

May 8, 2025

## **Position of the European Confederation of Tobacco Retailers (CEDT) in response to the French government's draft law on the prohibition of oral nicotine-containing products**

The European Confederation of Tobacco Retailers (CEDT) represents the national federations and associations of eight countries of the European Union, whose members are consumer-facing retailers in the service of the State. The CEDT represents 130,000 small family businesses, with a representative office based in Brussels ([www.cedt.eu](http://www.cedt.eu)).

With this document, the CEDT wishes to express its concerns about the draft law presented by the French government, providing for the prohibition of the sale of oral products containing nicotine.

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### **1. Public health policy in France**

We note that France has one of the strictest anti-smoking policies in Europe: the price of a pack of cigarettes is higher than elsewhere (€13 for the best-selling product) and plain packaging was introduced in 2016.

However, the results of these measures have been disappointing:

- The prevalence of smoking remains among the highest in the European Union and is struggling to decrease.
- Tax revenues from tobacco are lower than initially forecast.
- A parallel market (legal or illegal) has developed and is becoming increasingly difficult to contain.

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### **2. The difficulties associated with the application of a prohibition**

Due to the policy of exponential increases in tobacco prices, France has fostered the development of a multifaceted parallel market, to the point that cigarette smuggling and counterfeiting is now a major national problem (insert data on the French market).

Despite the entry into force in February 2025 of the ban on the sale of disposable electronic cigarettes (puffs), the French authorities still note the presence of these products on the market, purchased abroad or via the Internet.

Today, France wants to ban not only nicotine pouches, but also any oral product containing nicotine, thus risking reproducing an unsuitable policy both in terms of public health and the fight against illicit activities.

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### **3. Distortions of the European internal market**

We believe that the introduction of a ban in France could lead to serious distortions of the EU's internal market, to be analysed in the light of Articles 34, 35 and 36 TFEU on the free movement of goods, as well as in the light of the established case law of the Court of Justice of the European Union.

It is worth remembering that national measures that may hinder the free movement of products legally manufactured in EU Member States must be proportionate. The proportionality test is fundamental in assessing possible derogations from the principles of the Treaty and must be based on a rational balance between the means employed and the objectives pursued.

In other words, the Member State must use the least restrictive tool, according to the identified need, so as not to excessively infringe the rights guaranteed by the above-mentioned articles of the Treaty.

A ban decided without a thorough assessment of possible regulatory alternatives seems to go against European law. The French Council of State itself, on 28 January, issued an unfavourable opinion on the project, reaffirming that any restriction must be necessary and proportionate. However, the French Government has not provided any evidence justifying the necessity and proportionality of the prohibition of oral nicotine-containing products.

Beyond the legal considerations, it is in our opinion necessary to carry out a substantial impact assessment, taking into account past experiences in France, briefly described in the introduction.

The ban in a single Member State inevitably leads to an increase in cross-border purchases. This will feed parallel circuits, particularly on the Internet, with consequences for France's neighbouring countries. It can be expected that an increasing number of consumers will seek to circumvent the ban by purchasing through unofficial channels.

In other words, banning a product in a country with a large consumer base like France will inevitably lead to the structuring of parallel markets on a European scale, especially online, making regulatory efforts more difficult in the states where the product will remain authorized. Rather, it is to be feared that in view of the increasing popularity of these products, new structures of organized crime could also result from this ban. On the one hand, illegal trade and

import structures would be conceivable. On the other hand it could be worthwhile for organized crime to set up its own production to counterfeit the products.

This phenomenon not only undermines the fairness and balance of the internal market, but also creates unfair competition for legitimate retailers, such as those represented by the CEDT, who have to face competition from illicit and online trade.

The CEDT believes that any ban at national level must be carefully assessed in order to avoid side effects that jeopardise the integrity of the single market.

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#### **4. Impact on small family-run retailers**

The points of sale represented by the CEDT are family micro-enterprises constituting a direct link with consumers. These are essential activities for the local economy and the communities concerned.

A ban such as that provided for in the French regulations is likely to have a significant impact on these structures, compromising their economic viability.

Small businesses, operating in an increasingly competitive market, need policies that reflect their real needs and do not encourage unregulated parallel channels. This is done according to a regulatory approach inspired by the "Think Small First" principle through the Small Business Act for Europe (COM(2008) 394 final).

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#### **5. The importance of a balanced regulatory approach**

The CEDT stresses that any regulatory measure, whether national or European, must take into account its consequences on small businesses. Public policies must be balanced, aimed at protecting the health of consumers while ensuring the economic viability of small businesses.

An approach that ignores the importance of local commerce could profoundly disrupt market dynamics and weaken consumer confidence.

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### **Conclusion**

In conclusion, the CEDT invites the competent authorities to think carefully about the implications of the draft law to ban oral nicotine-containing products, in particular with regard to the integrity of the European internal market and the sustainability of small retailers.



Any regulation must be designed in such a way as to protect public health, but also to guarantee the economic continuity of small family businesses, which are the true pillars of the local and European economy.

The CEDT maintains that oral products containing nicotine should be sold exclusively through a responsible network, such as that of tobacconists, with a long experience in the sale of sensitive products. In addition, the CEDT proposes, rather than a ban, a stricter framework for these products, such as: a ban on sales to minors and a mandatory health warning.

The CEDT also points out that oral nicotine-containing products represent a less harmful alternative to traditional cigarettes. This alternative could help reduce the number of cigarette smokers, as shown by the example of Sweden, where this product has already been on the market for a long time.

In conclusion, the CEDT expresses its readiness for a constructive dialogue with the competent authorities, in order to ensure that future regulations are effective, fair and sustainable for all relevant actors, in particular small retailers, who are a vital component of our economy.