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**Subject: Notification 2023/467/LT**

**Draft Law No XIVP-2590(3) amending Articles 2, 9<sup>2</sup>, 9<sup>5</sup> and 30 of Law No I-1143 on the control of tobacco, tobacco products and related products of the Republic of Lithuania**

**Delivery of comments pursuant to Article 5(2) of Directive (EU) 2015/1535 of 9 September 2015**

Sir,

Within the framework of the notification procedure laid down by Directive (EU) 2015/1535<sup>(1)</sup>, the Lithuanian authorities notified to the Commission on 27 July 2023 the ‘*Draft Law No XIVP-2590(3) amending Articles 2, 9<sup>2</sup>, 9<sup>5</sup> and 30 of Law No I-1143 on the control of tobacco, tobacco products and related products of the Republic of Lithuania*’ (hereinafter, ‘the notified draft’).

According to the notification message, the notified draft would extend the concept of ‘added taste or smell’, which currently applies only to tobacco products, to electronic cigarettes and their refill containers. Thereby it aims to fill a gap in the existing regulation as, in the presence of a ban imposed in Lithuania on 1 July 2022 on the placing on the market of electronic cigarettes and their refill containers containing liquids adapted for filling electronic cigarettes, if this liquid contains flavours other than the smell and/or taste of tobacco, electronic cigarettes and their refill containers with certain non-tobacco flavour properties are still placed on the market. The specific authorised chemicals that give the flavour of tobacco to electronic cigarettes and their refill containers with their CAS numbers would be specified in sub-statutory legal acts. The

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<sup>1</sup>() Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services, OJ L 241, 17.9.2015, p. 1.

aim is to reduce the attractiveness of electronic cigarettes and their refill containers for young people.

In addition, the notified draft would exempt electronic cigarettes and nicotine-free refill containers from the health warning requirement laid down in the Law given that it is not considered appropriate to indicate the presence of nicotine on a nicotine-free product and that this is considered misleading for consumers of electronic cigarettes and their refill containers.

Examination of the notified draft has prompted the Commission to deliver the following comments pursuant to Article 5 (2) of Directive (EU) 2015/1535.

## COMMENTS

### Flavouring of electronic cigarettes

The notified draft provides for a definition of an additional tobacco product, electronic cigarette, electronic cigarette refiller scent or flavour <sup>(2)</sup>, prohibits the placing on the market of electronic cigarettes and refill containers containing liquids suitable for the refilling of electronic cigarettes if this liquid contains such additional scents or flavours <sup>(3)</sup> and empowers the State Consumer Rights Protection Authority to compile a specific authorised substances list that imparts tobacco scent and flavour to liquids for electronic cigarettes and refill containers, containing the CAS numbers of these substances <sup>(4)</sup>.

The Commission notes that the notified draft is regulating the flavours of electronic cigarettes where the responsibility for adopting rules remains with the Member States in accordance with Recital 47 of Directive 2014/40/EU on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products <sup>(5)</sup>. At the same time the Commission would like to bring to the attention of the Lithuanian authorities that the regulation of ingredients is in accordance in particular with its Article 20(3) a harmonised area of Directive 2014/40/EU.

### Exclusion of electronic cigarettes from the scope of the health warning

By Article 3 of the notified draft, Article 9<sup>5</sup>(1) of Law No I-1143 on the control of tobacco, tobacco products and related products would be amended to read as follows:

*“1. Unit packets or any outside packaging of electronic cigarettes and e-cigarette refills shall bear the following health warning: “This product contains nicotine, which is a*

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<sup>2</sup>() Article 2(26) of Law No I-1143 on the control of tobacco, tobacco products and related products as amended by Article 1 of the notified draft:

*“The additional tobacco product, electronic cigarette, electronic cigarette refiller scent or flavour — a clearly perceived smell or taste other than tobacco resulting from the additive or combination of additives, including fruit, spices, herbs, alcohol, caramel, menthol or vanilla and other additives or combinations thereof, and which is felt before or during consumption of the tobacco product, an electronic cigarette, and before the use of an electronic cigarette filler.”*

<sup>3</sup>() Article 9<sup>2</sup>(4)(5) of Law No I-1143 as amended by Article 2(2) of the notified draft.

<sup>4</sup>() Paragraph 5 added to Article 9<sup>2</sup> of Law No I-1143 by Article 2(3) of the notified draft.

<sup>5</sup>() Directive 2014/40/EU of the European Parliament and of the Council of 3 April 2014 on the approximation of the laws, regulations and administrative provisions of the Member States concerning the manufacture, presentation and sale of tobacco and related products and repealing Directive 2001/37/EC (OJ L 127, 29.4.2014, p. 1).

*highly addictive substance”. This requirement does not apply to e-cigarettes and nicotine-free refillers for electronic cigarettes.”*

Article 2(16) of Directive 2014/40/EU defines ‘electronic cigarette’ as follows:

*“‘electronic cigarette’ means a product that can be used for consumption of nicotine-containing vapour via a mouth piece, or any component of that product, including a cartridge, a tank and the device without cartridge or tank. Electronic cigarettes can be disposable or refillable by means of a refill container and a tank, or rechargeable with single use cartridges”.*

Under Article 20(4)(b)(iii) of Directive 2014/40/EU, Member States are required to ensure that unit packets and any outside packaging of electronic cigarettes and refill containers:

*“carry one of the following health warnings:*

*‘This product contains nicotine which is a highly addictive substance. It is not recommended for use by non-smokers’. or*

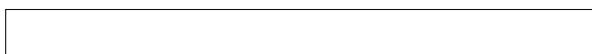
*‘This product contains nicotine which is a highly addictive substance.’*

*Member States shall determine which of these health warnings is to be used”.*

The Commission invites the Lithuanian authorities to ensure that the provision of Article 9(1) of Law No I-1143 as amended by Article 3 of the notified draft complies with the provisions of Article 2(16) and Article 20(4)(b)(iii) of Directive 2014/40/EU as regards the requirement that unit packets and any outside packaging of electronic cigarettes must bear a health warning on nicotine content.

The Commission invites the Lithuanian authorities to take the above comments into account.

The Commission furthermore recalls that once the definitive text has been adopted, it must be communicated to the Commission in accordance with Article 5(3) of Directive (EU) 2015/1535.



For the Commission

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