



Subject: Tobacco Europe's contribution to the TRIS notification 2022/851/B (Belgium) of the Royal Decree on the manufacture and placing on the market of electronic cigarettes

Tobacco Europe AISBL, the non-commercial association representing the common views of three major European-based tobacco and nicotine products manufacturers (British American Tobacco, Imperial Brands and Japan Tobacco International) welcomes the opportunity to express its views on the Belgian draft Royal Decree currently notified to the European Commission via TRIS procedure [2022/851/B](#).

This TRIS notification marks Belgium's second attempt at banning disposable e-cigarettes. The European Commission has already blocked the same legislative process in November 2021 by submitting a detailed opinion urging Belgium to comply with Article 24(1) of Directive 2014/40/EU.¹ On that occasion, the European Commission blocked Belgium's draft decree (notification 2021/0427/B) as the prohibition of disposable e-cigarettes was not justified by the need to protect public health as required by Art 24(3) of Directive 2014/40/EU.

Just as we witnessed with the previous TRIS notification, we believe the current draft Royal Decree continues to fail to provide both the evidence to justify the necessity, and the proportionality of a ban of disposable e-cigarettes on the grounds of public health protection. Therefore, we urge the European Commission to uphold its previous ruling and not give in to flawed policymaking. In fact, such an arbitrary and radical measure is in clear contrast to the intention of EU Directive 2014/40/EU, and an unjustified ban on disposable e-cigarettes would constitute a unilateral restriction on trade between Member States. The free movement of goods is one of the essential principles of the EU single market and the undue restriction of trade in products that are lawfully available in other EU markets is inconsistent with this principle.

In addition to the above, we kindly request the Commission to acknowledge that:

1. **Electronic cigarettes are regulated under Directive 2014/40/EU:** The Directive 2014/40/EU ensures public health by regulating electronic cigarettes under Article 20 and setting provisions on the placing on the market, notification, ingredients, nicotine content and health warnings. Any disposable e-cigarette placed on the EU market must comply with these provisions, hence, a ban of this category is disproportionate and goes against the standards of public health set by Directive 2014/40/EU. A unilateral ban by Belgium would also undermine the important harmonization objective supporting Directive 2014/40/EU.
2. **The rationale of the Belgian Government is unsubstantiated and lacks evidence:** The Belgian Government, in its draft Royal Decree, did not provide any evidence that disposable e-cigarettes pose an increased risk to public health in comparison with any other e-cigarettes. As e-cigarettes are currently regulated under Directive 2014/40/EU, we believe there are no grounds to prohibit arbitrarily this category, which differentiates itself from other e-cigarettes solely by the lifespan of the device. Furthermore, it is unclear on what basis Belgium asserted that most young people

¹ Communication from the Commission - [2021/0427/B](#)

have no plans to quit smoking or why that would be of particular relevance for disposable e-cigarettes more than other types of e-cigarettes;

3. **Mistaken regulatory grounds:** The Belgian Government's grounds for imposing the ban are unrelated to the public health reasons potentially justifying certain measures under Article 24 (3) of the Tobacco Products Directive.² The notification reveals once again that factors other than the protection of Belgium's public health are central to the justification of the ban (e.g., *"the environmental impact of the production and use of these products"*). It is important to recall that Belgium is again raising these non-pertinent considerations despite the fact that the European Commission already advised it previously that any justification would need to be based on public health grounds.
4. **No ground relating to the specific situation in Belgium:** a prohibition of a category of tobacco or related products by a Member State under Article 24 (3) of the Tobacco Products Directive is only permissible on grounds relating to the specific situation in that Member State. The Belgian government fails to provide any ground, whether related to public health or not, that is specific to Belgium and that would not equally apply to other EU Member States. In fact, the only statement made by the Belgian government in which it differentiates Belgium from other Member States, is where it asserts that *"young Belgians exhibit more experimental behaviour than the European average"*. Not only is this claim totally unsubstantiated, but it is also hard to see why – if true – it would apply only to the use of disposable e-cigarettes and not to other types of e-cigarettes.
5. **The marketing and sale of disposable e-cigarettes on social media is prohibited in Belgium and sanctionable under Regulation 2022/2065/EU (Digital Services Act, DSA):** Article 7 §2 bis of the Belgian Tobacco Act bans the advertising of e-cigarettes including disposables in any form and by any means.³ In addition, the DSA provides the Belgian Government and the European Commission with enforcement mechanisms, such as penalties and sanctions, against social media providers that fail to remove illegal content and products from their platforms, or do not set up strict measures for detecting, flagging and removing them.
6. **Prohibition is a disproportionate measure leading to reduced protection of public health:** The Belgian Government should instead focus its efforts on a stricter enforcement of Article 6 §4 of the Belgian Tobacco Act which already bans the sale of e-cigarettes to minors, and of the provisions set out in Article 20 of Directive 2014/40/EU, by taking off the market uncompliant, lower-quality products. Prohibiting the entire product category is a disproportionate measure, which has historically proven ineffective, and it would foster illicit trade and enable the flourishing of the black market. This would likely result in more uncompliant products being distributed and consumed in Belgium and would negatively impact the protection of public health. The

² Article 24(3) of the Directive 2014/49/EU

³ Loi du 24 janvier 1977 Loi relative à la protection de la santé des consommateurs en ce qui concerne les denrées alimentaires et les autres produits [Law of 24 January 1977 Law on the protection of consumer health with regard to foodstuffs and other products].



disproportionality of this measure goes against the spirit of Article 24(1)(3) of Directive 2014/40/EU.

- 7. The Belgian Authorities cast doubt on their own gateway hypothesis:** The Belgian Government itself acknowledges that it cannot be sufficiently scientifically substantiated that vaping may act as a gateway to tobacco smoking. To quote the authorities, *“Most experts believe that the gateway hypothesis cannot be sufficiently scientifically substantiated. However, this factor plays a major role in the e-cigarette debate”⁴*.

In conclusion, we encourage the European Commission to continue to block this draft decree, which is an unnecessary, disproportionate, and unjustified measure. This will ensure that the public health protection achieved by Directive 2014/40/EU is safeguarded, and that no arbitrary measures restrict the free trade of goods between Member States.

Tobacco Europe is grateful for the opportunity to provide these comments, and is at your disposal should you need any additional information.

Yours sincerely,

A handwritten signature in blue ink, appearing to read "Darge", with a long horizontal stroke extending to the right.

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Director Tobacco Europe

⁴ Conseil Supérieur de la Santé (2022). CIGARETTE ÉLECTRONIQUE: ÉVOLUTION. JUIN 2022, CSS N° 9549 [Superior Health Council (2022). Electronic Cigarette: Evolution. June 2022, CSS N° 9549]. Retrieved from https://www.health.belgium.be/sites/default/files/uploads/fields/fpshealth_theme_file/20220616_css-9549_avis_e-cigarette_vweb_0.pdf