same font colour, font type and font size as are generally used when presenting products on the website.

*Paragraph 6.* The ban mentioned in paragraph 5 does not cover the symbol of “place in basket” or other matters relating to the functioning of the website and ensuring web accessibility.

*Paragraph 7.* Sales outlets covered by paragraph 1 may not provide an opportunity for customers or visitors to the page to review, give a rating or the like to products covered by paragraph 1, if the review etc. in any way becomes visible or accessible for the reviewers themselves or others not employed by the sales outlet selling the products.

*Paragraph 8.* Sales outlets covered by paragraph 1 must ensure that, before the choice of product can be made, the customer is presented with a graphical image prepared by the Danish Health and Medicines Authority showing the age limit for the sale of electronic cigarettes and refill containers, see § 15(1) of the Act on electronic cigarettes etc.

Chapter 6

*Physical sales outlets that are specialised in the sale of electronic cigarettes and refill containers*

**§ 6.** The prohibition against visible placement and display under § 3(1 and 2) does not apply to the sale of electronic cigarettes and refill containers in physical sales outlets which specialise in the sale of these products.

*Paragraph 2.* A sales outlet under paragraph 1 is considered to be specialised in the sale of electronic cigarettes and refill containers when the outlet exclusively or mainly sells electronic cigarettes and refill containers with and without nicotine.

*Paragraph 3.* The exemption from the ban on visual location and display under paragraph 1 only applies to electronic cigarettes and refill containers. If the sales outlet sells other products or tobacco products, tobacco surrogates or herbal smoking products, these are included in the ban under § 3(1 and 2) and in rules on neutral information about products and pricesunder § 4 in this Order or in § 2(1 and 2) and § 3 in the Order on a ban on visual location and display etc. of tobacco products, tobacco surrogates and herbal smoking products.

*Paragraph 4.* If a sales outlet under paragraph 1 sells electronic cigarettes and refill containers through digital solutions, such as retailer home pages, internet shops, company home pages, company home pages on social media and apps, this is included in § 5.

*Paragraph 5.* It is not permitted for a physical sales outlet under paragraph 1 to advertise electronic cigarettes and refill containers at the sales outlet, in the shop window or on the shop front, except as provided for in paragraph 6. This includes:

1. the situation where there may be no elements, including around the products, which may produce promotional effects, such as special lighting, the use of colours or effects that otherwise highlight a particular product, trade name, price or other for electronic cigarettes and refill containers; or
2. by text, illustrations, pictures, colours, logos, symbols or other means to give the purchaser the impression that one or more products are beneficial to health, less damaging than other products, act as an aid to stopping smoking or in other ways have a beneficial effect or advantage.

*Paragraph 6*. The name of a physical sales outlet under paragraph 1 must appear in the physical store and on the shop front in a neutral design. The name itself may not have an advertising effect or stand out, but it may contain the words ‘electronic cigarettes’ or refer to electronic cigarettes in a neutral manner.

*Paragraph 7.* The exemption from the ban on visual location and display under subsection 1 does not give the sales outlet the possibility of visibly locating and displaying electronic cigarettes and refill containers in other places than inside the sales outlet, or of distributing advertising leaflets and free products etc.

Chapter 7

*Self-service machines*

**§ 7**. Self-service machines that are used to supply electronic cigarettes and refill containers after sale from a manned till must be neutrally designed. Information on the machine featuring brand, product name and prices must be displayed in a black font on a white background.

*Paragraph 2.* A machine covered by paragraph 1 shall not:

1. have or apply brand or company labels or other characteristics for these products, including a picture of a product,
2. give prominence to information and
3. have or apply text, illustrations, pictures, colours, logos, symbols or other means that can give the purchaser the impression that a product sold from the specific machine is beneficial to health, less damaging than other products, acts as an aid to stopping smoking or has other beneficial effects or advantages.

Chapter 8

*Penalties*

**§ 8.** Unless higher penalties are stipulated under other legislation, penalties will be imposed on those who violate the ban in sections 2 and 3 or violate the regulations in sections 4–7.

*Paragraph 2.* (legal persons) may be rendered criminally liable in accordance with the provisions in Chapter 5 of the Penal Code [Straffeloven].

Chapter 9

*Entry into force*

**§ 9.** This Order enters into force on 1 April 2021.

*Ministry of Health, 15 January 2021*

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/ Mie Saabye